



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-002861
UI-2023-002863
UI-2023-002864
First-tier Tribunal Nos:
EA/10763/2022
EA/01033/2023
EA/00808/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 April 2024

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

WAQAR AMJAD
ZANJABEEL NASREEN
MEHWISH WAQAR
(NO ANONYMITY ORDERS MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr I Chowdhary of Counsel
For the Respondent: Mr E Tufan, Senior Presenting Officer

Heard at Field House on 10 April 2024

DECISION AND REASONS

1. These are linked appeals. Mr Waqar Amjad is the husband of Mrs Mehwish Waqar and they are the parents of Zanjabeel Nasreen. There is a fourth child of the family who does not feature in these proceedings because he was granted British citizenship on 3 December 2021.
2. In the first instance Mr Amjad made an application for settlement as a person with a **Zambrano** right to reside. That application was on 30 June 2021. The application was made in relation to his care for an elderly British citizen, Mr John Sydney Hall. Details of that care are set out at some length at paragraph 6 of the

First-tier Tribunal's Decision in Mr Amjad's appeal. It is unnecessary to repeat those matters here save in one respect which we will come on to shortly.

3. Mr Amjad, in the section of the application form that required the applicant to state why the 'cared-for' person might have to leave the United Kingdom in the event that the applicant were required to leave the United Kingdom, did not address that issue directly: rather he stated the circumstances of Mr Hall and the nature and level of care that he provided to Mr Hall.
4. Indeed, such matters informed much of the Decision of the First-tier Tribunal in Mr Waqar's appeal, decided 'on the papers'.
5. However, we note the following passage in paragraph 6 of the Decision:

"... with the local authority having offered to move him into a social home, but he is too attached to the rent free house where he became a widow in 2010".

Further to this, there is also extensive reference to the local authority's care plan in respect of Mr Hall.

6. Be that as it may, and irrespective of the nature of the care provided to Mr Hall, or Mr Hall's circumstances, the basis of the Respondent's refusal of the First Appellant's application, set out in a decision letter dated 11 September 2022, was that the First Appellant enjoyed limited leave to remain. The dates of his leave are apparent from the papers. His most recent grant of leave was from 24 August 2022 until 23 February 2025. It is highlighted at paragraph 5 of the First-tier Tribunal's Decision in respect of Mr Waqar that he explained that he wanted to make the application under the '**Zambrano** route' because of the necessity of making repeat applications for limited leave to remain under the Immigration Rules.
7. As will be seen - and is now accepted on his behalf - the **Zambrano** route was not open to him for another fundamental reason.
8. Having determined that the fact that the First Appellant had leave prevented him from succeeding as a 'person with a **Zambrano** right to reside', the decision letter stated "*we have not considered the rest of the eligibility requirements for this category of the EU Settlement Scheme*".
9. Subsequent to the First Appellant's application, his wife and daughter made their own applications. It is explained that these applications were not made at the same time as the principal application because it had not initially been understood that separate applications were required. In due course the appeals of the Second and Third Appellants were heard together, but separately from - and after - the appeal of the First Appellant.
10. The applications of the Second and Third Appellant were not based on entirely the same circumstances - although this does not appear to have been recognised by the First-tier Tribunal in their linked appeals. The combined Decision in their appeals states: "*The appellants base their claims on the same facts as Mr Amjad*" (paragraph 9). This is not accurate: it is clear from the Respondent's decision

letter in respect of the Second and Third Appellants that they also relied upon the care for the British citizen child of the family - who has his own particular care needs and issues - who was naturalised as a British citizen in December 2021.

11. The Respondent refused the applications of the Second and Third Appellants on the same basis that they already enjoyed leave under the Immigration Rules. However, in respect of the British citizen child but also the decision referred to the circumstance of the British citizen child, the decision letter said that as the child *“was naturalised on 2 December 2021 it would not be possible to deem that you were a person with a Zambrano right to reside before the specified date”* - i.e. before 30 December 2020.
12. The appeals although clearly inextricably linked were not all links before the First-tier Tribunal. Sequentially, the appeal of Mr Waqar Amjad was considered first, ‘on the papers’, by First-tier Tribunal Judge Raymond. Judge Raymond, as already indicated above, made extensive reference to the circumstances of Mr Amjad’s care for the British citizen Mr Hall, before stating without further analysis: *“... I find that the appellant had been the primary carer of Mr Hall since 2012 under Zambrano, as it has been enshrined under Regulation 16 prior to the Withdrawal Agreement”* (paragraph 8). As regards the issue of extant leave to remain, the First-tier Tribunal determined it in the Appellant’s favour. The appeal was allowed accordingly.
13. The appeals of the Second and Third Appellants were considered together ‘on the papers’ by First-tier Tribunal Judge Harris. Judge Harris had available to him the decision of Judge Raymond. As noted above, Judge Harris perceived that the Appellants’ claims in those cases were based on entirely the same facts as Mr Amjad’s. That was only partially correct. Be that as it may, and notwithstanding the lack of any express consideration to any issue relating to the care of the British citizen child, it is clear that Judge Harris in effect allowed the appeals in line with the decision of Judge Raymond.
14. The Respondent applied for permission to appeal in respect of all three cases - at which point the cases were linked. Permission to appeal was granted on 21 February 2024 by Upper Tribunal Judge Kopieczek. The grant of permission is in these terms:

*“The grounds advance an arguable case for suggesting that First-tier Tribunal Judges Raymond and Harris, the latter having applied Judge Raymond’s reasoning in the case of Waqar Amjad, misinterpreted the decision in **Akinsanya v Secretary of State for the Home Department [2022] EWCA Civ 37** in allowing the appeals of these appellants against the refusals of settled status under the EUSS as persons with a Zambrano right to reside”.*
15. Mr Tufan indicated his reliance upon the case of **Sonkor [2023] UKUT 00276 (IAC)** in respect of the appropriate approach to **Akinsanya** to make good the Secretary of State’s contention that in circumstances where each of the Appellants already had leave under the Immigration Rules they could not succeed on the basis of **Zambrano** rights.

16. However, there is another matter that has been the subject of discussion before us: there is nothing in any of the evidence that remotely indicates that in the event that any of the Appellants were required to leave the United Kingdom, Mr Hall himself would be forced to leave the United Kingdom or the EEA. Indeed, it was expressly indicated in the evidence before Judge Raymond that Mr Hall had available to him support through the local authority including moving into a 'social home'. The reality is that Mr Amjad has been able to facilitate Mr Hall remaining in the home in which he had lived for so many years as a matter of choice. It does not follow - and indeed the evidence does not support the notion - that but for that Mr Hall would somehow be required to leave, or be forced to leave, the United Kingdom.
17. It follows - and indeed it has been very helpfully and properly acknowledged by Mr Chowdhary - that that caring arrangement is not one that engages the **Zambrano** principles.
18. On that basis the decision of First-tier Tribunal Judge Raymond was wrong in law.
19. This is not a matter that had been expressly pleaded in the Grounds. However, in our role to ensure the law is applied properly, we raised the point so that the parties could consider it and make such representations as they wished. Mr Chowdhary, who was instructed by Direct Public Access and had only been instructed at a late stage, on reflection candidly acknowledged the reality of the point.
20. Given that Judge Harris followed the reasoning of Judge Raymond, it must follow that Judge Harris's decision also requires to be set aside. Insofar as the Appellants in that case were also relying upon provision of care to the second child of the family, the British citizen child, that was not a matter addressed by Judge Harris, and necessarily did not inform his decision.
21. The decisions in the appeals require to be re-made.
22. In circumstances where it is now acknowledged that the care for Mr Hall cannot avail the Appellants by reference to the **Zambrano** rights, each of the appeals must be dismissed on that basis.
23. The alternative basis - the care for the British citizen child - was also acknowledged not to avail the Appellants. Mr Chowdhary very properly acknowledged the substance of the Respondent's case in this regard: British citizenship was not acquired until after the specified date of 30 December 2020. Mr Chowdhary recognised and acknowledged that the Appellants 'had no case'.
24. It follows that we re-make the decisions in each of the appeals by dismissing them.

Notice of Decisions

Appeal Numbers: UI-2023-002861
UI-2023-002863
UI-2023-002864
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25. The decisions of the First-tier Tribunal in each of these appeals contain an error of law, and each such decision is set aside.
26. We remake the decisions in the appeals. Each of the appeals is dismissed.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

I Lewis
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
15 April 2024