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

Appeal Number: IA/15092/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 September 2015**

**Decision and Reasons
Promulgated
On 24 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

**MRS MARIA CELIA DE ALMEIDA MARCELINO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: None

For the respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination of First-tier Tribunal Judge Majid ("the FTTJ") promulgated on 27 February 2015, in which he allowed the Appellant's appeal.
2. For ease of reference and continuity, throughout this decision I maintain the descriptions of the parties as appellant and respondent, as set out in

the FTTJ's decision, although it is the Secretary of State who pursues this appeal.

3. No anonymity direction was made in the First-tier Tribunal and I see no need for one now.

Background

4. The Appellant is Brazilian. She is the mother of an EEA national. On 4 March 2014 she applied for a residence card as confirmation of a right of residence in the UK. That application was refused by the respondent on 12 March 2014 because the appellant had provided insufficient evidence to demonstrate she was dependent on the EEA national and had been so since her arrival in the UK in January 2012. The application was refused by reference to regulation 7(1)(c) in that she had not shown she was a dependent direct relative in the EEA national's ascending line.
5. The FTTJ allowed the appeal on the grounds that (as per paragraph 25) "the Appellant comes within the relevant immigration law, as amended and merits the protections of ECHR" [sic].

The Hearing

6. As neither the appellant nor her representative were in attendance for the hearing I asked the court clerk to telephone the solicitors on the record, Nabas Legal LLP. He did so and reported to me that they had told him they were no longer instructed by the appellant; a letter had been sent by the solicitors to the tribunal to that effect. However, this is not on the tribunal file.
7. I was satisfied that the notice of hearing had been properly served on the appellant's solicitors and on the appellant herself (albeit care of her solicitors). The notice of hearing makes it clear that if a party or his representative do not attend the hearing on the due date, the appeal may be heard in the absence of that party. There being no application for an adjournment, I decided that it was in the interests of justice for the matter to proceed. I heard the submissions of Mr Avery.

Submissions

8. I referred Mr Avery to **Amirteymour and others (EEA appeals; human rights)[2015] UKUT 00466 (IAC)** and he indicated that the respondent no longer pursued her appeal on the grounds of a flawed Article 8 analysis. However, he submitted that the findings of the FTTJ were fundamentally flawed in that it was not clear from the decision and reasons which rule or regulation had been applied by the FTTJ in reaching his decision. The FTTJ had not set out the reasons for refusal or even cited Regulation 7 in the decision.

Error of Law Discussion

9. It is wholly unclear from the FTTJ's decision what, if any, law has been applied in reaching his decision. The relevant law is Regulation 7 of the EEA Regulations and yet there is no reference to this in the decision and reasons. Furthermore, whilst parts of the appellant's evidence are cited in the decision, there is no reference to the terms of Regulation 7 or the need for the appellant to demonstrate her dependence on the EEA national. Even the submissions made for the appellant by her representative, as recorded by the FTTJ, do not deal specifically with this issue.

10. The FTTJ states at paragraph 14 as follows:

"In my deliberations I must indicate that the Appellant has been living with her daughter for a considerable time and, therefore, for accommodation she will not be a burden on public funds if her appeal is allowed."

It is not clear whether the FTTJ is identifying in this sentence what he must find or whether this is a finding in itself. Either way, it makes no reference to the requirement for dependence, as set out in regulation 7.

11. The FTTJ notes parts of the appellant's evidence at paragraph 15 and states at paragraph 16 that that evidence is corroborated by the statements of her Portuguese daughter and their friend. However, at paragraph 15 it is stated that the appellant's evidence is that her daughter has been living in the UK since 11 March 2011 and, prior to that, with her daughter in Portugal. According to the appellant's application form, she only entered the UK in January 2012. Thus there is, on the face of the evidence, an inconsistency as regards the appellant's and her daughter's living arrangements and this goes to the issue of dependency, as raised by the respondent. This discrepancy is not addressed in the decision-making process. Nor has the FTTJ addressed the concerns of the respondent as to the insufficiency of the documentary evidence to demonstrate that the appellant is dependent on her daughter, the EEA national.

12. I also note that the appeal was allowed by the FTTJ by reference to the Immigration Rules and to the European Convention on Human Rights. There is no reference to the appeal being allowed under the EEA regulations. Nor indeed is there any reference to regulation 7 anywhere in the decision and reasons. Given this essential element of the decision-making process is missing, the findings are not sustainable. The respondent is entitled to know the basis on which the appeal was allowed and this is not clear from the decision. The decision-making is fundamentally flawed. It contains material errors of law and must be set aside.

13. Mr Avery submitted that the appropriate course was for the matter to be remitted to the First-tier Tribunal for a fresh decision to be taken by reference to regulation 7 and the relevant jurisprudence and I agree this is

appropriate, given the fact the appellant did not appear before me and no longer has legal representation.

Decision

14. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
15. The decision is set aside.
16. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge apart from Judge Andrew Davies.

Signed: *A M Black*
Deputy Upper Tribunal Judge A M Black

Date 9 September 2015

Fee Award

The FTTJ made a fee award and I set this aside also.

Signed: *A M Black*
Deputy Upper Tribunal Judge A M Black

Date 9 September 2015

DIRECTIONS

1. Any further documentary evidence relied upon by either party is to be filed with the Tribunal and served upon the other party by no later than 4.00 p.m. on 11 December 2015.
2. The appeal is listed at Hatton Cross with a time estimate of two hours to be heard at 10.00 a.m. on 11 January 2016.
3. A Portuguese interpreter is required.

Signed: *A M Black*
Deputy Upper Tribunal Judge A M Black

Date 9 September 2015