



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

Appeal Number: DA/01870/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 13 January 2016**

**Decision & Reasons Promulgated
On 5 February 2016**

Before

**UPPER TRIBUNAL JUDGE
D E TAYLOR**

Between

DWIGHT ST AUBURN PORTER

Appellant

And

SECRETARY OF STATE

Respondent

Representation:

For the Appellant: Mr Malik, HUMD sols

For the Respondent: Mrs Pettersen, HOPO.

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Mensah made following a hearing at Bradford on 14 July 2015. The appellant had been convicted of supplying a controlled Class A drug and sentenced to 2 years and 4 months imprisonment on 24 June 2014 following which he was served with a notice of liability to automatic deportation. A deportation order was signed on 23 September 2014.
2. Judge Mensah dismissed his appeal.

3. The appellant challenged her decision mainly on the grounds that she had made a factual error in relation to the appellant's daughter.
4. It is not disputed by the Secretary of State that the appellant has joint parental responsibility for his daughter with her aunt, since her mother is mentally ill and unable to care for her. Two grants of discretionary leave have been made on that basis. The judge wrongly stated that, by the time that the child care proceedings were underway, the appellant was serving his sentence for drug offences which was why she was placed in the care of her aunt. She then said that he only had telephone contact with his daughter, and there had only been one visit. However the respondent accepts in the refusal letter that the appellant had cared for his daughter in her mother's absence and that contact had been maintained through visits and telephone calls.
5. Mrs Pettersen accepted that the judge may have been misled by the fact that at the hearing the appellant was still serving his sentence, and that she had misconstrued the evidence as to the true nature of the level of contact.
6. She did not object to the case being remitted to the First tier Tribunal because she was without her file and unable to proceed with the hearing today.
7. Accordingly this appeal is to be listed before a judge other than Ms Mensah at Bradford to be reheard with all issues at large.

Deborah Taylor

Signed

Date 4 February 2016

Judge of the Upper Tribunal