



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

Appeal Number: HU/09757/2017

**THE IMMIGRATION ACTS**

**Heard at Glasgow**

**Decision & Reasons  
Promulgated**

**On 31 August and 18 October 2018**

**On 12 November 2018**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**A G**

Appellant

**and**

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

Respondent

For the Appellant: Mr K Forrest, Advocate, instructed by Katani & Co,  
Solicitors

For the Respondent: on 31 August, Mrs M O'Brien, and on 18 October, Mr M  
Matthews, Senior Home Office Presenting Officers

**DETERMINATION AND REASONS**

1. This decision is to be read with:
  - (i) The respondent's deportation decision, dated 23 and served on 24 August 2017.
  - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
  - (iii) The decision of FtT Judge M A Khan promulgated on 1 November 2017 (set aside, and relevant only as a record of the case then put by both sides).

- (iv) The grant of permission to appeal to the UT, dated 19 December 2017, on the issue of whether the FtT took account of evidence of the appellant's relationship with his daughter, C G.
  - (v) The decision of UT Judge Canavan, dated 21 February 2018, adjourning the hearing (because the appellant was unable to attend), and directing the appellant and respondent to provide evidence.
  - (vi) The decision of UT Judge Canavan, dated 24 April 2018, finding error of law, and setting aside the decision of Judge Khan, and observing at paragraph 7, "The main issue is whether the effect of deportation would be unduly harsh on the appellant's daughter, C G, born on 14 April 2002".
  - (vii) The note and further directions of the UT dated 31 August and issued on 4 September 2018.
2. The respondent filed a bundle on 18 October 2018 replicating the SSHD's materials before the FtT, items A - H, and adding further items 1 - 3.
  3. The appellant's solicitors filed a first inventory of productions on 12 October 2018, comprising:
    - (i) Statement of appellant, 2 October 2018.
    - (ii) Statement of C G, 2 October 2018.
    - (iii) Statement of C C, the mother of C G, 3 October 2018.
    - (iv) Statement by social worker, Mr Golding, who has been the allocated social worker of CG since 4 June 2018. It is undated, but based in part on a discussion with C G on 24 September 2018.
    - (v) Updated statement by Mr Golding, 9 October 2018.
  4. On 18 October 2018, the appellant was the only witness present. He adopted his statement, gave brief further evidence-in-chief, was cross-examined, and briefly re-examined. Parties made their submissions, and I reserved my decision.
  5. The case falls within the following paragraphs of the immigration rules:

### **Deportation and Article 8**

A398. These rules apply where:

- (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention;

(b) a foreign criminal applies for a deportation order made against him to be revoked.

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if -

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

399A. This paragraph applies where paragraph 398(b) or (c) applies if -

- (a) the person has been lawfully resident in the UK for most of his life; and
- (b) he is socially and culturally integrated in the UK; and
- (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

6. The appellant is a foreign criminal, having been sentenced to a period of imprisonment of at least 12 months.
7. The appellant is not in a relationship with a partner.
8. The appellant has not been lawfully resident in the UK for most of his life.
9. The appellant is the father of C G (his only child), born on 14 April 2002, a UK citizen.
10. There is no question of C G going to live with the appellant in Barbados, and no need to consider whether that would be unduly harsh.
11. The issues for decision, as identified by the parties, are:
  - (i) whether the appellant has a genuine and subsisting parental relationship with C G;
  - (ii) if so, whether it would be unduly harsh for C G to remain in the UK without the appellant; and
  - (iii) (if not allowed within paragraph 399) whether the public interest is outweighed by very compelling circumstances over and above those described in paragraphs 399 and 399A.
12. The appellant lived with C G and her mother until C G was aged about 3 1/2. He claims to have lived with them both thereafter "on and off" until she was aged about 5. Supporting evidence that he did so is sparse; but that part of his account may be accepted for present purposes.
13. There are copies of recent exchanges of text messages between the appellant and C G, not clearly dated, but apparently over the last few months.
14. The appellant has had some direct contact with C G over the period of 11 years or so since he finally split with her mother, including residential contact at weekends, although that has not occurred in recent years. By his account, their relationship has been limited and sporadic. He claimed in his statement, and in oral evidence, to have been in direct touch with C G until about the time of his arrest in early 2016.
15. Evidence from the Family Court at Manchester and from Manchester City Council Social Services shows that C G has been brought up against a troubled family background, spending periods in foster care, periods with

her mother and half-siblings, and periods with her maternal grandmother. There is a large volume of evidence about the family from these sources, but it makes very little reference to the appellant. Mr Matthews put it to the appellant (and maintained in submissions) that this was because the appellant played very little part in her life. He also put a passage from a core assessment prepared by the Council for the Court, dated 4 March 2013, at 15.2.4:

“Mr G has failed to keep his promises to C in terms of contact and has upset her as a result”.

16. The appellant’s response was not very cogent, but I understood the gist to be that he denied letting C G down other than a few times, and unavoidably; and that he and C G did not have “a social work relationship”, meaning that their contact was governed by informal agreement, not in dispute or officially supervised.
17. The absence of any need for official supervision might be a healthy sign. However, the family situation surrounding C G has been subject to scrutiny of social workers and the Court over many years. Mr Forrest invited me to consider that this tranche of evidence showed the chaotic situation in which C G and her half-siblings were brought up, but was neutral regarding the appellant’s relationship with C G, and could be put to one side. I do not agree. If the appellant played any significant and positive part in her life, that would be recorded. It is telling that such record as there is points in the other direction.
18. The first statement by Mr Golding says that the appellant had very little meaningful contact with C G throughout her childhood; that she is subject to the Children Act 1989; that only indirect contact would at first be permitted, if the appellant were to be released; and that on 24 September, C G was asked if she would like contact to be arranged, and answered in the negative.
19. In her brief statement of 2 October, C G says she speaks to the appellant every day; they have a very close bond; she has fond memories of him from growing up; and that if he were to be deported, she would feel no-one had listened to her, and people do not realise how hurt she would be.
20. C C says in her statement that she and the appellant “brought C G up together for many years”; he has been “a great father ... hands on since she was born”; and his deportation would have “a great impact” on her.
21. In his later statement, Mr Golding says that some previous points were incorrect, and are revised in light of additional information from C G and C C; the appellant had a good relationship with his daughter, maintained contact after separating from her mother, and saw her regularly until he was imprisoned; and the local authority would encourage contact. Although C G was negative about contact on 24 September, on 8 October

she was positive, and said that her earlier view was due to annoyance about her father not being there to help her in her current situation.

22. The appellant was derogatory in cross-examination about the knowledge Mr Golding had about the case, the length and degree of his active involvement, and his professionalism. However, Mr Golding had available to him extensive records, no doubt of a similar tone to those before the tribunal, and he has no reason to offer anything but his best professional assistance, or to seek to sway the tribunal.
23. Also in cross-examination, the appellant denied pressing C G and C C on what they might say about his case; but his reaction to the suggestion struck me as defensive and unconvincing.
24. Unlike the social worker, the appellant has a clear interest in encouraging the witnesses to maximise his role as a parent.
25. C G and C C did not attend to give evidence. I appreciate that they live at some distance, and their attendance might not have been easy or convenient. However, no explanation was advanced for their non-attendance. I accept the submission that their statements have not been tested before the tribunal, and that the weight to be given to them is thereby lessened.
26. The statement of CG says at paragraph 4, "My social worker has said he does not want me to see my dad." Given the considerations above, I am unable to give that particular assertion any credit.
27. I am unable to uphold the submission of Mr Forrest that the statements of C G and C C might be taken as clear and concise evidence of a genuine and subsisting parental relationship.
28. Mr Matthews asked me to find that there is *no* such relationship, relying on *SSHD v VC (Sri Lanka)* [2017] EWCA Civ 1967 at paragraphs 42 - 43. There was some force in that submission. This case is on the borderline of what constitutes a relationship in terms of the rules. The appellant has not been a principal or direct carer for his daughter for many years. I am satisfied that he has had only limited and sporadic contact with her and has recently been trying to magnify this, more in the hope of avoiding deportation rather than through concern for her wellbeing. I am, just, persuaded that the relationship is genuine, subsisting and paternal, but I find it well towards the weaker end of such relationships, which is relevant to the next question.
29. I attempted at the hearing to clarify the detriment C G might suffer through removal of the appellant. I accept that she might be upset. She has had an unfortunate childhood, which makes it particularly undesirable that any further adversity should be added. Contact over the last two to three years has been indirect, of a nature which can be carried on as easily between Manchester and Barbados as between Manchester and

Glasgow. I accept the submission by Mr Forrest that indirect contact is a poor substitute. C G will be legally a child for another year and a half. I take it that (although C G has recently been on holiday in the USA) there is no realistic expectation of direct contact in Barbados, or elsewhere, during that time. The extent of deprivation, then, is that C G will have no direct contact for the relatively short remaining period of her childhood, having had little benefit of such contact previously, and none in the last two years.

30. As UTJ Canavan observed in her error of law decision, the term “unduly harsh” represents something more than the negative effects of separation of a parent from a child which one might usually expect from the process of deportation. Where there is a relationship, deportation inevitably carries some detriment. The relationship in this case, and the difference made to it by removal, are vestigial. I have been referred to nothing whereby it might be held unduly harsh for C G to remain in the UK without the appellant.
31. Mr Forrest submitted that everything relevant to paragraphs 399 and 399A, but falling short of success, might be added towards a finding of very compelling circumstances. He said that even if not “unduly harsh”, the appellant’s departure would deprive the child of one constant in a chaotic upbringing; the part of his life spent in the UK was little less than in Barbados; and he could be considered as socially and culturally integrated.
32. The appellant’s offending is not just on the trigger point, but persistent and serious. His integration into the UK is of a dubious nature, given his criminal history. There is no difficulty over his integration into Barbados. Everything available has been prayed in the appellant’s aid, but it all falls short of paragraphs 399 and 399A, and does not approach the target of very compelling circumstances over and above those considerations.
33. For all those reasons, but principally on the view that the appellant’s departure is a marginal disadvantage to his daughter, the appeal is dismissed.
34. The anonymity order made earlier in the proceedings is maintained herein.



23 October 2018  
Upper Tribunal Judge Macleman