



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-005099

First-tier Tribunal No: EA/12143/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

3<sup>rd</sup> October 2023

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**DAPHNE YOLANDA MOORE**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Wilson of the Refugee and Migrant Centre.

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

**Heard at Birmingham Civil Justice Centre on 24 August 2023**

**DECISION AND REASONS**

1. In a decision promulgated on 9 June 2023 the Upper Tribunal set aside the decision of the First-tier Tribunal which allowed the appellant's appeal against the refusal of her application for settled or pre-settled status as a family member of an EEA citizen under Appendix EU to the Immigration Rules.
2. The appellant claimed to be a person with a Zambrano right to reside on the basis she is the primary carer of her husband, the Sponsor, a British citizen.
3. The couple met in 2009 and married in 2017. It is not disputed that the Sponsor requires a specific level of care. In the refusal the Secretary of State refers to seeking a letter from a Consultant confirming the diagnosis of the Sponsor's medical condition but all that was provided was a letter from his GP dated 22 December 2020 and a letter from the Sponsor's Social Worker confirming he suffers from alcoholic dementia diagnosed in 2019, hypertension, diabetes, osteoarthritis, had a stroke in 2012 following which the Sponsor was diagnosed with Bells Palsey in 2018, suffers from incontinence which was diagnosed in 2019, has problems with mobility, uses a frame and wheelchair, and often loses his balance.
4. In the evidence is the letter from the Sponsor's Social Worker, dated 16 July 2021, which details the Sponsor's needs and the appellant's role in the

Sponsor's care, which concludes by stating that the level of care and support the appellant provides allows the Sponsor to live in the community safely, and without this level of care the Sponsor would have to be placed in the care of the Local Authority.

5. No further evidence was provided for the purposes of the Resumed hearing before the Upper Tribunal.
6. It is clear that the Sponsor's care is provided not only by the appellant but also by the provision of commercial carers paid for by the Sponsor who attend three times a day for one hour. Whilst there may be deficiencies in such care depending on the Sponsors needs, the position is as accepted by Mr Bates that the appellant is the primary carer of the Sponsor albeit not the only person providing for his care needs.
7. It is also clear that there are other relatives in the UK, the Sponsor's children, who visit. It is accepted they have their own family and lives and would not be able to provide 24-hour care, but it was not made out that they would abandon the Sponsor if the appellant was removed, and he was placed in residential care.
8. When assessing whether the First-tier Tribunal had erred in law the Upper Tribunal considered the guidance provided by the Supreme Court in the case of Patel [2019] UKSC 59. Mr Wilson in his submissions referred to the decision of the CJEU in KA but that judgement was analysed by the Supreme Court and incorporated into its findings in Patel and does not of itself justify this appeal being allowed.
9. At [22] of its judgement the Supreme Court wrote:

“What lies at the heart of the Zambrano jurisprudence is a requirement that the Union citizen would be compelled to leave the Union territory if the TNC, with whom the Union citizen has a relationship with dependency, is removed. As the CJEU held in *O v Maahanmuuttovirasto* (Joined Cases C-356/11 and C-357/11) [2013] Fam 203, it is the role of the national court to determine whether the removal of the third country carer would actually cause the Union citizen to leave the Union...”

10. It was also found that where the Union citizen is an adult, a relationship of dependency, capable of justifying the grant to the third country national concerned of a derived right of residence under Article 20 TFEU, is conceivable only in exceptional cases, where, in light of all the relevant circumstances, any form of separation of the individual concerned from the member of his family on whom he is dependent is not possible.
11. The evidence shows that if the appellant was removed from the UK alternative care is available to meet the Sponsor's needs by way of 24 hour residential care. The appellant's case is that she needs to remain in the United Kingdom to provide the care her husband requires as nobody else was capable of doing so, but the existence of care from another source undermines this claim.
12. The correct question is not whether the appellant thought the Sponsor would leave the UK if her application was refused, but whether in light of the facts and applying the correct guidance, the Sponsor would be compelled to leave.
13. I accept the submission made by Mr Bates that the evidence available to the Tribunal in this appeal shows that if the appellant is removed from the United Kingdom there is alternative care available for the Sponsor as outlined by his Social Worker.
14. It is accepted that the Sponsor has complex health needs requiring 24-hour care, not all of which are met by the appellant, and it was not made out on the

evidence that his physical or emotional needs could not be met in a residential setting.

15. I do not find the appellant has established that the EU national sponsor will be compelled to leave the UK if she is deported.
16. I make that finding even though this may be a case in which the Sponsor has no ability to lead an independent life whoever is his carer. His quality of his life will arguably be the same whether care is provided by family members or in a residential setting by care professionals.
17. It is accepted, as Mr Wilson submitted, that the appellant wishes to stay with her husband. The error of law finding refers to a lack of evidence in relation to the issue of emotional dependency and whilst I accept Mr Wilson did his best to try and obtain a report from a Consultant Psychiatrist, but was defeated for reasons outside his control, there is insufficient evidence before me to show that this is the determinative factor in this case, albeit I have taken it into account as one of the factors relied upon by the appellant.
18. I similarly accept the submission of Mr Wilson that the provision of alternative care is not determinative, but the Supreme Court in Patel emphasised the high threshold adult individuals in circumstances such as exist in this case would have to show had been met. I find on the evidence provided the appellant has not established that the case is so compelling that the appeal should be allowed on EU law grounds.
19. As an aside, no more, I note the submission by Mr Bates that the appellant has family and private life in the UK recognised by Article 8 ECHR and that there is no reason why a new application could not be made for leave to remain on this basis. As this is an EU appeal Article 8 is not a live issue before me. Mr Bates has seen the reason why a previous application had been refused but found no reason why a fresh application could not be put forward. The First-tier Tribunal accepted the partner relationship, the appellant had 20 years continuous residence in the UK relevant to the assessment on a private life basis, indicating she had realistic prospects of succeeding.
20. I find for the reasons set out above the appellant had not established the required element of compulsion required in an appeal of this nature following the decision of the Supreme Court in Patel. The appellant should, however, make immediate contact with Mr Wilson to seek his advice on making an application for leave to remain on human rights grounds if she has not already done so.

### **Notice of Decision**

21. I dismiss the appeal.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**29 September 2023**