



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-002324

First-tier Tribunal No: EA/12031/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 18<sup>th</sup> of October 2023**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**Raja Abrar Ali Kayani  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: No attendance

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**Heard remotely at Field House on 10 October 2023**

**DECISION AND REASONS**

1. The parties are referred to as they were before the First-tier Tribunal.
2. There was no attendance by or on behalf of the appellant. I was satisfied that on 22.9.23 written notice of the hearing date and time was sent by post to the appellant at the address held on file in Manchester. Attempts to contact the appellant by telephone were unsuccessful. In the circumstances, I concluded that the appropriate course in the interests of justice was to proceed with the appeal in the appellant's absence.
3. The relevant background is that the appellant had appealed to the First-tier Tribunal against refusal of leave under Appendix EU of the Immigration Rules.
4. By a decision of the First-tier Tribunal (Judge Boyes), the respondent was granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Austin) promulgated 23.3.23 allowing the appellant's appeal against the respondent's decision of 4.11.22 to refuse his EUSS application made on 30.7.22 for a 'Zambrano' right to reside in the UK.

5. The First-tier Tribunal Judge was persuaded by the appellant's submissions, made in the absence of a representative of the respondent, that notwithstanding that the appellant could not succeed under the EUSS, he could succeed under the 2016 Regulations as a 'Zambrano' carer for his British citizen child.
6. In summary, the grounds of appeal argue that the First-tier Tribunal had inadequate regard to the limited scope of the appeal and relied on irrelevant matters. Mr Tufan's submissions mirrored the grounds contained within the IAFT4 form.
7. I am satisfied that the only right of appeal to the First-tier Tribunal available to the appellant was under Regulation 3 of the Citizens' Rights Appeals Regulations 2020, against refusal of leave under Appendix EU. As such, the only effective ground of appeal was that the decision was not in accordance with residence scheme immigration rules (Regulation 8).
8. Unarguably, in breach of paragraph 8 of the Senior President's Practice Direction of 2022, the judge erred in law by accepting and relying on the citation of an unreported decision of the Upper Tribunal which had no binding authority and was in fact decided on a different basis.
9. More significantly, in a clear error of law, the judge purported to find a right under the 2016 Regulations notwithstanding the repeal of those provisions on 31.12.20, which were not preserved for the purpose of an EUSS application or appeal in 2022, except as outlined below. In any event, the judge misapplied the 2016 Regulations.
10. A Zambrano right to reside was only available to a person who has no other lawful basis of stay in the UK as the primary carer of a dependent British citizen, or as a dependant of that primary carer. As the Court of Appeal explained in Akinsanya v the Secretary of State for the Home Department (SSHD) [2022] EWCA Civ 37, as a matter of EU law, a Zambrano right to reside does not arise where a person holds leave to remain. The Zambrano right to reside ceased to exist at the end of the post-EU exit transition period on 31 December 2020. Such cases are not covered by the Withdrawal Agreement with the EU or the citizens' rights agreements with the other European Economic Area (EEA) countries and Switzerland. However, the UK decided as a matter of more generous domestic provision to provide a person who held a Zambrano right to reside in the UK by the end of the transition period with access to the EU Settlement Scheme, until the route closed to new applications on 8 August 2023. However, the definition of a person with a 'Zambrano Right to Reside' contained within Annex 1 of Appendix EU specifically excludes a person who has extant leave at the date of application unless such leave had been granted under Appendix EU. The appellant had been granted discretionary leave under article 8 ECHR private and family life on 17.1.22. As Mr Tufan submitted, that alone was fatal to the application made.
11. It follows that the application as made could not have been granted and the appeal against the respondent's decision could not have succeeded on any basis.
12. In the circumstances, the appeal to the Upper Tribunal must succeed. I set aside the decision of the First-tier Tribunal and remake it by dismissing the appeal, on the basis that it could not succeed on any ground, as explained above.

### **Notice of Decision**

The respondent's appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside and remade by dismissing the appellant's appeal against the respondent's decision.

I make no order for costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**10 October 2023**