



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

Case No: UI-2023-000517

First-tier Tribunal No:  
HU/54284/2021  
IA/10919/2021

**THE IMMIGRATION ACTS**

Decision & Reasons Issued:  
On 15 January 2024

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**MAKA MARIE-ANGE LAGO**  
**(no anonymity order)**

**Appellant (in the FtT)**

**and**

**ENTRY CLEARANCE OFFICER**

**Respondent (in the FtT)**

For the Appellant: Mr A Devlin, Advocate, instructed by Latta & Co, Solicitors  
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 9 January 2024

**DECISION AND REASONS**

1. This is the ECO's appeal to the UT, but parties are referred to as they were in the FtT.
2. The appellant is a citizen of the Ivory Coast, a child at the time of her application to the ECO, and aged 19 at the time of the FtT hearing on 5 October 2022.
3. The appellant appealed against a decision made by the ECO on 14 July 2021, dismissing her appeal against refusal of entry clearance as the adoptive child of her natural aunt.

4. FtT Judge Komorowski allowed her appeal by a decision promulgated on 3 January 2023, finding that the sponsor had assumed parental responsibility. Parties had agreed that as the only issue to resolve.
5. The ECO sought permission to appeal to the UT. The thrust of the grounds is that the decision is contrary to the principles established in *Devaseelan* [2003] Imm AR 1.
6. Permission was granted by UT Judge Keith on 12 April 2023:

It is at least arguable that when taking a previous Tribunal decision as his starting point, while he recognised at paragraph [22] that he was not determining an appeal against the previous Tribunal decision, the FtT was nevertheless significantly critical of it, at paras [17] to [21], and arguably regarded the inadequacy of the previous reasoning, at para [23], as a good reason to depart from the earlier Tribunal assessment. In doing so, the FtT arguably erred in law. The FtT also arguably failed to consider whether any new evidence, which post-dated the previous Tribunal decision, should be treated with caution.
7. A rule 24 response for the appellant argues that the Judge did not treat the case as an appeal against a prior tribunal decision, but took it as his starting point and decided the case before him; had *Devaseelan* in mind when addressing new evidence; approached that evidence with due caution; and reached a decision consistent with the guidelines.
8. Mr Mullen relied upon the grounds, but he acknowledged that on looking at the detail of the decision, it was difficult to maintain that there was any error of substance. While some references to the prior decision might be read as critical, on a careful analysis the tribunal had taken that as its starting point and explained why the issues now appeared in a different light.
9. Mr Devlin had little to add to the clear and detailed arguments in his rule 24 response. He said this was a decision which scrupulously acknowledged all points made on both sides, applied the flexibility explained in *LD (Algeria)* [2004] EWCA Civ 804, and came to a conclusion entirely consistent with *Devaseelan*.
10. I am obliged to both representatives for usefully focusing the issue. In light of their respective submissions, it is clear how that should be resolved.
11. The ECO's appeal to the UT is dismissed. The decision of the FtT stands.

Hugh Macleman

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
9 January 2024