Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/06574/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 10th October 2014	**On 16th October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

MISS NEMANE MIREILLE DIGBEU
(NO ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ACCRA

Respondent

Representation:

For the Appellant: Mrs H Gore, Counsel, instructed by the sponsors Mr & Mrs Lebato
For the Respondent: Mr S Walker, Home Office Presenting Officer

Interpreter:
Ms S Grayson in the French language

DETERMINATION AND REASONS

Introduction

1. The appellant is a citizen of Ivory Coast born on 11th November 1994. In October 2012 (aged 17 years) she applied to join her mother (Mrs Robe Sylvie Blandine

Lebato) and her step-father (Mr Tagbeu Apollinaire Lebato) in the UK. The application was refused on 1st February 2013 on the basis that the appellant could not meet paragraph 297(i)(e) of the Immigration Rules. Her appeal against the decision was dismissed by Judge of the First-tier Tribunal M.D. Dennis in a determination promulgated on 26th March 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Osborne on 19th May 2014 on the basis that it was arguable that the First-tier judge had erred in law. In a decision promulgated on 7th July 2014 I found that Judge Dennis had erred in law and set aside his determination with no findings preserved. This decision is appended as Annex A to this determination.

2. The matter came back to me to re-make the appeal de novo. In an email dated 9th October 2014 Mr John Parkinson submitted an argument to the Tribunal on behalf of the respondent which argued that the appellant also did not qualify under paragraph 297 (v) of the Immigration Rules as it was said she could not be maintained adequately by her parent or parents without recourse to public funds. Mrs Gore only received this email from Mr Walker at the hearing. She was given time to take instructions, and I indicated that I would be happy for her to make written submissions, with further evidence if necessary, after the hearing given the late point at which this matter had been put in issue. Ultimately Mrs Gore said she was happy to deal with it by way of oral submissions at the hearing; and in any case in submissions Mr Walker conceded that the appellant could meet the requirements of paragraph 297(v) of the Immigration Rules.

Evidence & Submissions

3. Mrs Robe Sylvie Blandine Lebato, mother of the appellant, attended the Tribunal and gave evidence through the French interpreter. She confirmed that her own statement was correct and that she understood in summary what her husband, Mr Tagbeu Apollinaire Lebato, had said in his new statement and also believed that to be correct.

4. In summary in her statement Mrs Lebato explains that she had lived with the appellant, who was born outside of marriage, in Angre (Abidjan) in Ivory Coast. She had married Mr Lebato on 9th August 2008 but had continued to live with the appellant in Ivory Coast until March 2011. In March 2011 she had taken a short trip to Cocody (another area in Abidjan) to visit her uncle, Mr Bouabre and his family, without the appellant. Civil war had started and she had been unable to return to her home in the Angre district of Abidjan. Her uncle Mr Desire Tagro, who was a Home Office Minister at that time, was killed, and her other uncle Mr Bouabre (who was the Minister for economics and finance) had his house burned down.

5. Mrs Lebato fled to Ghana on 26th March 2011 with Mr Bouabre and his family as they believed the family was in danger.

6. The appellant went to the French military base in Adjufu (another area of Abidjan) with Mrs Lebato's father (who lived nearby) to find safety as the

rebellion spread to Angre where she and her grandfather lived. After some time the appellant and her maternal grandfather had to leave the military base. It was arranged for the appellant to live with her birth father although he had played no role in her life up until this time. Mrs Lebato continued to make all key decisions in the appellant's life. The appellant only stayed in her birth father's house due to the problems caused by the civil war.

7. Mrs Lebato obtained entry clearance to come to the UK as the spouse of her husband from the British High Commission in Accra. Since coming to the UK she has sent money to support the appellant regularly and continued to exercise parental responsibility for her, making all major decisions in her life. She has been the parent making such decisions. She has continued to arrange and pay for her education, which currently is at Mahou Secondary School in Dokui, Abidjan.

8. Mrs Lebato could not visit the appellant in Ivory Coast as she became pregnant in the UK. She had a difficult pregnancy; her baby was born prematurely and then died after six months in hospital. Mrs Lebato has kept in touch with the appellant by phone and Skype. She discusses education, her physical and emotional well-being and her future career prospects.

9. In June 2013 the appellant moved to San Pedro (another city in Ivory Coast) to live with her maternal grandmother but this arrangement did not work out as her grandmother was unkind due to her being illegitimate, and so in September 2013 she moved to be with her maternal uncle, Mr Serges Guero, in Plateau Dokui in Abidjan, but this arrangement was also problematic as the appellant did not get on well with her uncle's wife.

10. In cross-examination and response to question from me Mrs Lebato added that she had lived with her daughter continually until 2011. The appellant's father did not take decisions about her during the period 2011 to 2013 when she resided with him. Since June 2013 he has not had contact with her, and does not speak on the telephone. She makes very short telephone calls to the appellant because these are just to ask her to connect to Skype. They can then speak for two hours for 50p. She speaks via Skype about three times a week. She has not visited the appellant since her pregnancy and tragic death of her second child because she feels that she would only be able to stay for two weeks and this would be very difficult as it would not be enough.

11. Mr Tagbeu Apollinaire Lebato attended the Tribunal and gave evidence through the French interpreter. He confirmed his name, address and that his two statements were true and correct, and he wished to adopt them as his evidence to the Tribunal.

12. In summary his statements say as follows. The appellant was conceived when her mother was just 15 years old and her biological father was also under the age of 18 years. They were never in a proper relationship, and the pregnancy was not intended. When she was pregnant Mrs Lebato's father sent her away from

Abidjan to live with his family in the village of Saioua. The appellant was born in Saioua, and was brought up by Mrs Lebato alone. There was no contact with the biological father who remained in Abidjan. In 1999 the appellant and her mother relocated to the Angre suburb of Abidjan. The appellant's father continued to have absolutely no role in her upbringing. In June 2008 the appellant met her biological father for the first time, but by this time Mr Lebato had become engaged to her mother and had taken on the role as father.

13. Mr Lebato is a British citizen, who has lived in the UK since 19th September 1995. He met the appellant's mother (Mrs Robe Sylvie Blandine Lebato) in September 2006 in the Ivory Coast at a dinner party organised by her father whilst on a six week holiday. They formed a friendship, and kept in communication. From this time Mr Lebato started to provide financial support to his future wife and the appellant. In September 2007 he returned to Ivory Coast and they became engaged. In April 2008 their families met for the traditional notification of intention to marry; they had a civil marriage at the Registry Commune of Cocody on 9th August 2008 and a full traditional marriage ceremony on 10th August 2008. Mr Lebato returned to the UK in September 2008 having spent six weeks with the appellant and his wife. From this point Mr Lebato provided emotionally as well as financially for the appellant.

14. Mrs Lebato had always lived with the appellant until she became separated in March 2011 by the civil war, as is described above in her statement. Mrs Lebato became a registered refugee in Ghana in March 2011. Mr Lebato sent money to the appellant through Mr Innocent Guero for the appellant, whom he viewed by this time as his step-daughter, for her material needs. Mr Guero is Mrs Lebato's maternal uncle, and someone who was trusted to provide the money to the appellant and who worked in the city so could easily deal with the money.

15. Since Mrs Lebato came to the UK she has regularly sent money to the appellant and has continued to make all major decisions in her life. Mrs Lebato did not visit the appellant in Ivory Coast as she became pregnant and had a child who died after six months in hospital. The loss of their child and separation from the appellant have seriously affected Mrs Lebato. Mrs Lebato has been granted indefinite leave to remain in the UK on the basis of their marriage.

16. In August 2011 Mr and Mrs Lebato decided that the appellant would have to reside with her biological father due to the war situation. She had first gone to the French military base in Porte-Bouet in Abidjan with her maternal grandfather with other displaced persons. They stayed there between March and August 2011, when they had to leave. The appellant's biological father lived in Adjouffou, in Porte-Bouet, Abidjan. Mr and Mrs Lebato therefore paid money for the upkeep of the appellant and her biological father, as he was unemployed. Mr Lebato arranged for the appellant to attend a nearby school owned by a friend of his who lives in America, and paid the school fees. The appellant's biological father took no decisions on the appellant's behalf, and they did not form a bond as she felt he

had abandoned her at birth. The arrangement only came about due to the necessity in the context of a civil war.

17. In October 2012 the appellant applied to join them in the UK, and the application was refused on 1st February 2013. They continue to pay her school fees at Mahou Secondary School. Mrs Lebato and the appellant are very close and talk on the telephone and via Skype regularly. The appellant's natural father has played no role in her life and there is no father/daughter bond despite the time that she lived at his address. A letter of consent to the appellant leaving Ivory Coast was obtained from the biological father via Mr Anselme Innocent Guero.

18. In June 2013 the appellant moved from her biological father's home to live with her maternal grandmother in San Pedro, 400km from Abidjan. In September 2013 she moved to her maternal uncle's home in Plateau Dokui. Mr and Mrs Lebato continue to be in regular contact with the appellant.

19. He and Mrs Lebato have a net total income of £2200 a month. They live in a two bedroom property with a living room. There is more than sufficient income and accommodation for the appellant.

20. In oral evidence Mr Lebato explained that he knew the facts in his statement about the appellant's early life from his wife; and that he knew about the appellant since his relationship with his wife as he has been in direct contact with the appellant from this time onwards. His wife had spoken to the appellant's biological father to arrange the accommodation with him when she had to leave the French military base. Mr Lebato had also spoken to him and arranged for the financial help and the appellant's schooling in a school local to the accommodation which was owned by a friend of his who lived in the USA.

21. The visa application form had not enabled him to give full details of his wife's income but she worked doing sewing for a stylist and local community ceremonies, doing hair dressing and making cakes. She had survived with her daughter in this way in Ivory Coast. At the time of decision she earned about £100 a week from the workshop sewing; about £90 a week by doing hair-dressing and about £40 by selling cakes via the church. This was about £230 a week.

22. In cross-examination Mr Lebato said that the cash payments into the Santander bank statements – for instance on 6th June 2012 and 24th July 2012 were his wife's earnings from the above sources. She would collect money in a box and then pay it into their account. He himself had no source of income other than his employment. It was explained that Mr Lebato's son by a previous relationship was 18 years old at the time of decision to refuse the appellant, and was living at another address near his school (so he had no travel costs) with a family who wanted their children to learn English as they had come from France. This family provided Mr Lebato's son with food and accommodation for free, and he had child benefit and an educational support grant to provide for his other expenses.

23. Mr Walker submitted that he did not pursue the argument put in the email from Mr Parkinson about the appellant not fulfilling the financial requirements. It was clear that these had not factored in Mrs Lebato's earnings. He also accepted that there was sufficient accommodation as Mr Lebato's son was not living with the family (or causing them additional expense) at the time of decision. He accepted that Mrs Lebato had provided a credible explanation for the short telephone calls to the appellant. He continued to rely upon the refusal notice but accepted that the new statement did give more detail as to the responsibility Mr and Mrs Lebato had taken for the appellant.

24. Mrs Gore submitted that she relied upon her skeleton argument. She submitted that Mrs Lebato had been a single parent from the time of the appellant's birth to 2006. She had supported the appellant by dress-making and cake-making. The appellant had been born when her parents were teenagers, this is clear from the passport of the appellant's biological father. From 2006 Mr Lebato had also taken on parental responsibility. It was only because of the civil war which left the appellant alone in Ivory Coast, needing safety after she had to leave the French military base where she had been seeking safety with her maternal grandfather, that contact was made with the appellant's biological father. By this time she was over sixteen years old, and all that was provided was accommodation and not a parental relationship.

25. When applying TD (Paragraph 297(i)(e):"sole responsibility") Yemen [2006] UKAIT 00049 it was appropriate to see this as a case with both parents in the UK. Mr Lebato should be seen as the appellant's true father, as parent is not defined by the Immigration Rules and need not be the biological father. But if it was not seen in this way it was an exceptional case as the appellant had arguably three parents, with her biological father only providing her with a space to stay due to the aftermath of the civil war, which from her own statement it was clear the appellant found very difficult. It was only the second time her biological father had seen her when she went to stay with him in 2011 at 16 years and nine months. The appellant's biological father had played no role in her life. In the context of the civil war that led to their separation the appellant should be seen as someone seeking family reunion with her mother. It was appreciated that Mrs Lebato was not formally a refugee in the UK however.

26. At the end of the hearing I reserved my determination.

Conclusions

27. The respondent concedes that the appellant meets all requirements of the Immigration Rules other than sole responsibility under paragraph 297(i)(e) of the Immigration Rules. I am also satisfied that this is the case.

28. Mrs Gore is not correct to argue that parent is not defined by the Immigration Rules. A stepfather can only be a parent if the father is dead, see paragraph 6 of the Immigration Rules. As such the parents to be considered in this case are the appellant's mother and biological father.

29. I find Mr and Mrs Lebato to be credible witnesses. Their oral testimony was consistent with their written statements, and with each other, and with the other documentary evidence submitted by themselves and with country of origin evidence, for instance about the districts of Abidjan and Mrs Lebato's family's involvement with Ivorian politics. They both answered questions directly and fully, being anxious to assist the Tribunal by providing a detailed picture of the appellant's history.

30. I find that appellant's mother, Mrs Lebato, has been a constant in taking practical responsibility for the appellant and has provided control and direction of the appellant's life taking or being involved in all the important decisions.

31. Mrs Lebato provided for the appellant in all ways from the time of her birth until she was forced to leave Ivory Coast in the context of the civil war and find safety in neighbouring Ghana in March 2011, when the appellant was sixteen years old. From 2006 she was assisted in her financial provision for the appellant by the man who has become her husband, Mr Lebato, who lives in the United Kingdom. It is clear that Mr and Mrs Lebato married on 9th August 2008 from the Ivorian marriage certificate included in the bundle. From the time of this marriage I accept that Mr Lebato also took on the role of step-father to the appellant in terms of offering emotional support as well as financial provision.

32. I am satisfied that after her separation from the appellant in 2011 Mrs Lebato has been in regular telephone and Skype contact, as she has described (which is supported by the telephone records for Mr & Mrs Lebato from Lebara), and that she has provided emotional support to the appellant via these calls as well as dealing with practical advice and decision-making. Mrs Lebato has not visited the appellant having fled as a refugee to Ghana and then having joined her husband in the UK. However after entering the UK she had a very difficult pregnancy, and suffered the tragic loss of her very sick second child at six months of age on 20th February 2013 (evidenced by medical papers for Mrs Lebato, and her son's birth and death certificates) just after the decision to refuse the appellant entry clearance. She now cannot face having a short period with the appellant and then having to leave.

33. I find that since leaving Ivory Coast in March 2011 that together with her husband Mrs Lebato has arranged accommodation and day to day care for the appellant; she has provided for financial remittances; and made the key decisions about her education and health. It is notable that there is documentary evidence of regular financial transfers from Ria Holloway to the appellant have been via Mr Anselme Guero, Mrs Lebato's brother, thus clearly linking all financial assistance to Mr and Mrs Lebato.

34. In accordance with TD Yemen my next task is to determine whether the appellant's biological father, Mr Oke Alexandre Digbeu, has shared responsibility for the appellant. My conclusion is that he has not and did not at the time of refusal of entry clearance for the reasons set out below.

35. It is clear that the appellant's biological father had absolutely no role in the appellant's life until August 2011 when she was sixteen years old and nine months old. He had met her just once in 2008 when she was thirteen years old prior to this, and by this time Mr Lebato was already a father figure in her life, albeit one who was present via visits and telecommunications rather than a daily presence.

36. In August 2011 the appellant's biological father was paid to provide her with accommodation by Mr and Mrs Lebato as he happened to be living in a safe are of Abidjan where the appellant could be provided with good schooling, and in a context of the aftermath of civil war. Whilst the appellant lived with her biological father for some time she did not form a bond with him, and since leaving his address it is tellingly that she is no longer in contact via telephone (evidence of Mrs Lebato). The appellant describes her biological father in her own statement as: "a repugnant person and we always disagreed and had quarrels as he was unkind to me". She is clear that it was her mother and step-father who provided for her material needs whilst she stayed with her biological father and that he: "never made any decisions in my upbringing, wellbeing and welfare." This is consistent with the appellant's biological father's own letter (which consents to her joining Mr and Mrs Lebato and is clearly signed in the original written in French on 22/3/2013) which says that Mr and Mrs Lebato pay for her tuition fees, health care and pocket money whilst the appellant stays with him and that the appellant had lived with her mother until Mrs Lebato left Ivory Coast. It is also notable that the doctor who treated the appellant in July 2012, whilst she was living with her biological father, refers to her as being distressed by being unwell and "living away from her parents" (see letter of Dr Toudou Judicael).

37. As the appellant was living with her biological father at the time of the decision to refuse entry clearance, so did have some involvement in the appellant's life to the extent of providing accommodation and food, I find that this is a case where exceptionally the appellant's mother was the parent solely responsible. Although Mrs Lebato shared this responsibility with her husband Mr Lebato, who had become the appellant's de facto step-father, he is not deemed to be a parent by the Immigration Rules. The active taking of responsibilities by Mr Lebato (for instance in arranging financial transfers, in negotiating financial support to be provide whilst she the appellant was lodged with her biological father and finding a school nearby owned by a friend of his) however makes the exceptional situation with the appellant's birth father, that he did not shared parental responsibility with her mother, all the more credible.

38. I find that there were no other people in Ivory Coast who shared responsibility for the appellant's upbringing with her mother. It is clear that whilst accommodation and meals have been provided by other relatives since March 2011, the appellant's biological father aside, (for instance the appellant's maternal grandfather after Mrs Lebato left Ivory Coast and prior to the decision to refuse, and by her maternal grandmother and uncle after the decision to refuse) I find that there is no evidence that any of these has taken on responsibility for the appellant.

39. For these reasons I am satisfied that the appellant has shown on the balance of probabilities that she met all the requirements of paragraph 297 of the Immigration Rules at the time of the decision to refuse entry clearance. In these circumstances it is not necessary to consider Article 8 ECHR in any detail (particularly as no arguments were placed before me in relation to this provision by either party) beyond stating that I find that the appellant has, and had at the time of decision, family life with her mother and step- father, Mr & Mrs Lebato, and that refusal of entry clearance interfered and interferes with this family life. As the appellant met the requirements of the relevant Immigration Rules at the time of decision refusal of entry clearance was and is an unlawful interference with this family life.

Decision

40. The decision of the First-tier Tribunal involved the making of an error on a point of law.

41. The decision of the First-tier Tribunal is set aside.

42. The decision is re-made allowing the appeal under paragraph 297 of the Immigration Rules.

Fee Award

In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007). I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). I have decided to make no fee award as one was not requested and the full evidence which showed the sole responsibility of the appellant's mother, particularly in the supplementary statement of Mr Lebato, was only put forward at the hearing before the Tribunal.

Deputy Upper Tribunal Judge Lindsley
14th October 2014

Annex A

DECISION AND DIRECTIONS

Introduction

43. The appellant is a citizen of the Ivory Coast born on 11th November 1994. In October 2012 she applied for entry clearance to join her mother (Mrs Robe Sylvie Blandine Lebato) and step-father (Mr Tagbeu Apollinaire Lebato) in the UK. The

application was refused on 1st February 2013 on the basis that the appellant could not meet paragraph 297(1)(e) of the Immigration Rules. Her appeal against the decision was dismissed by First-tier Tribunal Judge MD Dennis in a determination promulgated on the 26th March 2014.

44. Permission to appeal was granted by Judge of the First-tier Tribunal Osborne on 19th May 2014 on the basis that it was arguable that the First-tier judge had erred in law in making factual errors regarding housing, wrongful receipt of child benefit and places in Abidjan which made his assessment on sole responsibility unreliable.

45. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions

46. Mrs Gore relied upon the grounds of appeal. She submitted that Judge Dennis had not found the sponsor credible due to a number of misunderstandings and so had formed a negative opinion that she did not have sole responsibility for her daughter.

47. It was understandable, if Judge Dennis believed that the sponsor was wrongly claiming child benefit for a dead child, that he would not believe her evidence. In fact the on-going receipt of benefit was for the Mr Tagbeu Lebato's child, and this could be seen from the benefits letters (particularly one dated 3rd May 2013) which were handed to the Upper Tribunal and this had been the oral evidence of the sponsors before the First-tier Tribunal. It was established that no one was sure whether there was documentary evidence on the point before the First-tier Tribunal or whether there was just an allegation of fraud by the presenting officer. In any case this was clearly unfounded given the evidence in the benefits letters and an unsound conclusion on the evidence before Judge Dennis even if he was without the documentary evidence in the letters.

48. Judge Dennis also believed that it was wrong of the sponsor not to take her child with her when she had to flee Ivory Coast to claim asylum in neighbouring Ghana, but again he had misunderstood the evidence before him. The sponsor had gone on a trip, which was not intended to be a long one, to visit a relative without her daughter and then a civil war had erupted that had made it impossible for her to return home.

49. Judge Dennis had also come to wrong conclusions on accommodation and maintenance as he clearly had evidence that showed the sponsors had a two bedroom flat (and not a one bedroom flat) so ought not have said this was unclear at paragraph 18. Further by Judge Dennis's own maths the income available for the appellant was sufficient and not insufficient (as he calculated the amount of benefits this family would have received as £1121.59 and the sponsor's claimed income was a net monthly amount of £2200 and this had not been put in issue in the determination), see paragraph 19 of the determination. Judge Dennis did not

appear to take into account the appellant's own written evidence to the Tribunal or that of her natural father.

50. Judge Dennis also appeared to have mixed up day to day care and the issue of sole responsibility at paragraph 21 of his determination.

51. Ms Gore accepted that it was difficult to understand what were the findings of Judge Dennis, as the determination did not separate the evidence and submissions from the findings as was commonly done. Ultimately it appeared that a number of confused findings on negative matters had negatively affected his findings on the key issue of the appeal. Further the failure to distinguish the evidence and what was found on the evidence was an error in itself due to the lack of clarity this created.

52. Mr Parkinson submitted that Judge Dennis had been entitled to conclude that the sponsor had abandoned her daughter in the Ivory Coast when she did not return to her after the troubles in Ivory Coast, but instead moved with her husband to the UK as the sponsor had not explained why she had made no efforts to do this, see paragraph 20 of the determination. He was entitled to say that the attitude of the sponsor to the appellant was not reflective of someone who had sole responsibility. Judge Dennis had also been entitled to say that the address for the appellant on the visa application form and other documents for a similar time was not exactly the same and draw negative conclusions from this. He had not made findings as such at paragraphs 17 regarding child benefit and 18 regarding the accommodation but just noted evidence so if they were not entirely accurate this did not matter. Further even if such conclusions were based on some misunderstandings Judge Dennis had then gone on to look at the case more broadly. The finding at paragraph 21 that the sponsor did not have sole responsibility was open to Judge Dennis on the evidence before him.

53. At the end of the hearing I informed the parties that I found that Judge Dennis had erred in law in the determination of the appeal but that I would set out my full reasons in writing.

54. It was submitted by Mrs Gore that it was not possible to proceed that day as a French interpreter had been requested by the sponsors but none was available, and further she had not been supplied with the bundles which had been before the First-tier Tribunal so was not ready to proceed. Mr Parkinson was happy for the matter to be adjourned for the re-making hearing. In these circumstances I agreed to the request that re-making hearing be adjourned.

Conclusions – Error of law

55. The key issue in this appeal was whether the sponsor had sole responsibility for the appellant. They key guidance case on this issue is TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049, which summarises the correct approach at paragraph 52. Of course there was no need for Judge Dennis to have

cited TD Yemen by name but it was necessary for him to follow the guidance set out in that case.

56. I find that Judge Dennis erred in law by failing to make clear findings as to whether this appellant was brought up by both of her parents or not; and whether those with day to day care had simply this or whether they had also taken over responsibility for the appellant in terms of making the important decisions in the appellant's life.

57. At paragraph 21 Judge Dennis sees to equate his conclusion that the sponsor was happy that the appellant was being adequately cared for in her absence with her not having sole responsibility for the appellant, despite noting correctly that that responsibility was not the same as daily care. The fact that the sponsor was happy that the appellant was well cared for on a day to day basis would not, of course, mean she did not retain sole responsibility for her. Indeed the fact that she arranged adequate care would indicate the sponsor was taking at least some on-going responsibility for the appellant.

58. I also find that key matters, such as the evidence of remittances, were not dealt with adequately. In the appellant's bundle are 30 remittance receipts. It is said in conclusion at paragraph 20 of the determination that: "there is no indication whatsoever that any fund were sent for the care and maintenance for the Appellant while she was with her father." Judge Dennis found that the appellant had lived with her father and grandfather for a period of two years, I understand between 2011 and 2013. There are many remittance receipts relating to 2012 which must therefore relate to this period. Earlier in the determination, at paragraph 16, Judge Dennis looks at the remittance evidence and concludes that they support the sponsors' evidence that they sent £125 a month in 2012 and 2013. He then objects to the evidence because he says there is no explanation about the payee, Anselme Innocent Guero, but this is not accurate. At paragraph 6 of Mr Lebato's statement and at paragraph 8 of Mrs Lebato's statement he is named as a man in the city whom they used to send funds to the appellant. He is also named as the person who was used to provide her with the funds sent by the sponsors to the Ivory Coast in the appellant's own letter. It is therefore not accurate to say that there is no indication whatsoever that funds were sent by the sponsors from the UK to the appellant during this time; and I find that Judge Dennis has failed to make adequate findings on the evidence before him.

59. As is clear from the submissions by Mrs Gore it is hard to understand whether ultimately a number of the apparent conclusions in the determination are findings or simply noting, with some degree of approval, submissions made by the respondent. An example of this is the matter of whether the sponsor was wrongly claiming child benefit (which it is now absolutely clear that she was not) and the subsequent impact on the assessment of the sponsor's credibility. There is a failure to separate the evidence and the submissions from the Judge's findings based on this evidence. Whilst it might be possible to write a clear determination without sections devoted to evidence, submissions and findings in this case it did

not succeed. For this reason too the determination fails to give adequate reasons for the ultimate decision that the sponsor did not have sole responsibility.

Decision

60. The decision of the First-tier Tribunal involved the making of an error on a point of law.

61. The decision of the First-tier Tribunal is set aside with no findings preserved.

Directions

1. The re-making hearing is adjourned to be heard before me in the Upper Tribunal at my next available date in September 2014 or failing that the earliest date I am sitting thereafter.

2. The appellant should produce a schedule of addresses, for the appellant from birth to present setting out by whom she was cared for at the time, which links to the documents submitted in support of the appeal and explains any difference in addresses on documents pertaining to the same time.

3. Any new evidence should be served in accordance with paragraph 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

4. The parties should file any new evidence on which they wish to rely and their skeleton arguments on the Tribunal and serve such evidence on the other party seven days prior to the hearing date.

5. A French interpreter is required.

6. The estimated length of hearing is three hours.

Deputy Upper Tribunal Judge Lindsley
30th June 2014