



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/21129/2015**

Appeal Numbers:

IA/2

1130/2015

THE IMMIGRATION ACTS

**Heard at City Centre Tower,
Birmingham
On 26th April 2017**

**Decision & Reasons
Promulgated
On 25th May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**ANNA PAVLOVICA (FIRST APPELLANT)
VESELINA DOUGLAS (SECOND APPELLANT)
(ANONYMITY DIRECTIONS NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Unrepresented

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The first Appellant is a citizen of Latvia born on 24th October 1981. The second Appellant, her daughter, is a British citizen born on 30 June 2013. Both Appellants received Notices of Decision dated 28th May 2015 stating that they had no right to remain under the Immigration (European Economic Area) Regulations 2006 and deciding to remove them under the

provisions of Section 10 Immigration and Asylum Act 1999. The Appellants appealed, and their appeals were heard by First-tier Tribunal Judge Colyer (the Judge) sitting at the Nottingham Justice Centre on 3rd June 2016. He allowed the appeals of both Appellants for the reasons given in his Decision dated 6th June 2016. The Respondent sought leave to appeal that decision and on 26th January 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge allowed the appeal of the second Appellant on the basis that she was a British citizen. This fact is not in dispute, and therefore I find no error of law in the Judge allowing her appeal. That decision is not set aside.
4. The Judge allowed the appeal of the first Appellant because he found her evidence to be entirely credible and decided that she was the sole carer of an infant British citizen resident in the UK. The Judge found that the decision of the Respondent was not in accordance with the law because as she was not aware that the second Appellant was a British citizen, she had failed to consider the best interests of the second Appellant, and the Article 8 ECHR rights of both Appellants.
5. At the hearing before me, Mr Mills argued that the Judge had erred in law in this conclusion. He referred to the Grounds of Application and argued that the Judge had erred by not taking into account the fact that the first Appellant was an exempt person as defined by Regulation 15A(6)(c) of the EEA Regulations. The Judge had not decided whether the first Appellant was a qualified person. Further, as the decision in **Zambrano** did not apply to the first Appellant because she was an EEA national, being a citizen of Latvia, the Judge failed to decide if the Appellant could reside with her daughter in Latvia following the decision in **Ayinde and Thinjom (Carers - reg. 15A - Zambrano) [2015] UKUT 00560 (IAC)**. Mr Mills conceded that if Regulation 15A of the EEA Regulations did not apply, the first Appellant could rely upon her Article 8 ECHR rights, and the Judge further erred in law by failing to consider those rights.
6. The Appellant appeared at the hearing unrepresented. She indicated to me that she was happy to proceed without representation. She made a submission which naturally was not relevant to the points of law argued by Mr Mills.
7. I find errors of law in the decision of the Judge as argued by Mr Mills and I therefore set aside the decision in the appeal. As Mr Mills said, the Judge failed to deal with two issues raised by the appeal. He failed to make any decision concerning the first Appellant's status under Regulation 15A of

the EEA Regulations, and further made no decision in respect of the first Appellant's Article 8 ECHR rights.

8. I did not proceed to remake the decision in the appeal as much evidence needs to be taken in respect of the issues raised by the errors of law identified above. The decision in the appeal will be remade by the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statement.

Notice of Decision

The making of the decision of the First-tier Tribunal in respect of the first Appellant did involve the making of an error on a point of law.

I set aside that decision.

The decision in the appeal will be remade by the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Date 24th May 2017

Deputy Upper Tribunal Judge Renton