



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

Appeal number: IA/21854/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On March 26, 2015**

**Promulgated
On March 30, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MOMOH JIMOH MUSARI

Respondent

Representation:

Appellant

Mr McVeety (Home Office Presenting Officer)

Respondent

Mr Chimpango (Legal Representative)

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant is a citizen of Nigeria who arrived in the United Kingdom in July 2013. He applied on November 28, 2013 for leave to remain on the basis of family and private life for ten years but the respondent rejected this appeal on February 25, 2014. On April 17, 2014 the appellant sought a derivative residence card under the Zambrano ruling but the respondent refused this on May 9, 2014.

3. The appellant appealed on May 22, 2014, under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (European Economic Area) Regulations 2006.
4. The matter came before Judge of the First-tier Tribunal Somal (hereinafter referred to as the "FtTJ") on November 13, 2014 and in a decision promulgated on November 18, 2014 he allowed his appeal under the EEA Regulations 2006.
5. The respondent lodged grounds of appeal on November 21, 2014 submitting the FtTJ had reached a perverse decision. She submitted that as the FtTJ accepted they shared the job of bringing up their children and his spouse was British he was unable to benefit from the 2006 Regulations.
6. On January 6, 2015 Judge of the First-tier Tribunal Tiffen gave permission to appeal finding the FtTJ had reached a perverse conclusion.
7. The matter came before me on the above date and the parties were represented as set out above. The appellant was in attendance with his wife.

PRELIMINARY ISSUES

8. Although this was a respondent appeal I pointed out to Mr Chimpango that the respondent's grounds of appeal appeared to have merit.
9. I referred the parties to Regulation 15A(7), which states that "a person, P, is to be regarded as a "primary carer" of another person if (a) P is a direct relative or a legal guardian of that person; and (b) P either (i) is the person who has primary responsibility for that person's care; or (ii) shares equally the responsibility for that person's care with one other person who is not an exempt person.
10. Regulation 15A(6)(c)(ii) states an exempt person includes a person who has a right of abode in the UK by virtue of section 2 of the 1971 Act and section 2 of the 1971 Act includes a British citizen.
11. I asked Mr Chimpango how the appellant could possibly succeed under Regulation 15A in those circumstances and he accepted there was some uncertainty in the FtTJ's decision.
12. I pointed out that it was not so much uncertainty in his decision but a perverse decision as the application was wholly misconceived in light of the fact both the children and his wife were British citizens. Mr Chimpango conceded the FtTJ was wrong to have allowed the appeal under the 2006 Regulations.

13. Mr Chimpango then invited me to consider a cross appeal because the FtTJ had not dealt with article 8 ECHR despite his application and subsequent grounds of appeal raising the same. I pointed out to that the appellant had not cross-appealed the decision and he therefore invited the Tribunal to grant him leave to make the appeal.
14. I reminded myself of the decision of EG and NG (UT rule 17, withdrawal; rule 24; scope) [2013] UKUT 143 (IAC) and in particular the contents of paragraph [46] which makes it clear that a Rule 24 response does not create a right of appeal. There had been no Rule 24 response in this appeal but even if there had been such a document filed this did not create a right of appeal.
15. Even if there had been a right of appeal within these proceedings I would have had regard to the decision of Sanade and others (British children - Zambrano - Dereci) [2012] UKUT 00048 (IAC) in which the the Tribunal stated that where in the context of Article 8 one parent (“the remaining parent”) of a British citizen child is also a British citizen (or cannot be removed as a family member or in their own right), the removal of the other parent does not mean that either the child or the remaining parent will be required to leave, thereby infringing the Zambrano principle (Murat Dereci [2011] EUECJ C-256/11). The critical question is whether the child is dependent on the parent being removed for the exercise of his Union right of residence and whether removal of that parent will deprive the child of the effective exercise of residence in the United Kingdom or elsewhere in the Union. I was satisfied that the removal of the appellant would not deprive any of the children of their effective exercise of residence in the United Kingdom or elsewhere in the Union.
16. I therefore found that the appellant had not appealed the FtTJ’s decision even when he became aware of the respondent’s permission and I was not prepared to entertain an application at this time.

DECISION

17. There was a material error. The original decision is set aside and I dismiss the appeal under the Immigration Rules.
18. The First-tier Tribunal did not make an anonymity direction pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to alter that order.

Signed:

Dated: **March 27, 2015**

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

As I have allowed the appeal I set aside the fee award.

Signed:

Dated: **March 27, 2015**

Deputy Upper Tribunal Judge Alis