



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

Case No: UI-2024-000927

First-Tier Tribunal No: EA/50393/2023  
LE/01778/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 26<sup>th</sup> April 2024**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**TAYYAB IQBAL**  
**(Anonymity order not made)**

Respondent

**Representation:**

For the Appellant: Ms S McKenzie, Senior Home Office Presenting Officer  
For the Respondent: Mr R Solomon, instructed by Woolfe & Co Solicitors

**Heard at Field House on 16 April 2024**

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing the appeal of Mr Iqbal against the respondent's decision to refuse his application for an EUSS Family Permit under the EU Settlement Scheme (EUSS) as a person with a Zambrano right to reside, as the primary carer of his EEA national wife.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Iqbal as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a national of Pakistan born on 19 December 1985. He entered the UK as a visitor on 28 September 2013 with leave until 7 January 2014 and then made various unsuccessful human rights applications which were refused in June 2018, April 2019, September 2019 and February 2020, unsuccessfully pursuing an appeal against the latter. He became appeal rights exhausted in November 2021.

4. The appellant married his wife Nasreen Akhtar, a British citizen, in an Islamic marriage on 24 February 2018 and registered a civil marriage on 3 April 2019. On 25 January 2022 he submitted an application for limited leave under the EU Settlement Scheme as a person with a Zambrano right to reside as the primary carer of his wife. His application was refused on 10 January 2023.

5. The respondent refused the application on the basis that it was not accepted that the appellant was the primary carer of his wife and it was not accepted that his wife would be compelled to leave the UK if he was required to leave for an indefinite period. The respondent was not satisfied that the relevant test in Patel v Secretary of State for the Home Department [2019] UKSC 59 was met in that regard. The respondent considered, therefore, that the appellant could not satisfy the requirements of regulation 16(5)(a) of the EEA Regulations 2016 and that he accordingly could not meet the requirements for settled status or pre-settled status under the EUSS as a 'person with a Zambrano right to reside' in the UK.

6. The appellant appealed against the respondent's decision. The appeal came before First-tier Tribunal Judge Symes on 3 January 2024. In a decision promulgated on 7 February 2024, the judge accepted that the appellant was his wife's primary carer and accepted that if the appellant was required to leave the UK his wife would have no alternative but to depart with him in order to continue to receive his care, attention and support. The judge found there to be no meaningful alternative support available to the appellant's wife. He found that the requirements of Appendix EU were satisfied and he allowed the appeal.

7. The Secretary of State sought permission to appeal to the Upper Tribunal against the judge's decision on the grounds that the judge had erred in law by conflating the preference of the sponsor to have the appellant provide care for her, with the sponsor being compelled to leave the UK, and that the judge had failed to follow the guidance in Patel.

8. Permission was granted by the First-tier Tribunal on the ground that the judge had misapplied Patel. A rule 24 response was filed on behalf of the appellant.

### **Hearing and Submissions**

9. The matter then came before me. Both parties made submissions.

10. Ms McKenzie submitted that the judge had failed to have regard to the test in Patel and had failed to consider the part of the test that required 'compulsion', as set out at [27] of the judgment, focussing solely on the first part of the test dealing with 'exceptional circumstances' as set out in K.A. and Others (Regroupement familial en Belgique) (Border control, asylum, immigration - Judgment) [2018] EUECJ C-82/16 . She also relied upon the Court of Appeal judgment in Patel v The Secretary of State for the Home Department [2017] EWCA Civ 2028, which preceded the Supreme Court decision, where the Court of Appeal, at [81] and [82] referred to State provision of care as an alternative to the care of the British citizen sponsor and the differences between leaving the UK through choice or compulsion, and submitted that the judge

had failed to consider that matter. Mr Solomon submitted, in response, that the judge had not misdirected himself and had applied the law and correctly approached the guidance in Patel. Ms McKenzie reiterated the points previously made in reply.

## Analysis

11. The Secretary of State's grounds do not challenge the judge's finding that the appellant was the primary carer of his wife. The only challenge is to the judge's decision on whether the appellant's wife would be unable to reside in the UK if he left the United Kingdom for an indefinite period. The respondent's case is that the appellant has failed to demonstrate that his wife would be compelled to leave the UK if he had to leave, as she would have access to other sources of care in his absence, and that Judge Symes failed to address that issue properly, conflating the issues of choice and compulsion. In so asserting, the respondent relies upon the test in Patel, as set out at [27], namely:

"...in the case of an adult it will only be in "exceptional circumstances" that a TCN will have a derivative right of residence by reference to a relationship of dependency with an adult Union citizen. An adult Union citizen does not have a right to have his family life taken into account if this would diminish the requirement to show compulsion to leave."

12. The respondent also relies upon the Court of Appeal judgement in Patel at [81] and [82] which states:

"81. I recognise the force of the submission that, if State provision in terms of medical or social services care is both a right of the dependent adult and in fact available, then the class of dependent adults who can demonstrate "compulsion" to follow a non-British carer abroad may be limited. I also recognise that devotion to and care of elderly, frail parents is to be applauded and praised, not condemned. It is clear that Mr Patel is to be praised for his admirable care of his parents. But I do not see any error in the legal approach taken by either the F-tT or the UT in this case. The question remains compulsion.

82. And it further seems to me that the evidence in this case was too equivocal to amount to compulsion, however one looked at the matter. There was absolutely no doubt as to the parents' devotion to their son, or his to them. Were he to leave to India, there was no doubt that the parents said they would follow, despite the findings below, but that really represented their cultural and individual commitment to each other. That, again, is choice not compulsion."

13. It is Ms McKenzie's submission that, in his reliance upon KA and MS (Malaysia) v Secretary of State for the Home Department [2019] EWCA Civ 580, the judge was only focussing on the first part of the relevant test which required there to be exceptional circumstances, but did not apply the second part of the test which was made clear in Patel and was the requirement for 'compulsion'.

14. I do not agree that Judge Symes omitted that consideration. It is right, as Ms McKenzie submitted, that the judge's focus appeared to be on the guidance in KA and MS, and that whilst he referred to Patel at [18] he did not actually cite the test at [27]. However it seems to me that he effectively applied that test in his findings at [21] and [22], where he considered alternative forms of care available to the sponsor in the appellant's absence and gave reasons for finding that that care would not be tolerable for the sponsor. At [5(c)] the judge referred to the medical evidence from which he made his finding at [21] as to the nature of the sponsor's total dependency upon the appellant and the necessity for it to be the appellant who provided her with care. In his findings at [22] the judge explained why the relationship between the appellant and

the sponsor was such that alternative forms of care could not replace the care provided by the appellant. The last line of [22] is essentially an application by the judge of the test of compulsion, albeit not by direct citation. Indeed there is a similarity between the judge's reasoning in those paragraphs and the second example given by the Secretary of State, as recorded at [84] of the Court of Appeal judgement in Patel, as to where the test of compulsion could, exceptionally, be met.

15. In the circumstances, the judge did indeed undertake the required fact sensitive assessment as discussed in the guidance in Patel and had regard to the relevant issues. He provided adequate reasons for concluding as he did. I do not consider that the grounds are made out and I find no reason to set aside the judge's decision.

### **Notice of Decision**

16. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. The Secretary of State's appeal is accordingly dismissed, and First-tier Tribunal Judge Symes's decision is upheld.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

17 April 2024