



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2024-004991

First-tier Tribunal No:  
HU/55845/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 12 February 2025**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**PAMELA BEKOE**

**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Holmes, Counsel

For the Respondent: Mrs Arif, Home Office Presenting Officer

**Heard at Field House on 30 January 2025**

**DECISION AND REASONS**

1. The Appellant is a Ghanaian national, born 7 February 2005, who on 25 January 2023 applied for entry clearance under paragraph 297 HC 395 to join her parents. The Respondent refused her application on 5 April 2023 and she appealed the decision. Her appeal was dismissed by Judge of the First-tier Tribunal Prudham (FTTJ) on 22 August 2024. Permission to appeal was granted by Judge of the First-tier Tribunal Chowdhury on 29 October 2024.

2. In her Rule 24 response, dated 1 November 2024, the Respondent opposed the application and submitted there was no material error and at the hearing Mrs Arif expanded on that response and submitted with regard to the court order the FTTJ was aware of the Court Order as it was referred to in paragraph [2] of the decision and she relied on what the Court said at paragraph 2(iii) of Volpi and anor v Volpi [2022] EWCA Civ 464 namely “an appeal court is bound unless there is compelling reason to the contrary to assume the trial judge has taken the whole of the evidence into his consideration. The mere fact a judge does not mention a specific piece of evidence does not mean that he overlooked it.” The social worker report formed part of the process in obtaining the custody order and the FTTJ dealt with all the evidence in paragraphs [23] to [25] of the decision. The Sponsor did not dispute in his statement that the order was obtained to bolster this application. Mrs Arif further submitted the other grounds were simply a disagreement with the FTTJ’s decision. The FTTJ had considered the evidence about the mother and highlighted contradictions in the decision and those findings were open to the FTTJ. The FTTJ did consider the age of the Appellant and the best interests of the Appellant (see paragraph [32]) when making credibility findings.
  
3. Mr Holmes adopted the grounds of the appeal and the grant of the permission and submitted there were one or more errors in the decision. Dealing with the court order Mr Holmes submitted there had been no issue with the reliability of the Custody Order and this order was significant because it meant the Sponsor father had a legal responsibility for the Appellant recognised both in Ghana (Appellant’s and Sponsor’s home country) and this jurisdiction. Mr Holmes then referred to paragraph [43] of AB and EM [2020] EWHC 549 (Fam) which set out the legal principles of such orders. The Court said:

"Such an order deserves grave consideration, but the weight to be given to in England must depend on the circumstances of the case. An order made very recently, no relevant change of circumstances being alleged, will carry great weight. Its persuasive effect is diminished by the passage of time and by a significant change of circumstances, for example the removal of the child to another country or the supervening illness of one of the claimants. The status of the foreign court, and the nature of the proceedings in and the legal approach taken by the court, may all be taken into account. The effect of the foreign order will be weakest when it was made many years ago and has since been modified by consent and the child has nearly attained the age of his majority and so can decide for himself with which parent he wishes to live."
  
4. In this current appeal Mr Holmes argued the FTTJ did not engage with the Order or consider what the court said in AB and EM. Paragraph [2] of the FTTJ’s decision did not engage with the order but simply set out the case.

It was not simply a failure to mention the order but the fact the order was a significant piece of evidence which required some engagement.

5. With regard to the second ground of Appeal Mr Holmes simply relied on the grounds of appeal. Turning to the remaining ground and the issue of sole responsibility Mr Holmes reminded the Tribunal that the law was set in TD (paragraph 297(i)(e): Sole responsibility) Yemen [2006] UKIAT 00049. He submitted the FTTJ had focussed on whether the mother had disappeared and did not engage on what the Sponsor father was actually doing. As regards the motivation for obtaining the order this was addressed in paragraph [14] of the decision.

6. There was no need for anonymity in this appeal.

### **DISCUSSIONS AND FINDINGS ON ERROR IN LAW**

7. Having heard the submissions I found there was no error in law. At the outset of the appeal hearing before the FTTJ it was clarified that the only issue under the Rules was whether the Sponsor father had shown he had sole responsibility for the Appellant's upbringing in accordance with paragraph 297(i)(e) HC 395 or whether the Appellant's mother still was involved in the Appellant's life. It was the Appellant's case that since 2019/2020, when her mother left that all decisions about the Appellant's upbringing were taken by the Sponsor father. The FTTJ heard oral evidence on this issue as well as having statements from both these proceedings and the family court in Ghana.

8. Mr Holmes argued the FTTJ did not specifically deal with the court order or attach any weight to that order and referred the Tribunal to the decision of AB and EM. As the order was obtained recently (in relation to the date of the application) he argued great weight should be attached to that order. Mrs Arif countered that argument stating that whilst the FTTJ did not carry out a detailed examination of the Order itself the FTTJ had considered the evidence that led to the Order being made and had found a number of inconsistencies in the evidence which were not explained away at the hearing.

9. The FTTJ considered the social worker's report and made both positive and negative points so far as the Appellant was concerned. The FTTJ a number of evidential points problematic:

- a. The affidavit of the maternal grandfather (page 283) stated the Appellant's mother disappeared in 2013 and her whereabouts remained unknown but this was contradicted (a) by the social worker's report (page 273) in which the Sponsor father told the social worker the Appellant's mother disappeared in 2019/2020 and (b) an affidavit from the Appellant's mother dated 20 March 2019 which clearly shows she had not disappeared (page 265).

- b. The Chronology in the report contradicted the Sponsor father's statement:
    - i. The report referred to the Appellant's mother going abroad and the Sponsor father having custody of the Appellant until he came to this country whereas the Sponsor father said the Appellant lived with her mother until 2015 at which time she went to live with his family.
    - ii. The maternal grandfather told the social worker the Appellant's mother was abroad but he failed to mention this in his earlier affidavit.
    - iii. The report suggested the Sponsor father had sole custody from birth but this contradicted the Sponsor father's claim her mother looked after her until 2015.
  - c. The FTTJ found the evidence about how the Sponsor and the Appellant's grandfather knew where the mother was opaque and at times contradictory and many of the Sponsor father's clarifying answers were not referenced in the statements albeit Mr Holmes said this was addressed at the hearing and recorded in paragraph [14] of the decision.
  - d. None of the school letters or reports were indicative of the Sponsor father having sole responsibility for the Appellant.
10. Importantly, the FTTJ concluded that the Appellant had not established her circumstances in Ghana and the FTTJ did not accept the Appellant's mother had disappeared as claimed and found the evidence about her was both contradictory and unreliable and the FTTJ found that paragraph 297 HC 395 was not made out.
  11. In granting permission the strongest ground was said to centre around the failure by the FTTJ to consider how the Court Order impacted on the decision making of the FTTJ. Mr Holmes' main submissions were on this very point. The Court Order (page 271) granted custody to the Sponsor father and is an important piece of evidence in a case such as this. However, it should not be overlooked that the family court and this Tribunal look at evidence through a different prism and it follows that the family court in Ghana would not be looking at the application through our Immigration Rules.
  12. The Respondent has never argued the custody Order was not genuine but Mrs Arif, and her colleague in the lower court, submitted this order was obtained to bolster the entry clearance application and it did not reflect the true position and that issue had not been addressed in the statements albeit the FTTJ's decision reflects the Sponsor father only applied for it to ensure she would not be stopped leaving the country.

13. It was argued on the Appellant's behalf that the FTTJ erred by not assessing this order in more detail but the FTTJ's detailed findings (paragraphs 25-28) show the FTTJ considered the current position and the FTTJ rejected the claim the mother was no longer involved in the Appellant's life and accepted the Respondent's submission the mother had not abdicated responsibility.
14. This finding is not inconsistent with the custody order which simply recognised that the father had legal custody. That order does not identify that Court's assessment of the contradictions but simply recognised that the Sponsor father was to have legal custody.
15. I do not agree with Mr Holmes that the FTTJ needed to go beyond that given he made findings about the Appellant's current circumstances. The custody order recognised the Sponsor's father's position but the FTTJ was entitled to consider independently whether this was the reality and for the reasons highlighted above the FTTJ found this was not the case.
16. Turning to the TD issue this decision must be considered in the round. The FTTJ accepted the Sponsor father played a role in the Appellant's life but concluded with reasons that he did not have sole responsibility which was the whole point of the appeal in the first place. Mr Holmes argued the FTTJ focussed solely on the mother and there is something in that submission but the FTTJ rejected the Sponsor father's evidence the mother was not involved. Given that finding the FTTJ was bound to find the Sponsor father did not have sole responsibility.
17. The final area of appeal centred around whether the FTTJ should have had regard to the Appellant's age when assessing her evidence but as the Rule 24 response states there were no adverse findings made about the Appellant's brief affidavit/statement albeit there were adverse findings made about other evidence as detailed above. The FTTJ did not make a finding about the mother based on what the Appellant said. The adverse findings were made based on what was contained in the social worker's report and statements/affidavits provided by the adults.
18. For all these reasons I find there was no error in law and the decision stands.

### **Notice of Decision**

There was no error in law and the original decision shall stand.



Judge of the Upper Tribunal  
Immigration and Asylum Chamber

4 February 2025