



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/03969/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at: Manchester Civil Justice Centre  
On: 20 November 2018**      **Decision & Reasons  
Promulgated  
On 20 December 2018**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**HAFIZ MUHAMMAD UMAR**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: -  
For the Respondent: Mr A. McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan who seeks recognition of a *Zambrano* right of residence under the Immigration (European Economic Area) Regulations 2016 (“the Regs”) as the primary carer of his British mother. The First-tier Tribunal (Judge Tully) rejected the claim on the 20<sup>th</sup> June 2018 and the Appellant now has permission to appeal, granted by First-tier Tribunal Judge EM Simpson on the 21<sup>st</sup> August 2018.
2. The Appellant did not attend the hearing on the 20<sup>th</sup> November 2018. His previous representatives had withdrawn from the record. I noted that the Appellant had, on the 6<sup>th</sup> November 2018, applied for the case before me to be adjourned, on the grounds that various witnesses he wished to call were unavailable. That application was refused on the 8<sup>th</sup> November 2018 on the grounds that none of these

witnesses were necessary for the determination of whether the decision of the First-tier Tribunal was flawed for error of law. No application to renew that adjournment request was made. I therefore proceeded to determine the appeal, having heard very brief submissions from Mr McVeety for the Secretary of State, who defended Judge Tully's decision.

3. By Regulation 15(A) of the 2016 Regs the Appellant was required to show that a) he was the primary carer for a British national residing in this country and b) that if the Appellant were compelled to leave the United Kingdom, so would that British national have to leave the country, and therefore the territory of the EU.
4. The First-tier Tribunal rejected, as a matter of fact, the Appellants claims to both limbs of Reg 15A. The determination is long and detailed but its reasons can fairly be summarised as follows:
  - i) The Appellant and his witnesses gave inconsistent evidence about where he, and his mother, were living, and with whom. The Appellant told the Tribunal that he lived with his mother in [ ]. When it was pointed out that her address, on her medical records and witness statement, was given as his sister's house in [ ], the Appellant had said that his mother no longer lived at that property but had maintained it as her 'official' address. He could not explain why she had not told her doctors, nor why it appeared as her current address on her sworn statement;
  - ii) The Appellant had told the Home Office that there was no other person available who could care for his mother. He had said that her marriage had broken down. It then emerged at hearing that his father was in fact living with his mother, a fact not mentioned in any of the 4 family witness statements;
  - iii) The GP had written to say that the Appellant is his mother's main carer, but the weight to be attached to that statement was diminished by the fact that the GP still believed the lady to be living at [ ]. It was clear therefore that the GP had not conducted a house visit and that the statement as to who was providing care was dependent upon what the GP had been told by the family;
  - iv) A letter from the Mosque couched in similar terms also attracted little weight given that it made no mention of the other family members, including the Appellant's two adult sisters and the Appellant's father;
  - v) The weight to be attached to a report by an independent social worker was diminished by the lack of information

regarding how much time the social worker actually spent assessing the family, and again it appeared likely that the information in the report was based upon what he had been told;

- vi) Whilst the Appellant may well contribute to his mother's care there are two other adult children living very close by to the Appellant's mother. These two daughters gave evidence that they were unable to look after her because they were too busy or did not want to. The Tribunal rejected both these reasons. The sister who claimed a degree of estrangement had nevertheless supported this appeal. The sister who was too busy because she was married and had children: this was not a reasonable explanation given that the Appellant is also married with children;
- vii) There was no suggestion in the evidence that the Appellant's mother would in fact leave the United Kingdom if he were required to go to Pakistan. There was no credible reason why one or both of the lady's daughters could not take that role, her husband is here and she receives extensive support and treatment from social services and the NHS.

5. I can find no arguable defect in any of that reasoning. The Tribunal did not overlook the "myriad" of documents that the Appellant supplied. It accepted that he does contribute to his mother's care, but for the very careful reasons given it rejected the contention that this was the sum total of the care that this 54 year-old lady required, or that is given. She has two adult daughters who live close to her and there were no credible reasons why they would not currently be contributing to her care, or more importantly would not do so were their brother to be denied a residence permit. There is no evidence to support the suggestion in the grounds that the Tribunal jumped to conclusions, or that it unfairly characterised the Appellant as someone who was prepared to lie. The Tribunal did not impugn the integrity or professionalism of the social worker. It simply observed that his comments had to be read in the context that he had not been given the full picture. As to the point that the proper legal basis for this decision may have been the 2006 Regulations as opposed to the 2016 Regs, nothing turns on it, since on the cogent and well-reasoned analysis of the First-tier Tribunal, this claim would fail under both.

### **Decision**

- 6. The decision of the First-tier Tribunal contains no errors of law and the decision is upheld.
- 7. There is no order for anonymity.

Upper Tribunal Judge Bruce  
20<sup>th</sup> November 2018