



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/01575/2020

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On 7 April 2022**

**Decision & Reasons Promulgated  
On 28 April 2022**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SOLOMON PRINCE ODAI**  
(Anonymity direction not made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Howard of Fountain Solicitors.

For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

**DECISION AND REASONS**

- 1.** By a decision promulgated on 10 December 2021 the Upper Tribunal set aside a decision of the First-tier Tribunal, having found erred of law material to the decision to allow the appeal.
- 2.** The matter returns to the Upper Tribunal to enable it to remake the decision by substituting a decision to either allow or dismiss the appeal.
- 3.** The appellant's immigration history shows he is a national of Ghana born on 18 March 1984.

- 4.** The appellant applied for entry clearance as a visitor on 20 April 2011 which was refused on 26 April 2011.
- 5.** On 18 May 2011 the appellant made a further application for entry clearance as a visitor which was issued on 20 May 2011 valid to 20 November 2011.
- 6.** The appellant claims to have entered the United Kingdom using that Visa on 1 July 2011.
- 7.** On 27 January 2016, the appellant applied for leave to remain in the UK under the family/private life route. His application was refused and certified as clearly unfounded, providing an out of country right of appeal, on 12 September 2016.
- 8.** On 14 March 2018, the appellant again applied for leave to remain in the UK under the family/private life route. This was refused and certified with an out of country right of appeal on 14 November 2018.
- 9.** On 7 August 2019 the appellant was served with a RED.0001.
- 10.** On 29 November 2019, the appellant applied for leave to remain in the United Kingdom under the family/private life route which was refused in the decision under challenge.
- 11.** It is a preserved finding from the decision of the First-tier Tribunal Judge that the appellant cannot satisfy the requirements of paragraph 276ADE(1) of the Immigration Rules as is the finding that article 8 ECHR is engaged on the basis of family and private life as a result of the appellant marrying on 6 August 2016, and the couple having a daughter born in the UK on 9 March 2017. Relevant to the finding concerning 276ADE is the finding that the appellant had not established that he will face very significant obstacles if returned to Ghana where he had lived the majority of his life. The Secretary of State's position in the refusal is that the appellant will be enough of an inside on return, an argument the appellant did not displace before the First-tier Tribunal.
- 12.** It was recorded by the First-tier Tribunal Judge that the appellant did not qualify for leave to remain under Appendix FM of the Immigration Rules. The appellant's wife is not British, not settled or in the UK with Refugee or Humanitarian Protection leave to remain, meaning the appellant could not qualify under the 'partner route' and because the appellant lives as a family unit with his partner and child he could not qualify under the 'parent route'.
- 13.** It was accepted before me that the issue in the appeal is article 8 ECHR outside the Immigration Rules.
- 14.** The Secretary of State did not dispute the existence of family life between the appellant and his wife and their child before the First-tier Tribunal and accepted the issue was that of the proportionality of the decision, that remains the situation.
- 15.** At the time of the First-tier hearing, the appellant's wife held leave to remain until 1 February 2022 having been first granted leave to remain on 23 April 2015 alongside her family; which consisted of her mother and siblings after they had arrived in the UK as a family unit many years previously.

- 16.** There was no cross-examination, the factual matrix being that set out in the updated witness statements dated 5 January 2022.
- 17.** In his statement the appellant confirms his immigration history, relationship history, birth of their daughter, and his picking and dropping her off when her mother is at work. In relation to why his appeal should be allowed the appellant writes:
- 13. I can confirm that I cannot return to Ghana because I am in a genuine and subsisting relationship with my wife who is a citizen of Togo and she has been residing in the UK since 1991 she was two years old. I understand she is neither a British citizen nor settled here & currently has a 10 year private life route but without my wife and my daughter, my life would be shattered.
  - 14. I can confirm that my daughter do not talk since birth and she has no speech which troubles her in understanding and expressing feelings due to communication difficulty. She sometimes appears unaware of other people or what is going on around her. Due to this, her behaviour leads to frustration which turns her into physical/aggressive play. Please see letter her school to confirm this.
  - 15. I can confirm that even if I go back home and my wife wants to sponsor me, I cannot come back to the UK under Appendix FM because she is not a British citizen or settled here. So, my only option is to live with my wife in the UK and support them.
  - 16. I can confirm that my wife and daughter has never lived anywhere else except the UK and my wife is only travelled to Ghana once during March 2020 to attend my mother's funeral on my behalf because I cannot travel outside the UK due to my immigration status.
  - 17. I can confirm that there are insurmountable obstacles for my wife, our daughter & I to relocate to any country because we are both Nationals of different countries.
  - 18. Furthermore, my wife has been working full time and I am looking after our daughter when my wife is at work. It would be very difficult for my wife to work and look after our daughter without my support.
  - 19. I believe that the refusal decision is contrary to Article 8 and my appeal should be allowed so that I can stay with my wife and daughter in the UK.
- 18.** The statement from the appellant's wife, also dated 5 January 2022, which has been taken into account together with all the historical evidence provided in the appeal bundles from all sources, confirms she is a citizen of Togo with a valid passport, confirms admission to the UK in 1991 with her mother and three siblings, confirms her own immigration status as having been granted leave to remain on the 10 year private/family life route on 23 April 2015, and the grant of periods of leave to remain which at the date of the statement was valid until 1 February 2022.
- 19.** The appellant's wife confirms the relationship history, the birth of their daughter and in relation to why she believes the appellant should not be deported writes:

10. I can confirm that our daughter has speech problem and that she do not talk since birth. Please see letter from her school confirming this.
  11. I can confirm that I am working full time as a Care Assistant since 28/02/2019. When I go to work, my husband looks after my daughter.
  12. I can confirm that my husband is not allowed to work. So, he stays at home most of the time and helps me and my daughter in domestic affairs. It would be very difficult for me and my daughter to live without my husband/father respectively.
  13. I can confirm that due to my husband's refusal, we are in extreme stress and anxiety. If my husband is not living with me, it will be very difficult for me to survive and look after my daughter.
  14. I can also confirm that my mother-in-law Mrs Mercy Odai (aged 69) passed away in Ghana on 02/02/2020. I went to Ghana on 05/03/2022 attend my mother-in-law's funeral.
  15. I can confirm that due to my husband's immigration status, he wasn't able to attend his mother's funeral.
  16. I can confirm that I have lived all my life in the UK (since 1991 when I was 2 years old). My husband and I have made several friends here and all my other family members live in the UK. Please see attached letters of support from friends and church confirming this.
  17. I believe that my daughter has a legal right to be with her father. Therefore, it is respectfully submitted to allow my husbands appeal under Article 8, so that he can stay with me and my daughter in the UK.
- 20.** The reference letters in support letters have been duly considered and weighed in the assessment but need not be set out verbatim in the decision.
- 21.** There is reference to a letter from the appellant's daughter's preschool which is dated 25 June 2021. I set the content out in full as it appears in the copy letter provided:

Stephanie has come up in leaps and bounds since she started preschool. She has settled well and now knows the routine of the setting. She is also becoming aware of some boundaries and likes to join in other children's play. However, we have observed the following and think it might be beneficial to get a specialist advice.

1. Although Stephanie likes to join in other children's play, her has no speech though her understanding is there, she hears instruction and follow instructions. Sometimes because of no speech, her behaviour most times leads to frustration on her part. This in turn results in "physical/aggressive play" which prevents her from connecting as she should with other children.
2. She sometimes appears unaware of other people or what's going on around her.
3. She does engage in pretend play or games or use toys in creative ways
4. She has trouble understanding and expressing her feelings due to communication difficulty.
5. She follows rigid routine and has difficulty adapting to change in schedule or routine

6. She is smalls food before attempting to eat them, she also put everything in her most especially toys
  7. She sometimes shows obsession/intense interest in some play.
  8. She hardly gives eye contact to an adult or her peers.
  9. She screams so loud when she is angry, she tends to be aggressive by kicking off and throwing herself on the floor. She does throw any item in hand, run around the nursery and turn things upside down due to anger.
  10. She is beginning to bite as a way of expressing her emotions either out of excitement or to show her disapproval of what is happening around her and also pinch others around her
- 22.** There is also within the bundle a letter from the Hertfordshire Community NHS Trust Community Paediatric Service dated 22 April 2021 confirming that they have received a referral which has been accepted and that Stephanie was on the waiting list and will be contacted when an appointment became available.

### Discussion

- 23.** ‘The provisions of section 117A to s.117D (Part 5A) are intended to provide for a structured approach to the application of article 8 which produces in all cases a final result which is compatible with article 8’ – see NE-A (Nigeria) v. Secretary of State for the Home Department [2017] EWCA Civ 239 (11 April 2017) [2017] Imm AR 1077.
- 24.** Section 117A reads:

#### **117A Application of this Part**

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—
    - (a) breaches a person's right to respect for private and family life under Article 8, and
    - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
  - (2) In considering the public interest question, the court or tribunal must (in particular) have regard—
    - (a) in all cases, to the considerations listed in section 117B, and
    - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
  - (3) In subsection (2), “the public interest question” means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2)
- 25.** Section 117B reads:

**117B Article 8: public interest considerations applicable in all cases**

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
  - (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
  - (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to—
  - (a) a private life, or
  - (b) a relationship formed with a qualifying partner,  
that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
  - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
  - (b) it would not be reasonable to expect the child to leave the United Kingdom

**26.** Section 117 C is not applicable as this is not a deportation appeal and section 117D is the definition section.

**27.** In *Akinyemi v The Secretary of State for the Home Department* [2019] EWCA Civ 2098 Sir Ernest Ryder, Senior President of Tribunals, who gave the lead judgment, stated at [46] 'I entirely accept that part 5A of the NIAA 2002 reinforces the statement of Executive policy that is to be found in the Rules and "sets the intended balance of relevant factors in direct statutory form"

- 28.** In *GM (Sri Lanka) v. Secretary of State for the Home Department* [2019] EWCA Civ 1630, a case relied upon by Mr Howard, Green LJ stated at [26-32]:
26. Before turning to the arguments, we make six preliminary observations about the test to be applied.
  27. First, the IR and section 117B must be construed to ensure consistency with Article 8. This accords with ordinary principles of legality whereby Parliament is assumed to intend to make legislation which is lawful (see for example *R v SSHD ex p. Simms* 2 AC 115 at page 131; and *Bennion on Statutory Interpretation* (7<sup>th</sup> Edition) at page 718 - there is "*a high threshold for rebutting this presumption*"). Were it otherwise then domestic legislation could become inconsistent with the HRA 1998 and the ECHR and be at risk of a declaration of incompatibility.
  28. Second, national authorities have a margin of appreciation when setting the weighting to be applied to various factors in the proportionality assessment: *Agyarko* (ibid) paragraph [46]. That margin of appreciation is not unlimited but is nonetheless real and important (ibid). Immigration control is an intensely political matter and "*within limits*" it can accommodate different approaches adopted by different national authorities. A court must accord "*considerable weight*" to the policy of the Secretary of State at a "*general level*": *Agyarko* paragraph [47] and paragraphs [56] - [57]; and see also *Ali* paragraphs [44] - [46], [50] and [53]. This includes the policy weightings set out in Section 117B. To ensure consistency with the HRA 1998 and the ECHR, section 117B must, however, have injected into it a limited degree of flexibility so that the application of the statutory provisions would always lead to an end result consistent with Article 8: *Rhuppiah* (ibid) paragraphs [36] and [49].
  29. Third, the test for an assessment outside the IR is whether a "*fair balance*" is struck between competing public and private interests. This is a proportionality test: *Agyarko* (ibid) paragraphs [41] and [60]; see also *Ali* paragraphs [32], [47] - [49]. In order to ensure that references in the IR and in policy to a case having to be "*exceptional*" before leave to remain can be granted, are consistent with Article 8, they must be construed as not imposing any incremental requirement over and above that arising out of the application of an Article 8 proportionality test, for instance that there be "*some highly unusual*" or "*unique*" factor or feature: *Agyarko* (ibid) paragraphs [56] and [60].
  30. Fourth, the proportionality test is to be applied on the "*circumstances of the individual case*": *Agyarko* (ibid) paragraphs [47] and [60]. The facts must be evaluated in a "*real world*" sense: *EV (Philippines) v SSHD* [2014] EWCA Civ 874 at paragraph [58] ("*EV Philippines*").
  31. Fifth, there is a requirement for proper evidence. Mere assertion by an applicant as to his/her personal circumstances and as to the evidence will not however necessarily be accepted as adequate: In *Mudibo v SSHD* [2017] EWCA Civ 1949 at paragraph [31] the applicant did not give oral evidence during the appeal hearing and relied upon assertions unsupported by documentary evidence which were neither self-evident nor necessarily logical in the context of other evidence. The FTT and the Court of Appeal rejected the evidence as mere "*assertion*".

32. Sixth, the list of relevant factors to be considered in a proportionality assessment is "*not closed*". There is in principle no limit to the factors which might, in a given case, be relevant to an evaluation under Article 8, which is a fact sensitive exercise. This obvious point was recognised by the Supreme Court in *Ali* (ibid) at paragraphs [115ff]] and by the Court of Appeal in *TZ (Pakistan) and PG (India) v SSHD* [2018] EWCA Civ 1109 ("*TZ*") at paragraph [29]. Nonetheless, there is in practice a relatively well trodden list of factors which tend to arise in the cases. We address those of relevance to this appeal below. But others exist, identified in Strasbourg and domestic case law, such as the personal conduct of an applicant or family member in relation to immigration control eg. breach of immigration rules or criminal law, or public order considerations; the extent of social and economic ties to the UK; and the existence of prolonged delay in removing the applicant during which time the individual develops strong family and social ties: See generally *Ali* paragraph [28] citing with approval *Jeunesse v The Netherlands* (2014) 60 EHRR 17 ("*Jeunesse*")
- 29.** Dealing with the specific elements of section 117 B, it was not submitted before me that the maintenance of effective immigration control was not in the public interest.
- 30.** It was not disputed the appellant is able to speak English. Although the appellant is unable to work his partner is and it was not made out that the appellant would not be able to obtain employment if he was granted leave to remain. It was not made out that he is likely to become a burden on the taxpayer.
- 31.** However, 'An appellant can obtain no positive right from either section 117B(2) or (3) whatever the degree of his/her fluency in English, or the strength of his financial resources' - see AM (s117B) Malawi [2015] UKUT 260 (IAC). Also 'Whilst the ability to speak English and being financially independent - no financial dependence upon the state - may add to the strength of private/family life, that is different from the existence of such factors establishing a public interest in favour of the appellant' - see *Rhuppiah v. Secretary of State for the Home Department* [2018] UKSC 58.
- 32.** In relation to the private life aspect; it is clear from the appellant's immigration history that since his leave as a visitor expired he has remained in the UK in breach of the immigration laws of this country and that his status has always been precarious.
- 33.** Whilst it is accepted this is not a rigid "one size fits all" assessment insufficient evidence was adduced to support a finding other than that little weight should be attached to the appellant's private life, outside the family relationship, that he has formed in the UK. The private life includes, inter alia, attendance at his church and friendships.
- 34.** Concerning the relationship and weight to be attached to the same; it is also indisputable that the relationship between the appellant and his wife was formed at a time when his status was precarious and his remaining in the United Kingdom unlawful. That does not mean that no weight should be given to the relationship as there is clearly a subsisting relationship between the appellant and his wife and a strong family bond between them. It is accepted family life recognised by article 8 ECHR exists.



- 35.** In relation to section 117B(6) as noted above, this is not a deportation appeal. The public interest would not require the appellant to be removed if he had a genuine subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the UK.
- 36.** It is not disputed that the appellant has a genuine subsisting parental relationship with Stephanie. The definition of a “qualifying child” is to be found in section 117D(1) as:
- “qualifying child” means a person who is under the age of 18 and who—
- (a) is a British citizen, or
  - (b) has lived in the United Kingdom for a continuous period of seven years or more;
- 37.** As Stephanie is unable to satisfy either criteria she is not a qualifying child.
- 38.** The appellant has failed to establish he is entitled to remain in the United Kingdom under the statutory provisions, which reflect the Secretary of State’s view of what needs to be established to outweigh the public interest. The Secretary of State retains a margin of appreciation as noted above as to what she believes should be the required test, although it has been confirmed by the Senior Courts that even though an individual is unable to satisfy the Immigration Rules or UK domestic provisions it is still necessary to undertake a holistic assessment to determine whether interference in the recognised protected right is proportionate.
- 39.** In relation to the continuation of family life outside the UK, the appellant and his wife refer to very significant obstacles in their witness statement, but it is a preserved finding that no very significant obstacles exist. This is the relevance of finding the appellant could not succeed under the Immigration Rules which include Appendix FM paragraph EX.1(b).
- 40.** As with any claim that family life could not continue outside the United Kingdom, is necessary to ascertain whether any alleged obstacle to the continuation of family life exist. The reasoning relied upon in the witness statements is that the appellant is a citizen of Ghana and his wife a citizen of Togo.
- 41.** It is important to take into account legal provisions relating to Ghana. The main statutory provision is the Immigration Act 2000.
- 42.** Section 4 of that Act sets out the conditions for entry into Ghana in the following terms:
- (1) Subject to this Act where an immigration officer is satisfied that a person other than a citizen of Ghana entering Ghana;
    - (a) is in possession of a valid passport or other travel document and a valid visa to enter Ghana where applicable;
    - (b) is exempted from obtaining a visa to enter Ghana;
    - (c) has his name endorsed upon a visa and is in the company of the holder of the visa;

- (d) has applied and been granted an emergency entry permit; or
  - (e) is a person admitted to diplomatic status by the Government of Ghana, the immigration officer may permit that person to enter Ghana for a period that may be specified.
- (2) A prohibited immigrant within the meaning of section 8 shall not be permitted to enter Ghana.
  - (3) Where a person who appears before an immigration officer does not have a visa or an emergency entry permit, the immigration officer may grant him a visa subject to such conditions as may be prescribed by Regulations, and to such other conditions that the immigration officer may impose.
  - (4) Conditions prescribed for the purpose of this section may relate to—
    - (a) security to be furnished whether by bond, deposit or otherwise, and the liability of the person who provides the security;
    - (b) place of residence in Ghana;
    - (c) occupation or business to be followed or undertaken;
    - (d) any activities which might offend the religious beliefs of any section of the community;
    - (e) in the case of permission for passing through Ghana, the route to be followed; and
    - (f) in the case of any condition or permit in the form of a pass, the return of the pass.
- 43.** The appellant’s spouse is a citizen of Togo a member of the Economic Community of West African States (ECOWAS) who is exempt from the requirement to obtain a visa before entering Ghana. Such status enables the appellant’s spouse to enter Ghana on production of a valid Togo passport without any further requirements, for a period of 90 days. It is not made out before me that there is any obstacle to the appellant’s spouse or child being able to enter Ghana with the appellant or separately at a later date.
- 44.** So far as the child is concerned, the child could be a national of Ghana or Togo or have dual nationality of each state. Ghanaian nationality law enables a child born outside Ghana to be registered as a Ghanaian citizen if one of his or her grandparents is a Ghanaian citizenship, as will be the appellant’s parents. Even if the child takes citizenship of Togo, the Immigration Act 2000 enables persons of African descent to apply for an indefinite right of abode in Ghana.
- 45.** Section 13 of the Immigration Act 2000 states:

Section 13—Residence Permits.

- (1) A person who has been lawfully admitted entry into Ghana, may upon an application to the Director in the prescribed manner, be issued with a residence permit.
  - (2) The Director may grant residence permit for up to a period not exceeding eight years, except that, a residence permit shall not be for more than four years in the first instance.
- 46.** As the appellant’s wife can gain entry to Ghana lawfully it is not made out she will not be able to make an application to be issued with a residence permit to enable her to live in Ghana lawfully after the 90-day period.
- 47.** Section 16 of the Ghana Immigration Act 2000 states:

Indefinite Residence Status for Foreign Spouses.

- (1) A foreign national married to a citizen of Ghana is entitled to indefinite residence in Ghana if that foreign national:
  - (a) has resided in Ghana throughout the period of twelve months immediately preceding the date of the application;
  - (b) has immediately preceding the period of the twelve months, resided in Ghana for an aggregate period of not less than two years;
  - (c) has not been convicted of any offence and sentenced to a period of imprisonment of twelve months or more;
  - (d) intends to reside permanently in Ghana upon the grant of the status; and
  - (e) is in possession of a valid residence permit on the date of the application.
- (2) The Director may in such special circumstances as he thinks fit and with the approval of the Minister allow a continuous period of six months and an aggregate period of one year to be substituted for the twelve months and two years respectively provided under paragraphs (a) and (b) of subsection (1).
- (3) Where a foreign spouse who is granted an indefinite residence status stays away from Ghana for more than twelve consecutive months that foreign spouse automatically loses the status.
- (4) A foreign spouse who loses an indefinite residence status under subsection (3) may apply to the Director for reinstatement, except that the application shall be treated as a fresh application subject to such conditions as the Director may determine.
- (5) The separation, divorce or death of a spouse in a marriage to which this section applies shall not affect the indefinite residence status held by the foreign spouse immediately before the occurrence of the event.
- (6) Notwithstanding any provision of this section, a foreign spouse whose marriage is no longer in existence may upon application to the Director be granted indefinite residence status subject to evidence that the marriage was contracted in good faith.

**48.** It is not made out before me that having completed the necessary period of residence within Ghana set out in the Section, that the appellant's wife could not apply for indefinite leave to remain, described as Indefinite Residence Status, enabling her to settle permanently in Ghana with the appellant and their child.

**49.** It is not made out this family cannot return to Ghana where they can continue their family life.

**50.** I deal at this point with one issue, namely that the appellant's wife has been granted leave to remain in the United Kingdom. She is not, however, settled and is on a route to settlement. Leave was granted to her on the basis of her family/private life with her own family members but there has clearly been a material change in her circumstances in that her family life is now focused upon the appellant and Stephanie. Her leave is not recognition by the Secretary of State that she cannot leave the United Kingdom. A grant of leave does not prevent her leaving the United Kingdom to continue her family life with her husband elsewhere.

**51.** I note Mr Howard's submissions regarding the difference between the ability of the family unit to relocate to Ghana and the practicality and reasonableness of expecting them to do so. I accept there is an additional element to be considered namely whether the family will be

able to live in Ghana by reference to basic needs such as housing, food, and other essentials, but it was not made out the appellant will be unable to reintegrate or provide the same, as evidenced by the finding of no insurmountable obstacles. It is also not made out that if the appellant returns alone to make the necessary arrangements with his partner and child joining him at a later date that any such period of separation will make the decision disproportionate.

- 52.** I appreciate settling as a family away from the routines and everything they have been used to in the UK will be difficult, but the appellant has failed to establish an evidential foundation for the assertions there are insurmountable obstacles to their family life continuing outside the United Kingdom. Such assertion is not properly supported by evidence. It must also be remembered that "Very real culture shock" is not the same as "very significant obstacles"- see Secretary of State for the Home Department v Olarewaju [2018] EWCA Civ 557 at [26].
- 53.** An important aspect of this family unit is obviously the best interests of Stephanie. The child is not a British citizen. The child's best interests are to remain with her mother and her father.
- 54.** In relation to the child's needs, there is no diagnosis or evidence to show the determinative factor is the child remaining in the United Kingdom. The report from the school of her frustration and outbursts may be related to the lack of oral communication from Stephanie and her frustration at others not knowing what she wants because she cannot communicate the same. The evidence shows that Stephanie engages with the school and can follow instructions indicating she can hear what is being said. Speech delay can often not be because of any long-term problem but rather as a result of a delayed development or inability to form actual words.
- 55.** There are speech and language therapists in Ghana, and it was not made out that Stephanie would not be able to have access to the same if required or that they would not be able to assist her and meet her needs. The official language of Ghana is English which would therefore not be a barrier to the child.
- 56.** There is no evidence of any other health or related issues concerning Stephanie that would count against her travelling with her parents to form a new life in Ghana.
- 57.** I accept that one impact of the appellant's wife and Stephanie leaving the United Kingdom will be a change in the relationship with their maternal family. There was however no evidence provided to show that the impact on the same would be sufficient to render the decision disproportionate.
- 58.** I have undertaken the assessment of Stephanie's best interests focusing upon the child and the reality of her situation. Stephanie is still very young and dependent on her parents. It is not a case in which there is any need for Stephanie's immediate family to be broken up as her mother and father can continue their family life in Ghana with the child being part of their new life as it is for many children whose parents relocate internationally.

- 59.** I have considered the effect of the decision and the impact of the appellant and his wife and Stephanie leaving the United Kingdom on all members of the family' as per *Beoku-Betts v. Secretary of State for the Home Department* [2008] UKHL 38, but there is insufficient evidence specifically relating to this issue to establish that it is a determinative factor. It is another piece of the jigsaw.
- 60.** The main argument relied upon by the appellant is that he wants to stay in United Kingdom with his wife and child and for the status quo to be preserved. His wife's position is that she wishes her husband to remain so they may continue to enjoy family life together and for the status quo to be preserved.
- 61.** On the Secretary of State side of the balance sheet, required when undertaking a proportionality assessment, is that the appellant cannot meet the requirements set out in statute. It is also the case that both his family and private life came into existence of time when his immigration status was precarious.
- 62.** 'Under the settled jurisprudence of the ECtHR it is likely to be only in an exceptional case that article 8 will necessitate a grant of leave to remain where a non-settled migrant had commenced family life in the United Kingdom at a time when their immigration status was precarious. That general principle applies to considerations of article 8 both within and outside the Rules. Where precariousness exists, it affects the weight to be attached to family life in the balancing exercise. That is because article 8 does not guarantee a right to choose one's country of residence' see - *TZ (Pakistan)* and *PG (India) v. Secretary of State for the Home Department* [2018] EWCA Civ 1109.
- 63.** Having weighed up the competing interests with the required degree of anxious scrutiny, and accepting that there will be an impact upon this family unit of the Secretary of State's decision, and especially taking into account the best interests of the child as the primary consideration, and give having given proper weight to the public interest relied upon by the Secretary of State, I find that Mr Williams has made out to the required standard that the appellant's removal from the United Kingdom is proportionate to the legitimate aim being relied upon. There is insufficient evidence to show that the family life enjoyed by the appellant's wife and Stephanie cannot continue in Ghana.

## **Decision**

- 64. I dismiss the appeal.**

Anonymity.

- 65.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 11 April 2022