



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/01157/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 16th March 2018

**Decision & Reasons
Promulgated
On 11th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR MUHAMMAD BILAL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Murphy, Counsel, instructed by SG Law
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 31st October 1985. The Appellant has an extensive immigration history dating back to first entering the UK on a student visa back in September 2005. On 24th March 2015 the Appellant made a human rights application for leave to remain in the United Kingdom on the basis of claiming to have established private and family life. That application was refused by Notice of Refusal dated 12th February 2016.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Nash sitting at Hatton Cross on 4th August 2017. In a Decision and Reasons promulgated on 29th August the Appellant's appeal was dismissed.

3. On 9th September 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 11th January 2018 Judge of the First-tier Tribunal Shimmin granted permission to appeal. Judge Shimmin recorded that the grounds requesting permission to appeal to the Upper Tribunal made four submissions as to where the First-tier Tribunal Judge had erred. These were:-
- (a) That the judge had failed to follow the case of *SF and others v Secretary of State for the Home Department (Guidance, post-2014 Act) Albania [2017] UKUT 120 (IAC)*;
 - (b) failed to have regard to whether there would be a breach of the *Zambrano* principle if the Appellant's British child is removed;
 - (c) failed to show powerful or exceptional or reasonable reasons for justifying the removal of the British child;
 - (d) failed to show sufficient reasons as to why it would be proportionate for the Appellant's wife to leave the UK with the Appellant.
4. No Rule 24 response has been lodged by the Secretary of State. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Murphy. The Secretary of State appears by her Home Office Presenting Officer, Mr Tarlow.

Relevant Case Law

5. The relevant case law to this appeal are to be found in the head notes of *SF and others* and *Sanade*. They recite as follows:-

SF and others v Secretary of State for the Home Department (Guidance, post-2014 Act) Albania [2017] UKUT 120 (IAC):

“Even in the absence of a ‘not in accordance with the law’ Ground of Appeal, the Tribunal ought to take the Secretary of State’s guidance into account if it points clearly to a particular outcome in the instant case. Only in that way can consistency be obtained between those cases that do, and those cases that do not, come before the Tribunal.”

Sanade and others (British children - Zambrano - Dereci) [2012] UKUT 48 (IAC):

“(5) *Ruiz Zambrano* now makes it clear that where the child or indeed the remaining spouse is a British citizen and therefore a citizen of the European Union, as a matter of EU law it is not possible to require the family as a unit to relocate outside of the European Union or for the Secretary of State to submit that it would be reasonable for them to do so.”

Submissions/Discussions

6. Mr Murphy relies on the Grounds of Appeal. He addresses each section of those grounds in turn. Firstly he submits that the First-tier Tribunal Judge materially erred as his conclusions are contrary to the guidance given in *SF and others* as this case involves a British child. He takes me to paragraphs 7 and 8 of that decision.
7. Secondly, he submits that the First-tier Tribunal has not had regard as to whether there would be a breach of the *Zambrano* principle if the British child is removed and thirdly, that the judge has erred in failing to show powerful or exceptional reasons justifying the removal or reasonableness of removal of the British child, applying the test in *MA (Pakistan) & Ors [2016] EWCA Civ 705*. Finally, he takes me to the issue relating to insurmountable obstacles and Article 8 outside the Rules and submits that the First-tier Tribunal Judge has failed to have sufficient regard to the circumstances of the Appellant's spouse, who was a recognised victim of domestic violence and was granted indefinite leave to remain and that the judge has not provided sufficient reasons as to why it would be proportionate for her to live with the Appellant in his country of return.
8. Mr Murphy takes me against those basic submissions to the decision of the First-tier Tribunal Judge, pointing out that at paragraph 47 the judge has failed to give any consideration whatsoever to the considerations to be found in paragraph 117B(6) and at paragraph 51 whilst the judge has given a consideration of *ZH (Tanzania)* he has failed to make considerations based on the premise of the *Zambrano* principle. He relies on the above-mentioned head note in *Sanade*. He submits that it was an error to contend that the child, being a British citizen, could leave the UK and that this clearly is in error to the principles of *Sanade* and *Zambrano*. He asked me to find firstly that there are material errors of law and secondly to remake the decision allowing the appeal.
9. In brief response, Mr Tarlow takes me to paragraphs 52 and 53 of the decision, submitting that this is a child of very young age and that as a result has minimal, if any ties, to a particular society and culture. He submits that there has been no material error and the judge was entitled to make the findings that he did. However, he acknowledges that he has no submissions to make with regard to the *Zambrano* point.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's

factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

12. I am satisfied that there are material errors of law in this decision. Whilst acknowledging that the judge has given consideration at paragraphs 52 and 53 to the age of the child the judge has failed to follow the basic principles of *Zambrano* that as a matter of law it would not be possible to require the family as a unit to relocate outside the EU or for the Secretary of State to submit that it would be reasonable for them to do so where the child is a British citizen or the remaining spouse is a British citizen. Mr Tarlow has assisted the Tribunal considerably in his approach in that he has not sought to argue this point and whilst not going so far as to make concessions he points out that he has nothing further to add on the point. In these circumstances the judge has materially erred in law and I set aside the decision.

The Remaking of the Decision

13. I am asked by both parties that in the event that I find material errors of law that I remake the decision. That I now do. This is not a case where there has ever been any criminality and there is no public interest to be found with regard to the removal of a parent. I note the factual circumstances of this particular family and indeed it would be pointless removing the Appellant to Pakistan bearing in mind that it appears he has never actually lived there. In all circumstances, following the principles of *Zambrano* and *Sanade*, the correct approach is to remake the decision, allowing the appeal.

Decision

The decision is remade, allowing the appeal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris