



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

Appeal Number: IA/06396/2014

THE IMMIGRATION ACTS

Heard at Sheldon Court, Birmingham

**Decision & Reasons
Promulgated**

On 22 December 2014

On 12 January 2015

Determination given 22 December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**PATRICIA BATANA MBONDA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr Mills, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of the Democratic Republic of Congo, date of birth 15 July 1974, appeals against the Respondent's decision made on 15 January 2014 to refuse a derivative residence card, pursuant to an application on 12 March 2013.

2. The basis of the application was that the Appellant was a third country national upon whom a British citizen was dependent in the United Kingdom, reliant upon the case of Ruiz Zambrano (C-34/09).
3. For reasons given, the Respondent was not satisfied that it had been shown on a balance of probabilities that the Appellant was the primary carer of a British national and that the removal would force the British national to leave the United Kingdom or the EEA.
4. The matter was further considered in respect of private life considerations arising under Appendix FM and paragraph 276ADE of the Immigration Rules.
5. The appeal against that decision came before First-tier Tribunal Judge Osborne (the judge) who, on 19 June 2014 for cogent reasons given, found that the Appellant's claim could not succeed under the Immigration (EEA) Regulations 2006 and further that there was no jurisdiction to entertain that appeal. The judge went on to consider the matter under Article 8 of the ECHR outside of the Immigration Rules and concluded again the appeal should be dismissed.
6. Application was made on 26 June 2014 for permission to appeal which was granted by First-tier Tribunal Judge Nightingale on 6 August 2014. The Respondent made a Rule 24 response, essentially supporting the findings that the judge had made particularly on the issue that there was no right of appeal and therefore the appeal was properly dismissed for want of jurisdiction.
7. The judge in giving permission essentially noted that there was no substance to any challenge and concluded that there was no right of appeal. However, the judge, heard argument about it at the hearing particularly from the Presenting Officer. Permission to appeal was given on the basis that there might be jurisdiction to entertain an Article 8 ECHR

claim: nevertheless there was of course in the Respondent's original decision, no removal directions or requirement of the Appellant to remove: Rather the indication given in the refusal letter was that a further decision would be made in due course.

8. At the outset of the hearing the Appellant did not appear and her nominated representatives JM Wilson confirmed by brief letter of 22 December 2014 that they were not attending and were without instructions.
10. Having considered the case file and the most recent notice of appeal, I was satisfied that the Tribunal sent to the Appellant at her identified address, the notice of the hearing by first-class post on 28 October 2014. There was no explanation for the Appellant's absence, no request in advance for a postponement of the hearing and no request, by or on the Appellant's behalf, for the matter to be adjourned.
11. In these circumstances I was satisfied the Appellant has absented herself from the hearing and that no purpose is served, not least given the merits of the claim and any other information provided to show that she would attend on a further hearing or could make any relevant contribution to the legal issues raised, at any adjourned hearing.
12. I have considered whether or not there is any basis for an appeal to the First-tier Tribunal and it is apparent to me that the judge made no error of law on that issue under the EEA 2006 Regulations. Whilst the judge did go on to consider Article 8 issues outside of the Rules and was not a matter that fell to be determined and there was no jurisdiction to do so. In the circumstances the appeal fails.
The original Tribunal's decision stands.

ANONYMITY

No anonymity direction has been made nor was one requested nor is one appropriate.

Signed

Date 7 January 2015

Deputy Upper Tribunal Judge Davey