



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

Appeal Number: IA 09917 2013

THE IMMIGRATION ACTS

**Heard at Field House
On 28 November 2013**

**Determination Promulgated
On 9 December 2013**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

NAHEED GHULAM RASOOL

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gondal, (Legal Representative) Berkshire Law Chamber

For the Respondent: Mr G Jack, Senior Home Office Presenting Officer

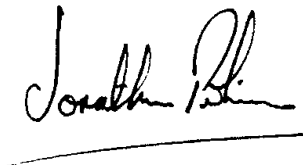
DETERMINATION AND REASONS

1. This is an appeal by a female citizen of Pakistan against the decision of the First-tier Tribunal dismissing her appeal against a decision of the Secretary of State refusing her application to vary her leave to remain in the United Kingdom. The appellant has lived lawfully in the United Kingdom since June 2009 and during that time she has studied and married and has had a child who was born on 3 June 2013 and so is now roughly five months old.
2. The First-tier Tribunal Judge worked meticulously through the Rules and found that the appellant satisfied all of the Rules except one. He was not satisfied that the appellant's circumstances came within one of the exceptions to refusal which he identified as EX(a)(ii). He was not satisfied it would not be reasonable to expect the child to leave the United Kingdom. It is a little surprising to read this conclusion in a determination which is otherwise meticulously prepared and

explained because, as is set out in the grounds that have been prepared by the appellant's representatives, there is very clear guidance from the tribunal and the higher courts that it will be unusual to decide properly that a British national child can reasonably be expected to leave the country of which he or she is a national to make his home elsewhere. Particular reference is made to the decisions of **Sanade and Others (British children – Zambrano – Dericci) [2012] UKUT 48** where these points were considered.

3. We do not see any need to explain the case in any greater detail. The authorities are perfectly clear and we are quite satisfied having heard Mr Jack's very fair presentation of the case and the grounds prepared by the appellant's representatives that the decision was clearly wrong.
4. We set aside the decision of the First-tier Tribunal and substitute a decision allowing the appeal under the Rules.
5. The evidence proves that the exception applies. We do not award costs in this case. As Mr Jack pointed out, the application could not succeed when it was made but the subsequent birth of a British national child is a material change of circumstances.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 5 December 2013