



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/23837/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 14 March 2016**

**Determination Promulgated  
On 20 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ARCHER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SHAZIA RAMZAN**

Respondent

**Representation:**

For the Appellant: Mr Kandola, Senior Home Office Presenting Officer  
For the Respondent: Ms Dogra, Counsel, instructed by Bukhari Chambers

**DECISION AND REASONS**

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.
2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge Blake) allowing the respondent's appeal against a decision taken on 21 May 2014 to refuse her application

made under regulations 15A and 18A of the Immigration (European Economic Area) Regulations 2006 (“the Regulations”) on 9 December 2014 for an EEA derivative residence card.

### **Introduction**

3. The respondent is a citizen of Pakistan born on 15 December 1980. The application was made on the basis that she is the primary carer of her sister, AM, who is a UK citizen.
4. The Secretary of State accepted the respondent’s identity and nationality but concluded that there was insufficient evidence to support the claimed family relationship and AM could obtain assistance from other organisations or individuals. Preference for a family carer was not enough. There was insufficient evidence to conclude that AM would be unable to reside in the UK if the respondent were required to leave. The respondent had entered the UK as a Tier 4 (General) Student and her leave was curtailed in November 2013.

### **The Appeal**

5. The respondent appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 20 August 2015. She was represented by Mr Mannan of Counsel. The First-tier Tribunal found that the respondent and AM were honest and credible witnesses. AM had been blind since 2000 and had been fully dependent upon her mother. Her mother was no longer able to care for her because of her own health issues and the task had fallen fully on the respondent. AM had suffered a devastating experience through losing her sight in midlife. She was depressed and had developed a mistrust of all strangers. There was no one else in the family in the UK who could provide care. AM would not be able to reside in the UK or another EEA state if the respondent was required to leave. The respondent’s attendance on AM as her primary carer was necessary and within the scope of the Regulations.

### **The Appeal to the Upper Tribunal**

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law by failing to consider whether AM would be **compelled** to leave the UK if the respondent was required to leave. The respondent relied upon regulation 15A(4A)(c) and MA and SM (Zambrano: EU Children outside the EU) Iran 2013 UKUT 380; EU law will not be engaged where the EU citizen is not compelled to leave. The respondent’s removal might result in some difficulty for AM but that would not result in a compulsion to leave the UK. That finding was reaffirmed by the Court of Appeal in Sanneh and others v SSWP [2015] EWCA Civ 49; the Zambrano principle does not preclude the removal of the primary carer even if that would necessarily diminish the quality of their lives. If AM were left in the care of social services or another competent carer she would not be left without the resources to live in the EU.

7. Permission to appeal was granted by First-tier Tribunal Judge Colyer on 25 January 2016. It was arguable that the judge had failed to consider the principle whether AM would be compelled to leave the UK if the respondent was required to leave.
8. Thus, the appeal came before me

### **Discussion**

9. Mr Kandola submitted that there was a material misdirection in law. The respondent was a primary carer of an adult sibling and there was a higher threshold. There was adequate care in the UK. The judge did not really grapple with that issue. There was no compulsion to leave the UK and no sustainable conclusion to that effect in the decision. AM and her mother would not be left without recourse to live within the EU. A decision dismissing the appeal should be substituted. The respondent did not rely upon Article 8.
10. Ms Dogra submitted that the decision was very detailed comprising 117 paragraphs. The judge was clearly aware of the Zambrano principles from paragraphs 16, 83, 107; for the national court to determine whether the EU citizen would be required to leave the EU. At paragraphs 91-96 and 109-115 of the decision the judge found that AM would not be able to remain if the respondent left. The fact that the judge did not use the words "*compelled to leave*" is neither here nor there. There is always the possibility of social care but that was dealt with at paragraphs 112-113 of the decision. The mere availability of social care cannot be enough or all Zambrano applications would fail. There was no error of law and the decision should stand.
11. Mr Kandola submitted in response that there was no reference to "*compelled to leave*" and that was highly material; actually the crucial question in this appeal and not dealt with by the judge. If the judge had dealt with the issue correctly then the First-tier would have concluded that AM could continue to reside in the UK.
12. I note that the refusal letter at page 3 states that the evidence provided was insufficient to demonstrate that AM would be unable to reside in the UK or another EEA state if the respondent was required to leave the UK. That was the same test as applied by the judge at paragraph 115 of the decision. It is unsurprising that the decision makers in this case applied the same test because both the respondent and the judge were seeking to apply regulation 15A of the Regulations.
13. Regulation 15A (4A) states that P satisfies the criteria in the paragraph if she is the primary carer of a British citizen, the British citizen is residing in the UK and the relevant British citizen would be unable to reside in the UK or in another EEA state if P were required to leave. There is no requirement in the Regulations for decision makers to explicitly consider compulsion although as a matter of common sense if a person is "*unable to reside*" then they must also be "*compelled to leave*". The case law simply highlights the importance of applying the test strictly - the

convenience of existing arrangements or a preference for a particular carer is not enough.

14. I find that the judge applied the test appropriately at paragraphs 112-115 of the decision. The finding that the respondent had fallen into error by concluding that AM could procure assistance from other sources with the help of social services in the absence of the respondent was properly open to the judge. There is no evidence that the findings of fact and the decision arising from those findings of fact were perverse. There is therefore no material misdirection and no material error of law.
15. Thus, the First-tier Tribunal's decision to allow the respondent's appeal under the Regulations did not involve the making of an error of law and its decision stands.

**Decision**

16. Consequently, I dismiss the appeal of the Secretary of State.

Signed



Date 14 May 2016

Judge Archer

Deputy Judge of the Upper Tribunal