



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/27785/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 19 October 2017

Decision & Reasons Promulgated  
On 22 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

R O  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Jacquisse, counsel  
For the Respondent: Mr I Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a national of Ghana, date of birth 7 August 1987, appealed against the decisions of the Secretary of State, dated 22 July 2015 and 19 August 2016, to refuse leave to remain. Her appeal against the decisions came before First-tier Tribunal Judge Bart-Stewart (the Judge) who on 8 November 2016 dismissed her appeals with reference to the Immigration Rules and Article 8, ECHR.

2. On 31 May 2017 I, having heard submissions from Ms Jacquise, concluded that the Judge had erred in failing to consider the Zambrano rights which the two children of the Appellant, by different fathers, enjoyed in the United Kingdom and in particular because the Judge had found that neither of the children's fathers had any intention of the children living with them permanently. Indeed in the case of one of the fathers there was direct opposition from the father's present wife with the access position in respect of the child called A.
3. In respect of the child G, date of birth 20 May 2015, she as a British national, born in the UK, living with her mother and there was limited staying access to the child's father but again no suggestion that he was an alternative parent with whom the child could reside if the Appellant left the UK. In those circumstances in my decision I restricted the appeal to the issue of whether or not the outcome of the appeal would be different if Zambrano implications had been addressed in the context of the children's best interests.
4. Mr Jarvis considered my decision and bore in mind the sustained and retained findings of fact which the Judge had made. In the circumstances he accepted that on the basis of the Zambrano considerations the Appellant could not be removed.
5. It was argued therefore with reference to the case of Chavez-Vhílchez and Others C-133 10 May 2017 that the circumstances strongly pointed to the conclusion that the removal of the Appellant was essentially going to force the removal, which could otherwise not occur, of the children. In those circumstances the best interests of the child, the age of the children, their physical and emotional development, extent of emotional ties and limited connections with both children's fathers, the effect of separation in terms of removing the children to a country to which they are complete strangers strongly suggested that that was not in the best interests of the children nor was it appropriate not least when in respect of the child D: There is a court order restricting his removal from the UK.

6. It is also clear on the evidence that the fathers and their new families were not willing to take on the general care of the children thus shared parental controls and the exercise of those rights was not an issue.
  
7. In those circumstances, I was similarly in agreement with Mr Jarvis, the effects of the Judge's decision in terms of the findings of fact established the genuine and subsisting relationship between the Appellant and the children and that to remove the Appellant would force the children also to leave the United Kingdom which would not be acceptable.

### **NOTICE OF DECISION**

The appeal is allowed on Article 8 ECHR grounds.

### **ANONYMITY ORDER**

An anonymity order was made and is to be continued.

### **DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 19 October 2017

Deputy Upper Tribunal Judge Davey

**TO THE RESPONDENT**

**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and decided to make a fee award of £140.

Signed

Date 19 October 2017

Deputy Upper Tribunal Judge Davey