



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/04535/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at City Centre Tower,
Birmingham
On 6th February 2018**

**Decision & Reasons
Promulgated
On 5th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

SAIMA BIBI

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahmed, Counsel, instructed by Syed Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Pakistan born on 23rd July 1984. The Appellant visited the UK as a spouse, her husband being a British citizen, between 2004 and 2008 when the Appellant was obliged to return to Pakistan with her two daughters. In 2015 the Appellant divorced her husband who had remained living in the UK. The Appellant subsequently applied for an EEA family permit in order to accompany her daughters, ZB and FB, to the UK as their sole carer. That application was refused for the reasons given in a Notice of Decision dated 22nd March 2016. The Appellant appealed, and her appeal was heard by First-tier Tribunal Judge

Black (the Judge) sitting at Taylor House on 4th July 2017. He decided to dismiss the appeal for the reasons given in his Decision dated 12th July 2017. The Appellant sought leave to appeal that decision and on 22nd November 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The appeal before the Judge concerned the derivative rights of a parent of children who are British citizens under the provisions of Regulation 15A(4A) of the Immigration (European Economic Area) Regulations 2006. The Judge considered the decisions in **MA and SM (Zambrano: EU children outside EU) Iran [2013] UKUT 00380 (IAC)** and **Chavez - C-113/15**. The Judge dismissed the appeal because he found it probable that the Appellant's former husband and the father of the children was still resident in the UK, and that the Appellant had relatives in the UK. Therefore the Judge was not satisfied that if the Appellant was not admitted to the UK, her children would be unable to reside there and thereby denied their Treaty rights. The Judge also dismissed the appeal as regards the Appellant's Article 8 ECHR rights on the basis that the best interests of the children were to remain living in Pakistan with their mother.
4. At the hearing before me, Mr Ahmed referred to the grounds of application and submitted that the Judge had erred in law in coming to this conclusion. He argued that there was clear evidence that the Appellant's former husband had had no contact with his children and that he would not be able to care and provide for his children in the UK. Therefore it must be the case that the children would be denied their Treaty rights if their mother could not bring them to the UK. Mr Ahmed added that the Judge had erred in his assessment of the Appellant's Article 8 ECHR rights as he had not considered the **Zambrano** principle.
5. In response, Mr Mills submitted that there was no such error of law. He referred to the decision in **Patel v SSHD [2017] EWCA Civ 2028** where it was decided at paragraph 72 that the decision in **Chavez** did not widen the scope of the **Zambrano** principle which only applied to expulsion cases. As the Judge explained from paragraph 9 of the Decision onwards, he did not accept much of the evidence of the Appellant. In particular, the Judge found on the balance of probabilities that there had been contact between the Appellant, her former husband, and the children after 2008. The Judge was entitled to come to that conclusion on the evidence before him. The Judge was therefore not in error in finding that the Appellant had failed to discharge the burden of showing that the refusal of her application would result in her children being denied Treaty rights.
6. I find no error of law in the decision of the Judge which I do not set aside.
7. The Judge made a finding that the two children of the Appellant could come to the UK and reside there either with their father or with relatives of

their mother and therefore would not be denied their Treaty rights if their mother was not allowed to accompany them. This is a finding of fact made by the Judge which he was entitled to make on the evidence before him and which he fully explained at paragraph 9 of the Decision. The Judge applied the correct standard of proof in making that finding of fact. He did not rely upon speculation, but made findings on the balance of probabilities. He dealt with all the relevant evidence. The Judge therefore did not err in finding that the **Zambrano** principle did not assist the Appellant in her appeal.

8. As regards the Appellant's Article 8 ECHR rights, the Judge found that the best interests of the children were a paramount consideration and amounted to the children remaining living with their mother in Pakistan. There was no suggestion that the Appellant would come to the UK without them. The Judge was therefore correct to find that there were no exceptional or compelling circumstances relating to the Appellant, and therefore that Article 8 ECHR was not engaged.
9. For these reasons I find no error of law in the decision of the Judge.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed

Date 28th February 2018

Deputy Upper Tribunal Judge Renton