



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

Appeal Number: IA 24888 2013

THE IMMIGRATION ACTS

**Heard at Field House
On 28 February 2014**

**Determination Promulgated
On 12 March 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SAMUEL KWAME FORSON

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Oke, Legal Representative instructed by Daniel & Samuel Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Ghana against a decision of the First-tier Tribunal dismissing his appeal to refuse to vary his leave to remain in the United Kingdom on 31 May 2013.
2. The relevant immigration history is that the appellant came to the United Kingdom as a visitor on 13 October 2001. He was given discretionary leave on 21 April 2010 until 21 April 2013 by reason of his having established family life in the United Kingdom. He applied for an extension of that stay on 22 April 2013. The application was almost certain to run into difficulty because the appellant's circumstances had changed and it was refused.
3. When the appellant was given leave to remain on a discretionary basis it was because he had established strong family life elements in his private and family life. He was living with his wife, his daughter who was then still a minor and his son who is now aged 17. By the time he made his second application in April of 2013 the marriage had broken down, the daughter had achieved her majority and

relations with his son had deteriorated to the point where he had found it necessary to try and make an application to the Family Court for a contact order.

4. In fact the form that he completed with a view to commencing proceedings in the family courts had been refused because it had not been accompanied by the appropriate fee and the appellant had made a further application to be excused fees based on his impecuniosity.
5. The First-tier Tribunal Judge dismissed the appeal in what is in many ways a thorough and careful determination but there are two potential errors.
6. Firstly, the judge seems to have ignored completely the appellant's complaint that the decision was in breach of a policy that ought to have been considered because it helped the appellant and secondly, because the judge had misdirected himself concerning the approach to take when there are family proceedings which according to the appellant had been initiated.
7. I will deal with the policy point first. A difficulty facing the appellant is that it is very hard to see how the most careful consideration of the policy identified before me could have assisted the appellant and, although the judge ignored the point, the policy was never produced for his consideration. It is well-established that people intending to rely on policies in this Chamber ought to make sure that copies of the policy are available to the Tribunal. Policies are often of short duration and old copies can be extraordinarily difficult to track down. It is incumbent on a party relying on a policy to produce it so that everybody can understand what it is that the appellant is complaining about. That was not done in this case.
8. Mr Oke had a copy of the necessary policy before him when he prepared the case (or rather I assume that he had; he has not actually been established that he did). I do not doubt that he has acted in good faith but it is easy to make mistakes.
9. However the document on which he relies does not actually help the appellant. It would only be of assistance if there had been no change in the appellant's circumstances but it is the very essence of the appellant's case that his circumstances are now different. He no longer claims to be a happily married man living in a nuclear family but to be in an unhappy or dissolved marriage trying to get to court to order to facilitate contact with his child. The circumstances are quite different and the most careful consideration of the policy as far as I can see would have produced exactly the same decision in the First-tier Tribunal. There was no material error here.
10. The second point concerns the approach that the Tribunal should have taken knowing that proceedings had been initiated. I am not at all satisfied that this is relevant because it is not clear to me that proceedings had been initiated. I have seen evidence suggesting that attempts had been made to be excused payment but I am not persuaded that proceedings have been initiated when they have not been issued.
11. On the facts of this case this is not material. The guidance given in **RS (Immigration and Family Court proceedings) India [2012] UKUT 00218 (IAC)** assists where courts are getting involved and I do not think it is necessarily the case that the proceedings have to be initiated before **RS** is relevant. The

Tribunal's decision should, as far as is possible, have regard not only to the fact that proceedings have been issued or contemplated, but to the substances of the application. Otherwise wholly unmeritorious applications could be made to frustrate immigration control.


12. I want to make it clear that I am far from satisfied that the immigration rules do give proper regard to the rights of children in all circumstances and I am confident this Tribunal, at least until the jurisprudence is more settled, will be extremely alert to the possibility that the Rules and policies not taking proper account of the needs of children who are affected by the removal of their parents. It would be wholly undesirable and may well be wrong in law for the Secretary of State to be routinely making decisions to remove somebody when there are serious issues to be determined in the Family Courts.
13. What is different about this case is the extreme weakness of the proposed application. Reference is made to contact order in respect of two children but this is nonsense. The oldest child is an independent adult and I can think of no circumstances whatsoever in which a contact order could possibly be made in her case.
14. The case of the second child is a little bit different because he is a minor and it is generally very desirable that children are allowed to cultivate relationships with both of their parents. However the second child is already 17 years old. Within a year he will be an independent adult. There is nothing from him before me to indicate that he wants to see his father but he has been frustrated because of his mother. It is not even the appellant's case in his statement that his former wife is preventing contact. The evidence that would be necessary to show that this is the sort of case where there is any merit in the contact application is just not before me and so again I do not see how any deficiencies on the part of the First-tier Tribunal can possibly be described as material. This is just not a case where there is any proper basis for thinking that the contact proceedings are going to have any bearing on the outcome of this application that led to these proceedings.
15. I address my mind particularly to paragraph 1(iii) of the head note in **RS**. It says:

“In the case of contact proceedings initiated by an appellant in an immigration appeal, is there any reason to believe that the family proceedings have been instituted to delay or frustrate removal and not to promote the child's welfare?”
16. This question has to be answered in the affirmative. It is right to say that attempts were made to issue the proceedings before the Secretary of State's decision but they were made after the application had been made and in anticipation of enquiries being made. They were clearly brought knowing that there was an immigration issue at large.
17. As I have indicated, it is an extremely weak case with nothing to indicate any inherent merit in it and I think this is a case initiated in the Family Courts with a view to frustrating the immigration decision rather than helping the child.
18. Mr Oke said that the proper course was for me to adjourn the case because it is likely there would be information available for the Family Court no later than 31 March which could go some way to indicating if my analysis of the case is right or if this is an unusual case where there are elements that I have just not

considered. This was a point made attractively but I think it would be inappropriate for me to yield to it because the decision to me is plain on the evidence and it is that there is no material error on the part of the First-tier Tribunal.

19. It follows therefore that I uphold the decision of the First-tier Judge and dismiss the appeal that is before me.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 7 March 2014