



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: IA/51315/2013**

Appeal

THE IMMIGRATION ACTS

Heard at: Field House

**Determination
Promulgated**

On: 1st December 2014

On: 7th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

And

Karen Monique McDonald

Respondent

Representation

For the Appellant: Mrs Pal , Senior Home Office Presenting Officer

For the Respondent: Mr Adophy, Solicitor

DETERMINATION AND REASONS

1. The Respondent is a national of Jamaica date of birth 1st March 1970. On the 9th September 2014 the First-tier Tribunal (Judge Majid) allowed her appeal against a decision to refuse to vary her leave to remain and to remove her from the United Kingdom pursuant to s47 of the Immigration Asylum and Nationality Act 2006. The Secretary of State now has permission to appeal against that decision¹.
2. The grounds of appeal take issue with the determination's reference

¹ Permission granted on the 20th October 2014 by First-tier Tribunal Judge Cruthers

to the Zambrano² principles, and with the Tribunal's approach to Article 8 outside of the Rules. Permission is granted on those grounds.

3. The determination does appear to touch upon the Zambrano principles (paragraph 26), and various cases relating to the 'best interests of the child' are set out at length (paragraphs 18-27). This, Mr Adophy acknowledged, is somewhat peculiar since the case did not feature any children. He speculates that possibly the First-tier Tribunal has confused two cases. Ms MacDonald's case before the First-tier Tribunal was a) that she qualified for indefinite leave to remain having accrued ten years lawful residence in the UK; failing that b) she qualified for leave on the basis of her private life under paragraph 276ADE, or finally c) her removal would be a disproportionate interference with her Article 8(1) rights. None of those questions are satisfactorily answered in this determination. It must be set aside.
4. The parties are in agreement that the matter should be remitted to the First-tier Tribunal, since it would appear that there has not been a safe and effective first-instance hearing. I concur.

Decisions

5. The determination of the First-tier Tribunal contains errors of law and it is set aside.
6. The decision in the appeal is to be remade in the First-tier Tribunal.

Deputy Upper Tribunal Judge Bruce
1st December

2014

² Ruiz Zambrano (European Citizenship) [2011] EUECJ C-34/09