



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005511
First-tier Tribunal No:
EA/07044/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 April 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN
DEPUTY UPPER TRIBUNAL JUDGE BEN KEITH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHAZIA KOUSAR
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Papatotiriou, Counsel

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

Heard at Field House on 29 February 2024

DECISION AND REASONS

1. This is an appeal against the decision of First Tier Tribunal Judge Anthony (“the Judge”) promulgated on 30 March 2023. The Judge allowed the appeal granting the application under Appendix EU.
2. The Respondent is a citizen of Pakistan whose date of birth is 14 May 1977.
3. On 21 April 2021, the Respondent applied for settled or pre-settled status pursuant to EU Settlement Scheme (“EUSS”) as a person with a derivative or Zambrano right to reside.
4. The application was considered by the SSHD pursuant to Appendix EU. The SSHD in a refusal letter dated 4 January 2022 refused to issue settled or pre settled status pursuant to EUSS.
5. There are 4 grounds of appeal set out in the SSHD’s appeal. However, it is only necessary to deal with Ground 1:

GROUND ONE: Misinterpretation of meaning and effect of immigration rules

In considering the application of Person who had a Zambrano right to reside (EU11 Condition 3(a)(vi)) at [15] – [17] of the determination Judge Anthony fails to appreciate that this is a term of art defined in Annex 1 and does not simply reflect that a right had been held in the past. Rather it concerns a person who held a Zambrano right immediately before one of a number of different statuses none of which applies here.

6. By a rule 24 response Mr Papatiriu concedes that ground 1 is made out:

“The Appellant accepts Ground 1 as formulated by the SSHD in the grounds of appeal (IAUT-1 form) and that First-tier Tribunal Judge Anthony (‘FtTJ’) allowed the appeal on the basis of a wrong interpretation of the Immigration Rules. It is accepted that this error was material to the outcome of the appeal and therefore the Appellant does not oppose the setting aside of the FtTJ’s decision on that basis.”

7. We agree that is a concession properly made. As a result we find a material error of law.
8. Having considered the representations of the parties and the Presidential Guidance we consider that the case should be remitted to the First Tier for a rehearing given that there are substantial findings of fact to be made.

Notice of Decision

1. There is a material error of law and the judgment of the First Tier Tribunal is set aside.
2. The case is remitted to the First Tier Tribunal for rehearing.

Ben Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 February 2024