



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/12316/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 April 2015**

**Decision & Reasons  
Promulgated  
On 17 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GIBB**

**Between**

**RASIDAT BOLANLE LAWAL  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr E Akohene, Solicitor, instructed by Charles Hill & Co,  
Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a Nigerian citizen, applied for a derivative residence card on the basis that she was the primary carer of her British citizen child. This was refused, on 25 February 2014, and her appeal was dismissed by First-tier Tribunal Judge Archer, in a decision promulgated on 1 December 2014.

2. Permission to appeal was granted by First-tier Tribunal Judge Frankish, on 20 January 2015. The three grounds seeking permission to appeal had been concerned with the judge's finding that the child's father could take responsibility for her if the appellant were required to leave the UK (the first ground); that paragraph 29 of the decision included a statement that the decision under appeal was not in accordance with the law in the Regulations, which was inconsistent with the outcome (the second ground); and in not giving full consideration to Article 8 (the third ground).
3. At the hearing before me attention was focused on the first ground. An issue emerged, in the course of submissions and discussion, that was hinted at but not properly identified in the first ground. This related to paragraph 27 of the decision. The second sentence of that paragraph was as follows.

"There is no evidence before me that the father would be prepared to add Sameerah to his household if the appellant is required to leave the UK."
4. The penultimate sentence of paragraph 27 was as follows.

"I find on balance of probabilities that the father could take responsibility for Sameerah if the appellant were required to leave the UK and there is no evidence that he is not willing to do so."
5. As was agreed between the parties at the hearing before me these two sentences disclosed an error of law. It is well-established that findings, to be lawfully made, must be based on evidence. Within the judge's decision itself the two sentences, on their face, make the case that the finding about the father taking responsibility for the child was not evidence-based.
6. There followed some discussion as to whether the agreed error of law was material to the outcome. This led to a consideration of the last sentence of paragraph 26 of the decision, which was a finding that the appellant had not shown that her British child was a self-sufficient person. It was agreed between the parties that the case had always been concerned with the **Zambrano** ruling, and not with the **Chen** case. Mr Walker confirmed that self-sufficiency had not been raised as an issue in the refusal. The application had been made and considered on the basis of Regulation 15A(4A). Mr Walker submitted that the financial evidence had only been considered as a means to assess whether the appellant was the primary carer. It was accepted that there were no self-sufficiency or other financial requirements in **Zambrano** type cases.
7. Having listened to submissions from both sides as to the consequence of the agreement that there was a legal error in paragraph 27, and whether it was material, I decided that the finding in the penultimate sentence of paragraph 27 did rest on a material error of law, and that it needed to be set aside. There did not appear to be any other basis on which the appeal would have fallen to be dismissed, once it was accepted that self-sufficiency would not have been such a basis, as it was not a requirement in this type of case.

## **Remaking of the Decision**

8. Having listened to both representatives on the subject of whether there was any need for further evidence I indicated that I would hear submissions and proceed to an immediate remaking.
9. Mr Walker submitted that there was no specific finding or conclusion within paragraph 24 of the decision as to the primary carer issue, and it would be preferable for the matter to be adjourned, and for there to be an opportunity for further evidence. The further evidence required was the financial evidence, the limitations of which was noted at paragraph 26 of the decision.
10. Mr Akohene submitted that the primary carer point was clear from the decision. At paragraph 25 there was a clear finding that the appellant was the primary carer for her child. It was important not to confuse the test of primary carer with that of sole responsibility in the Immigration Rules. The appellant was clearly the primary carer based on the evidence, and the judge's findings. The father had almost no involvement. At the time of the hearing there had been no contact at all between the father and the child for twelve months, and the last telephone conversation had been six months before the hearing.
11. Following consideration of the submissions by both sides I am satisfied that the decision can be remade without the need for further evidence. There are clear findings by the judge in paragraph 25, which are as follows.

"I find that the appellant is the primary carer for Sameerah. There is no reason to doubt her account of working and looking after Sameerah. ... I find that Sameerah and the appellant live alone together. On the evidence available to me, I find that the father has very limited contact with Sameerah and currently plays no part in her upbringing."
12. Nothing in the submissions, or in the grounds, sought to challenge these findings, and I can see no argument that they were not evidenced-based and properly reached. The judge did note, at paragraph 26, that the financial evidence was limited, but at the same time it was noted that the appellant had provided evidence to show her annual earnings from a nursing agency for the tax year 2013/2014. The key point, however, is that it was not necessary for the appellant to establish that either she or her child were self-sufficient. The only argument was whether the primary carer findings in paragraph 25 were sustainable in view of the limitations in the financial evidence. In my view those findings are sustainable, based as they were on the evidence and findings set out from paragraph 20 onwards in the decision.
13. No further submissions were made, as to the remaking of the decision, with reference to the issue of whether the appellant's daughter would be

unable to reside in the UK if the appellant were required to leave. It was not suggested, in particular, that this conclusion should not follow in the appellant's favour, based on the observation that there was no evidence that her father would be willing or able to take on responsibility for her.

14. Mr Akohene, for the appellant, accepted that there would be no need for a consideration of the second and third grounds, in view of the outcome arising from the first ground, and the agreed position that there was an error of law in the negative determinative finding at paragraph 27 of the decision.
15. For these reasons the judge's finding at the end of paragraph 27 is set aside, as resting on a material error of law. The decision is remade on the basis that the appellant has established, on balance, the three requirements set out in Regulation 15A(4A).
16. It was not suggested that there was any need for anonymity in this appeal, and I make no such order. No application was made for a fee award. Despite the outcome of the appeal I have decided not to make such an award, on the basis that the outcome depended on evidence not submitted with the application.

### **Notice of Decision**

17. There was a material error of law in the judge's decision, and the decision dismissing the appeal is set aside.
18. The following decision is substituted.
19. The appeal is allowed under the 2006 Regulations.

Signed

Date **14 April 2015**

Deputy Upper Tribunal Judge Gibb