Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/05644/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 25 November 2014	**On 31 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS F S
(ANONYMITY ORDER MADE)

Claimant

SET ASIDE DECISION & REASONS DATED 11.2.2015
And remaking decision

1. I set aside the decision and reasons dated 11th February 2015 in accordance with the Tribunal Procedure (Upper Tribunal) Rules 2008. Under Rule 43 the Upper Tribunal may set aside a decision which disposes of the proceedings, and re-make the decision or a relevant part of it, if it is in the interests of justice and certain conditions apply. The conditions include a procedural irregularity in the proceedings. I find that there was such a procedural irregularity in that the written submissions dated 30th January 2015 and received at the Upper Tribunal on 3rd February 2015 pursuant to directions made on 15th January 2015, did not come to my attention until after the decision had been remade and that this was as a result of administrative error.

2. I now have regard to the written submissions made but they do not cause me to alter my decision and reasons. The Claimant was found to be the primary carer. The issue related to Regulation 15A(4A) of the 2006 Regulations. On the evidence that was before the First-tier

Tribunal it was found that the child's father has a role in caring for his daughter but this was restricted by his working hours. The child has emotional ties with her mother and also with her father although she became fretful when with her father. There was no evidence to show that the child's life would be seriously impaired such that she would be compelled to live with the non EU citizen outside the UK. As to the practical arrangement I was satisfied that the father would be able to make adjustments to his working arrangements to enable him to look after the child. In **Sanneh R (on the application of) v SSWP & HMRC 2013 EWHC 793 (Admin)** Hickbottom J held that …"even where a non EU ascendant relative is compelled to leave EU territory, the Article 20 rights of an EU child will not be infringed if there is another ascendant relative who has the right of residence in the EU, and who can and will in practice care for the child". This view was emphasised in **MA & SM(Zambrano:EU children outside EU) Iran [2013] UKUT 00380(IAC)** and in which it was confirmed that: " The mere fact that the sponsor cannot be as economically active as he would wish because of his care responsibilities to JM and FM, is not sufficient to support a conclusion that JM and FM would be denied the genuine enjoyment of their EU citizenship rights, nor would this be the case even if the sponsor were required to stop working altogether." The written submissions cite two unreported decisions of the First–tier for which permission has neither been applied for nor granted in accordance with the Practice Direction No 11. There was no evidence before the Tribunal to indicate that the child had no relationship with her father nor that the bond between her and the Claimant prevented the father from looking after his daughter. The evidence was that he did have a role, albeit he was not the primary carer, and that involved taking her to school on occasion. He could be expected to make adaptations to his working life to look after his child.

Decision

3. The Appeal of the Secretary of State is allowed.

4. I dismiss the appeal under the Immigration (EEA) Regulations 2006 with reference to Regulation 18A.

Signed

Deputy Upper Tribunal Judge G A Black
Date: 30.3.2015

Anonymity order made because there is a child involved.

Signed

Deputy Upper Tribunal Judge G A Black
Date: 30.3.2015