



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

Appeal Number: IA/46794/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 3 June 2014**

**Determination  
Promulgated**

**On 18 June 2014**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**VERONICA AYOYEMI FAMOROTI**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms O Ukachi-Lois instructed by Freemans Solicitors  
For the Respondent: Ms S L Ong, Home Office Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Nigeria who appealed to a Judge of the First-tier Tribunal against the respondent's decision of 21 October 2013 refusing her application for a derivative residence card. The basis of her application was that she was a third country national upon whom a British citizen was dependent in the United Kingdom, on the basis of the decision of the CJEU in Zambrano [2011] EUECJ-34/09 (08 March 2011).

2. The judge noted that for the appellant to qualify she would have to show that she was the primary carer of the EEA national, i.e. her daughter M.
3. Her evidence was that she had come to the United Kingdom as a student and entered into a relationship with George Guduza and they had the child M together. M was born in April 2012. By that stage, the appellant said, her relationship with Mr Guduza had already broken down though after M's birth contact was resumed to the extent that he gave her his passport which she then used to apply for a British passport for M. Subsequently he retrieved his passport but she said that in every other respect he had disappeared.
4. In her statement she said she was the sole and primary carer of her child and had full parental responsibility and Mr Guduza had failed to take any care or accept responsibility for her and had failed to provide any financial support. She provided two documents in support of her arguments. The first was a letter from the Kent County Council stating that the appellant and her daughter had been known to them since October 2013 and according to the information provided by the appellant and to the best of the writer's knowledge the appellant was the main carer for M. The second letter came from Temple Hill Surgery and was from the GP who said with reference to the appellant that she had requested a letter confirming that she was the only one who had brought her daughter into the surgery and she confirmed that since she had been bringing her daughter to the surgery she was the only one who had been doing so.
5. In oral evidence the appellant said that she had been working twenty hours a week in accordance with her student visa and had been helped financially by friends. She had not been sent any money by her parents as they considered the child to be illegitimate.
6. The judge considered the chain of events set out above to be curious. He found it more than coincidental that the father came back to reclaim his passport and then simply abandoned the appellant. He said that the lack of any evidence as to the appellant's personal circumstances, in particular critical evidence as to how she was supporting herself in relation to looking after her child and continuing her studies, showed to him that her case lacked substance and in fact the more she gave evidence the more satisfied he was that there was much more to her case than she was prepared to reveal. He did not find credible the bare assertion that she was on her own and dependent upon friends without any support from her family. He considered that all the evidence in the case pointed to the father having played a careful role in ensuring that his child had a British passport, and he did not accept that the father had disappeared from the scene. He said that for all these reasons he was satisfied that that part of the case relating to the alleged care of her child had been manufactured, and he dismissed the appeal.

7. Permission to appeal was granted on the basis that no evidence had been adduced to suggest that the child's father had any involvement in the child's care and the judge had not commented on the letter from the Social Services or the GP and did not indicate whether he had considered the case of Omotunde (best interests - Zambrano applied - Razgar) Nigeria [2011] UKUT 00247 (IAC).
8. On the issue of whether there was an error of law in the determination, Ms Ukachi-Lois referred to the respondent's Rule 24 response which had been served on 14 May 2014 and argued that it did not address the Zambrano and Omotunde issues that had been raised in the grounds. The judge had not referred to the evidence and it should be found that he had erred materially.
9. In her submissions Ms Ong argued that the judge had not accepted that the appellant was the primary carer. He had not accepted the account she gave concerning the child's father and there were concerns about a lack of evidence and these were proper concerns. The absence of any consideration of Article 8 was not material. It was the case that the two letters had not been referred to specifically, but they were set out at paragraphs 8 and 9 in the summary of submissions and the reference to them showed that they had been considered by the judge. In any event it was not material. What was said in that evidence was very limited and did not take the case much further and there was no evidence for example from friends in the United Kingdom which could have assisted or any other forms of evidence which could be what the judge meant with regard to the reference to a lack of evidence, at paragraph 15.
10. By way of reply Ms Ukachi-Lois referred to the birth certificate at E1 of the respondent's bundle which showed the different addresses of the appellant and the father which she said showed that at the time of birth they were living at two different address and that was relevant to the claim that they were not together. It was crucial in such an application for the relevant case law to be considered and there was no consideration of the best interests of the child.
11. After consideration I concluded that the judge's determination was marred by a material error of law in the failure to address the evidence from Kent County Council and from the GP in assessing whether or not the appellant had shown that she was the primary carer, and also with regard to the failure to address Article 8.
12. The appellant produced further evidence in the form of letters from the Kent County Council and a letter from HMRC concerning tax credits. She argued with regard to the former, which was dated 22 May 2012, that it related also to the letter in the bundle of 24 January 2014 and addressed the initial assessment that had been made in the absence of any safeguarding issues. It pointed to the council being aware that the appellant and her daughter needed help. There was no reference to

anyone else. The tax credits letter identified that she was entitled to tax credit and it was again specifically in reference to the appellant. It was all of that evidence which pointed to her being the primary carer for her daughter.

13. In her submissions Ms Ong argued that this evidence did not prove the appellant was the primary carer on a balance of probabilities. There had been very limited Social Services involvement to date, including a reference "to the best of their knowledge", her being the sole carer. The HMRC letter about tax credits was based on what the appellant said. It did not go to prove the issue of her being a primary carer and there was no evidence as to how she supported herself for example by way of bank statements or evidence from friends without the relationship. This was of relevance to the burden of proof.
14. With regard to Article 8, Regulation 15A had been introduced after Zambrano to take into account the fact that where the appellant was not a primary carer there might be someone, potentially the father, who could provide care. The appellant could not meet the requirements of Appendix FM or paragraph 276ADE and there was no evidence put in about either of those and it was clear from Gulshan that otherwise compelling circumstances needed to be shown and that had not been done.
15. By way of reply Ms Ukachi-Lois argued that the appellant's evidence was that friends and family supported her and her evidence had been consistent. There was no proof of financial assistance as she had been helped by way of money paid by hand and it was very hard to prove any kind of audit trail. The crux was whether the best interests of the child were to remain with her mother and she was the only person who could care for her.
16. I reserved my determination.
17. The onus is on the appellant to show that she is the primary carer of her daughter M. The evidence in this regard is essentially as set out above. The documentation, such as it is, all goes one way. As was pointed out by the judge who granted permission to appeal, there is no evidence to show that the child's father has had any involvement in her care. There is the indirect point referred to by Ms Ukachi-Lois of the mention of the two addresses on the birth certificate, the birth having been registered on 11 May 2012, and the further evidence put in today from the Kent County Council and also from HMRC with regard to a tax credits award to the appellant. It is a matter of the balance of probabilities only, and although the evidence is far from overwhelming, I am persuaded that the burden of proof has been satisfied by the appellant in this case. Accordingly I conclude that she has made out the requirements of Regulation 15A and has shown that she is entitled to a derivative right of residence, and her appeal is therefore allowed.

Signed

Date 12.06.2014

Upper Tribunal Judge Allen