



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/00620/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 November 2017**

**Decision & Reasons  
Promulgated  
On 05 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MISS MARIAM RAYMONDE SABINE SORO  
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Claimant

**Representation:**

For the Appellant: Ms A.Fijiwala, Specialist Appeals Team  
For the Respondent/Claimant: Mr T. Ogunnubi, Legal Representative, TM  
Legal Services

**DECISION AND REASONS**

- 1.** The Secretary of State has been granted permission to appeal to the Upper Tribunal from the decision of First-tier Tribunal Judge Majid promulgated on 9 March 2017 following a hearing at Taylor House on 11 January 2017. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the claimant requires anonymity for these proceedings in the Upper Tribunal.
- 2.** The claimant is a national of Cote D'Ivoire whose date of birth is 7 January 1994. On 31 July 2015 she applied for a permanent residence card as the

dependent family member of an EEA national who had exercised treaty rights in the UK for a continuous period of five years.

3. On 3 January 2016 the Secretary of State (“SSHD”) refused to issue her with a permanent residence card as she had not provided sufficient documentary evidence to show that her sponsor had been continuously self-employed for five years, including working as a registered childminder since 26 January 2011, or that she was currently economically active. So the SSHD declined to give her the confirmation she sought with reference to Regulation 15 (1)(b) or Regulation 14.
4. Judge Majid allowed the claimant’s appeal, concluding at paragraph [27] that the Claimant came, *“within the relevant Immigration Rules as amended and should have the benefit of discretion”*. His reasons for finding for the Claimant included the following reasons given in paragraphs [12] and [13]:
  - (a) The claimant’s dependence on her mother was apparent from the documents;
  - (b) It cannot be fair to separate this daughter from her mother;
  - (c) Given the closeness of the relationship, her evidence should have been accepted, but the person at the Home Office dealing with her case was over-suspicious;
  - (d) It would not be fair to only go with the view taken by the SSHD as this would mean depriving the Claimant of her appeal right.

### **Reasons for Finding an Error of law**

5. In **South Bucks District Council v Porter (2) [2004] UKHL 33** Lord Brown said at [26]:

The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issues’, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need only refer to the main issues in the dispute, not to every material consideration.

6. Mr Ogunnubi initially sought to defend the decision of Judge Majid, but when I drew his attention to paragraphs [12] and [13] he rightly conceded defeat.
7. The reasons for the decision are not intelligible and they are not adequate. The Judge did not reach a conclusion on *“the principal important controversial issue”*, which was the exercise of treaty rights by the claimant’s mother. The Judge’s reasoning betrays a misunderstanding of

the issues which he was required to resolve. The Judge did not reach a rational decision on relevant grounds.

8. For the above reasons, the decision is vitiated by a material error such that it must be set aside in its entirety and remade.

### **Reasons for Remitting the Appeal to the First-tier Tribunal**

9. Following my error of law ruling, Mr Ogunnobi sought to persuade me to proceed at the same hearing to remake the decision, taking into account an updated bundle of documents, which included documents which were not before the First-tier Tribunal. Ms Fijiwala opposed this course. I ruled in favour of the SSHD on the ground that both parties had been deprived of a fair hearing in the First-tier Tribunal, and therefore this was not an appropriate case to be retained by the Upper Tribunal for remaking. I directed that the appeal should be remitted to the First-tier Tribunal at Taylor House for a hearing *de novo*.

### **Notice of Decision**

10. The decision of the First-Tier Tribunal contained an error of law, which requires the decision to be set aside in its entirety and remade.

### **Directions**

11. **The appeal shall be remitted to the First-tier Tribunal at Taylor House for a fresh hearing (Judge Majid not compatible).**

Signed

Date 02 December 2017

Deputy Upper Tribunal Judge Monson