



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

Appeal Number: HU/08903/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC via Decision & Reasons Promulgated
Skype
On 6 November 2020**

On 10 November 2020

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**VA
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Ferguson, Counsel

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

1. The appellant is a citizen of Ghana. She is 16 years old and I have anonymised this decision given her age. She lives with her grandmother in Ghana. Her father, a British citizen, has claimed that he has had sole responsibility for her and she has made an application under paragraph 297 of the Immigration Rules. This application was refused by the respondent in a decision dated 8 April 2019.

2. In a decision dated 2 January 2020, the First-tier Tribunal ('FTT') dismissed the appellant's appeal on human rights grounds, concluding that the father and mother were both involved in her upbringing, and therefore the father did not have sole responsibility.
3. The appellant now appeals against that decision to the Upper Tribunal ('UT'), permission having been granted by FTT SPJ Buchanan in a decision dated 15 April 2020.
4. The grounds of appeal allege inter alia that the FTT completely failed to address the evidence from the father and the appellant's sister (who resides with him in the UK) to the effect that the mother (who lives in Ghana) has played a very limited role in the appellant's life since remarrying some 10 years ago. Both father and sister gave oral evidence before the FTT as summarised at [14-15] of the FTT's decision. That evidence is significant and goes to the heart of the issue in dispute before the FTT. In summary, when the parents separated the sister went to live with the father in the UK and the appellant remained with the mother in Ghana. The latter relationship broke down when the mother remarried some ten years ago. The appellant then lived with the maternal grandmother in the holidays and attended boarding school in Ghana. The father made all important decisions regarding the appellant including schooling and health. Both witnesses stated that the mother had no or little contact with the appellant.
5. In a rule 24 notice dated 3 July 2020 the respondent submitted that the FTT was entitled to reach the conclusions it did, relying in particular upon the FTT's findings at [17-18]. In particular the FTT regarded there to be "no evidence" that the father had sole responsibility as the mother continued to share responsibility with him on the basis that: the school letter is silent as to the father's claim that he is the primary contact; and the father sent the money for school fees via the mother and not directly to the school. The FTT also rejected the claim that the grandmother was in poor health and as such the mother was given the task of passing the money from the father on to the appellant and could no longer care for her.
6. At the beginning of the hearing I indicated my provisional view to Mrs Aboni: The FTT's conclusions were reached without making any findings as to the credibility of the father and the sister. Both witnesses attended the FTT hearing and gave evidence relevant to the ultimate conclusions reached. Mrs Aboni immediately agreed that the FTT decision contains a material error of law such that it should be set aside and remitted to the FTT. I am satisfied that Mrs Aboni was entirely correct to concede the appeal. As Mrs Aboni acknowledged the appellant's father and sister attended the hearing and provided important evidence - see [10] to [15]. In addition, the appellant relied upon letters from herself, her sister and her father to support her case that although she lived with her ill grandmother in

Ghana her father remained solely responsible for her. Although the appellant's case has been summarised by the FTT in some detail, Mrs Aboni was correct to concede that the FTT completely failed to engage with, making findings of fact in relation to or give adequate reasons for rejecting the oral evidence.

Disposal

7. Entirely new findings of fact need to be made in relation to the two important issues that appear to remain in dispute – paragraph 297(i) (e) and alternatively (f), albeit the FTT appears to have accepted that the remaining requirements of paragraph 297 have been met, in particular the father is a British citizen and has financially supported the appellant for a lengthy period.
8. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the FTT. It will be a matter for the FTT to make arrangements for the hearing but on the information available to me the matter could proceed fairly as a remote hearing. No witness requires an interpreter and cross-examination is unlikely to be lengthy.

Decision

9. The FTT decision contains an error of law and I set it aside.
10. The decision is remitted to the FTT, where it shall be re-made by a judge other than Judge Somal.

Other matters

11. Ms Ferguson asked me to make arrangements to return the father's evidence (copies were not made) so that the relevant evidence could be placed within a consolidated bundle for the FTT, and I have done so.
12. It would be helpful if the respondent could file and serve a position statement within 14 days of the date this decision is sent, confirming that the disputed issues only relate to paragraph 297(i)(e) and (f) of the Immigration Rules.

Signed: *UTJ Plimmer*
Upper Tribunal Judge Plimmer

Dated:
6 November 2020