



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004923

First- Tribunal No:
EU/50316/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

10th December 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

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(ANONYMITY ORDER MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: M Allison

For the Respondent: P Lawson, Senior Presenting Officer

Heard at Cardiff Civil Justice Centre on 19 September 2024

DECISION AND REASONS

1. The appellant, a female citizen of Swaziland born on 17 February 1983, claims to be entitled to reside in the United Kingdom by virtue her status as a *Zambrano* carer. Her application was refused by the Secretary of State and she appealed to the First-tier Tribunal which allowed her appeal. The Secretary of State now appeals to the Upper Tribunal. Granting permission Judge Athwal wrote:

The single ground asserts that the Judge erred by failing to identify how the Appellant satisfies the requirements of Appendix EU of the Immigration Rules for settled or pre-settled status at either the specified date or the date of application. The Appellant holds leave under Appendix FM so cannot satisfy the

requirements of EU 11 at the specified date or date of application; being granted leave under a different capacity within the Immigration Rules meant that she ceased to have a *Zambrano* right to reside for the period claimed, so could not have accrued 5 years, which is what the Judge concluded; the Appellant did not demonstrate that she would be required to leave the UK and her children compelled to leave the United Kingdom.

2. At the initial hearing at Cardiff on 19 September 2024, Mr Lawson, Senior Presenting Officer for the Secretary of State, told me that he accepted on behalf of the respondent that the judge had not erred in law for the reasons advanced in the grounds of appeal or at all. Having considered the papers, I agree with him. The appellant is not excluded from a *Zambrano* right to reside in the United Kingdom as the judge of the First-tier Tribunal had duly found. Accordingly, the Secretary of State's appeal is dismissed.

Notice of Decision

The Secretary of State's appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 22 November 2024