



IAC-FH-LW-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-000577
EA/04942/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On the 20th September 2022**

**Decision & Reasons Promulgated
On the 14th November 2022**

Before

**UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE SAINI**

Between

**MA VICTORIA TABAQUE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

Appellant:

Mr M Mohzam, Solicitor, Alex James Law Limited

Respondent:

Mr T Melvin, Senior Presenting Officer

DECISION AND REASONS

Background

1. The Appellant appeals against the decision of First-tier Tribunal Judge Aziz dismissing the Appellant's appeal against the refusal to issue her a EEA Family Permit on the basis of her seeking to travel to the UK with her German child. The decision was promulgated on 14 September 2021. The Appellant was granted permission to appeal by Upper Tribunal Judge Grubb in the following terms:
 1. The First-tier Tribunal (Judge S Aziz) dismissed the appellant's appeal against a decision to refuse her a family permit as the primary carer of an EU national who wished to live in the UK.
 2. The FtT did not admit the application for permission which was 2 days out of time. The present application does not provide any reason for that application being out of time. This application is also out of time by 4 days. The reason given is problems with the representatives' email. Applying the UT Procedure Rules, I must consider whether to admit the present application in the "interests of justice" (rule 21(7)) and, if I do, whether to extend time for the present application applying the 3 stages in R (Onowu) v First-tier Tribunal (Immigration and Asylum Chamber) (extension of time for appealing: principles) IJR [2016] UKUT 185 (IAC)). The FtT application was only 2 days out of time and the delay was not serious or significant. Likewise the UT application which was 4 days out of time. I accept that the delay may have been due to administrative difficulties. I also note that the appellant resides abroad. Having regard to all the circumstances, I am satisfied it is in the interests of justice to admit this application and to extend time.
 3. The grounds raise an arguable point of law concerning the scope of EU law - whether or not properly articulated through the case of Zambrano (Chen may provide a closer analogy) - and whether the appellant as the parent of the EU (German) national wishing to enter and reside in the UK has, herself, a right of entry and residence. Permission is granted.
2. We were provided with a Rule 24 reply from the Respondent which we have taken into account in reaching our decision.

Discussion

3. At the close of the hearing, we reserved our decision which we shall now give. We do not find that the grounds of appeal demonstrate a material error of law for the following reasons.
4. In essence, the Appellant appeals on the premise that it is contrary to European Union law and the Grand Chamber judgment of Gerard Ruiz Zambrano v. Office national de l'emploi [2011] EUECJ C-34/09 for the parent of a European child to be denied entry to one Member State (here,

the United Kingdom) whilst still being able to reside in another Member State (in this instance, Germany).

5. As observed in the Respondent's Rule 24 reply, the Zambrano principle does not assist the Appellant as it explicitly applies to a situation where the Union citizen child would be unable to reside in the territory of the European Union. On the facts of Zambrano, the parent was being denied residence in the Member State of which his children were nationals. This situation does not arise in the present case, as the Appellant and her German child are entitled to reside in Germany. We put this matter to Mr Mohzam who did not suggest otherwise. Indeed, Mr Mohzam accepted this before the FTT as recorded at §14 of the decision.
6. Mr Mohzam's case appears to be that the Zambrano principle has been wrongly interpreted by the Upper Tribunal in MA and SM (Zambrano: EU children outside EU) Iran [2013] UKUT 380 as being wrongly restricted to entry into the Member State of which the EU child is a national, however, Mr Mohzam has not attempted to demonstrate that the Zambrano principle goes further than this on the terms of the Grand Chamber's judgment, nor has he explained how it might so extend in the absence of reliance on the Zambrano judgment should this be a new point in law (which is the very basis upon which UTJ Grubb granted permission in the first place). As such, the point was not developed before us.
7. In any event, considering it for ourselves, we do not see any merit in this argument as this point appears to be disposed of by the European Court of Justice's judgment in Alokpa v. Ministre du Travail, de l'Emploi et de l'Immigration [2013] EUECJ C-86/12 at [32]-[35], which establishes that if a EU citizen can reside elsewhere in the EU, then the European citizen is *not* obliged to leave the territory of the EU and thus there would be no deprivation of the EU citizen's genuine enjoyment of the substance of the rights conferred by virtue of their status as a citizen of the EU. There can, in other words, be no breach of the rights in Articles 20 and 21 TFEU where, as here, a third country national parent has a right to enter and reside in the EU in the country of their child's nationality. We provided Mr Mohzam with a copy of Alokpa and directed him to the relevant section of the judgment. He was unable to distinguish the case, or to make any submissions in answer to it.
8. Finally, the reference in the grounds of appeal at §9, arguing that the judge had sufficient evidence to find in the Appellant's favour that she was her child's primary carer, appears to us to be nothing more than a disagreement with the judge's findings at §28 of the decision which were open to him to reach and which are self-explanatory. We observe that it is not unusual for applicants to provide evidence from an independent party, such as the child's school, as to who is paying the school fees, and who is responsible for delivering the child to school and collecting them on a daily basis, and which parent or parents attend meetings in relation to the child's education and progress. No such evidence was present save for a statement from the Appellant and the child's father in the 7-page

Appellant's Bundle. As such, the judge was entitled to describe the evidence as "scant" and to find the Appellant had not established that she was the primary carer of her child given that this issue was raised in the refusal letter and the paucity of evidence provided to address it.

9. In light of the above findings, we find that the decision of the First-tier Tribunal does not contain any material error of law.

Notice of Decision

10. The appeal to the Upper Tribunal is dismissed.

11. The decision of the First-tier Tribunal shall stand.

Signed

Date

28 October 2022

Deputy Upper Tribunal Judge Saini