



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

Appeal Numbers: OA/01237/2014  
OA/01244/2014  
OA/01245/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 February 2015**

**Decision & Reasons Promulgated  
On 16 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

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

Appellants

**and**

**MISS JESSICA DUAH AGYEMANG  
MR STEPHEN DUAH AGYEMANG  
MISS MERCY KORANG  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Miss J Isherwood, Home Office Presenting Officer

For the Respondents: Mr S Unigwe, Counsel

**DECISION AND REASONS**

1. The respondents' appeals against decisions to refuse them entry clearance, to enable them to join their mother in the United Kingdom for settlement were allowed by First-tier Tribunal Judge Coutts ("the judge") in a Decision and Reasons promulgated on 27 October 2014.

2. The judge heard evidence from the respondents' mother, their sponsor, and took into account documents contained in a bundle, including a witness statement from the sponsor's aunt, responsible for day-to-day arrangements concerning the respondents in Ghana. The judge found that the requirements of the immigration rules contained in paragraph 297 were met. In particular, he found that the respondent's sponsor had had sole responsibility for their upbringing, in the four years following her departure from Ghana and arrival in the United Kingdom. He made favourable findings regarding maintenance and contact between the respondents and their mother.
3. The Secretary of State applied for permission to appeal, contending that the judge had not explained his favourable finding regarding sole responsibility. No adequate reasons were given and the judge failed to have regard to the guidance given in TD [2006] UKAIT 00049. Permission to appeal was granted in December 2014.
4. Miss Isherwood handed up a copy of TD. Mr Unigwe handed up written submissions and a copy of the witness statement which had been before the judge.

### **Submissions on Error of Law**

5. Miss Isherwood relied on the grounds in support of the application for permission to appeal. Paragraphs 15 to 19 of the determination contained the judge's reasoning but there was no adequate explanation for his favourable finding on sole responsibility. It was clear from TD that the test concerned continuing control and direction over a child's upbringing, for the purposes of the rules. At paragraph 44 of the decision in TD, the practicalities were highlighted as requiring analysis and the correct approach appeared at paras 49 to 51. Evidence was required regarding contact between a parent and the person with day-to-day care and control, in relation to the important decisions in a child's life. The evidence before the judge and the grounds of appeal to the First-tier Tribunal contained nothing of real substance showing how the sponsor in the United Kingdom took important decisions concerning the children. The focus in the evidence was all about money and financial support. There was a letter regarding education but this concerned 2006-2007. There was evidence regarding the payment of fees. Both the ECO and the ECM raised finance and concerns in that context.
6. The judge's finding that the sponsor was a credible witness was not enough. The evidence was not sufficient to show how she dealt with the important decisions concerning her children. The judge found that the children's mother maintained contact with them but there was no detail here about important decisions.
7. Mr Unigwe said that the decision in TD supported the respondents' case. It contained a summary of other authorities. The Secretary of State had not

identified what was missing from the judge's decision. Paragraphs 15 to 19 contained his assessment but, before that, he referred to the evidence before him. The mother's witness statement was important, particularly at paragraphs 14 to 17. She said there that she was the person who "solely provided" for her children. The judge took this evidence into account. He heard oral evidence from the sponsor and submissions. There was documentary evidence regard the extent of telephone and other contact and transfers of funds. As he made clear in paragraph 16, the judge found the sponsor entirely credible. It was clear from the summaries in TD of other cases, including Emmanuel, that the judge took into account the relevant factors, including financial support and contact. He assessed the evidence and came to findings that were open to him.

8. Miss Isherwood said in a brief response that every decision had to be adequately reasoned. The sponsor's witness statement was largely concerned with finances and there was little about the direction or control of the children's lives. The arrangement made with her aunt was a temporary one.

### **Conclusion on Error of Law**

9. The determination is quite short but, I find, succinctly reasoned. The judge did indeed find the appellant's mother an entirely credible witness and he took into account her witness statement, in which she claimed to be solely responsible for maintaining the children (in paragraph 16). The judge made findings regarding financial support and the transfer of funds to Ghana, in part to meet the children's school fees. There was evidence that their mother had recently returned from a visit. As expressly found by the judge, the arrangements whereby the day-to-day arrangements were passed to a close relative were intended only to be temporary. They have been in place for some four years.
10. TD contains a useful summary of earlier cases, including Emmanuel [1972] ImmAR 69. The IAT concluded, in that case, that the regular remittance of funds for a child's upkeep and the maintenance of a close interest in and affection for that child were important factors that enabled a conclusion that the parent in the United Kingdom had had sole responsibility for the child's upbringing. The emphasis in TD is on a practical assessment of the evidence with the focus on control and direction of the children by the sponsoring parent.
11. Notwithstanding Miss Isherwood's able submissions, I conclude that the judge's reasoning, particularly at paragraphs 15 to 18, is sustainable. He focused on the issue of sole responsibility there, having earlier made a favourable finding regarding maintenance. He drew attention to the temporary nature of the arrangements, the credible answers given by the respondents' mother, the nature of the family arrangement, the contact maintained between the respondents and their mother and the regular remittances of funds to meet expenses which include the children's

education. As Mr Unigwe said, the judge made it clear earlier in the determination that he had in mind all the evidence before him, including the documentary evidence. Although Miss Isherwood is right to say that much of the evidence concerned the financial support of the children, I find that the judge correctly took this into account as a relevant, but not a determinative factor. It formed part of his assessment, as did the close contact maintained between the respondents and their mother. Overall, I conclude that the judge was entitled to find that “the whole weight of evidence here points towards the sponsor having sole responsibility for the respondents”, as he found in paragraph 18 of the decision.

12. The judge did not err in his assessment of the evidence and there was no misdirection regarding the relevant law.
13. The decision of the First-tier Tribunal shall stand.

### **DECISION**

14. The decision of the First-tier Tribunal, containing no material error of law, shall stand.

Signed

Date 9 February 2015

Deputy Upper Tribunal Judge R C Campbell

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

There has been no direction for anonymity and I make no direction on this occasion.

Signed

Date 9 February 2015

Deputy Upper Tribunal Judge R C Campbell