



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: IA/27905/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 November 2015**

**Decision & Reasons Promulgated  
On 21 December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**BEBERLY KARIN SINGCO OCUAMAN**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms L Appiah (counsel) instructed by Bloomsbury  
Immigration Specialists

For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the appellant against the decision of First Tier Tribunal Judge Majid promulgated on 27 February 2015 which dismissed the appellant's appeal against the respondent's refusal to grant a derivative residence card in terms of the Immigration (EEA) Regulations 2006.

## **Background**

3. The appellant is a national of the Philippines, born on 17 May 1981.
4. On 8 May 2014, the appellant applied for a residence card on the basis that she is a third country national upon whom a British national is dependent in the UK.
5. On 20 June 2014, the respondent refused the appellant's application, relying on Regulations 15A and 18A of the Immigration (EEA) Regulations 2006.

## **The Judge's Decision**

6. The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge Majid ("the judge") dismissed the appeal against the respondent's decision.

7. Grounds of appeal were lodged and, on 6 May 2015, Judge P J M Hollingworth granted permission to appeal, stating:

"1 An arguable error of law has arisen in relation to the approach adopted by the judge to the central issues in the case. The arguable error rests on the degree of analysis undertaken by the judge of the available evidence and the findings to which such analysis would lead.

2 A further arguable error of law arises as to the degree to which the findings by the judge have been affected by the judge's reference to the restrictive environment of immigration at this time."

8. In a decision promulgated on 25 September 2015 the Upper Tribunal set aside the Judge's decision finding that it contained material errors of law as (*inter alia*) inadequate findings of fact had been made. The Upper Tribunal directed that the case should be considered of new at a resumed hearing of the Upper Tribunal.

## **The Hearing**

9. No new evidence is placed before me. I was provided the same documents as were presented to the First-tier Tribunal. I have sight of the appellant's bundle, which contains the items listed on the index to the bundle, together with the respondent's "PF1" bundle. The appellant gave evidence. She adopted the terms of her witness statement dated 18 February 2015 before answering a few supplementary questions. She then answered a number of questions in cross examination, before being briefly re-examined. The appellant's mother gave evidence. She adopted the terms of her witness statement dated 18<sup>th</sup> of February 2015 before answering a number of questions in cross-examination. I then heard parties' agents submissions.

## **My Findings of Fact**

10. The appellant was born on 17 May 1981. She is a national of the Philippines. The appellant's mother is Linda Singco. The appellant's mother left the Philippines to work in Hong Kong as a nanny to 3 children. The appellant's mother worked in Hong Kong between 1983 - 1994.

11. In 1994 the appellant's mother entered the UK, when she came here as a domestic worker for her Hong Kong employer who had removed from Hong Kong & relocated to the UK. The appellant's mother continued to work for her employer in the UK until 1998. In 1998 the appellant's mother was granted indefinite leave to remain in the UK. She has remained in the UK since then. The appellant's mother retired from work in 2011.

12. The appellant entered the UK in 2009 as a student. She has remained in the UK since then, living with her mother. The appellant's only relative in the UK is her mother.

13. In 2012 the appellant's mother has an accident which caused a fracture to the neck of the femur in her right hip. The injury was treated with a dynamic hip screw and a de-rotation screw inserted into the bone. In the course of that treatment it was discovered that the appellant's mother now suffers from osteoporosis. The osteoporosis is managed with oral medication. The appellant's mother does not use a walking aid. She is self-caring and is able to pursue the ordinary activities of daily living independently however she enjoys the help of the appellant provides in grocery shopping and domestic chores. The appellant's mother also suffers from hypertension which is managed with oral medication.

14. If the appellant leaves the UK, her mother will remain in the UK. The appellant's mother values her British citizenship and has no intention of leaving the UK.

## **Conclusions**

15. The appellant applied for a derivative right of residence as a third country national upon whom a British citizen mother is dependent on the UK. "Family member" is defined in article 2 of directive 2004/38/EC. The appellant does not fall within the definition of family member contain there, nor does the appellant fall within the definition of "other family members" contained in article 3 of the same directive. The respondent has therefore correctly considered the appellant's application in terms of regulation 18A of the Immigration (European Economic Area) regulations 2006. The appellant argues that she is the primary carer of a British citizen and relies on the case of Ruis Zambrano (C-34/09).

16. In DH (Jamaica) and others v SSHD [2012] EWCA Civ 1736 the Court of Appeal said that the application of the Zambrano test required a focus on whether, as a matter of reality, the EU citizen would be obliged to give up residence in the EU if the non-EU national was removed. If the EU citizen, be it wife or child, would not in practice be compelled to leave the country if the

non-EU family member were to be refused the right of residence, there was nothing in the jurisprudence to suggest that EU law would be engaged simply because their continuing residence was in some sense affected, for example, in relation to the quality of life. The right of residence was a right to reside in the territory not a right to any particular quality of life or particular standard of living and only if that was affected to such an extent that it was likely to compel the EU citizen to leave would the principle apply.

17. In FZ (China) [2015] EWCA Civ 550 the Chinese appellant sought to rely on Zambrano by asserting that his wife had decided to accompany him to China if he was deported and this would compel his British daughter to leave with her parents. The Court of Appeal held that the application of the Zambrano principle was limited to exceptional cases. A desire to preserve the family unit would not be enough for the principle to apply. In the instant case, there was no compulsion for the appellant's wife or child to leave. The Tribunal had noted that after the Claimant's arrest the wife was the sole breadwinner of the family.

18. In Ayinde and Thinjom (carers- Reg 15A - Zambrano) [2015] UKUT 00560 it was held that (i) The deprivation of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizens identified in the decision in Zambrano [2011] EUECJ C-34/09 is limited to safeguarding a British citizen's EU rights as defined in Article 20; (ii) The provisions of reg. 15A of the Immigration (European Economic Area) Regulations 2006 as amended apply when the effect of removal of the carer of a British citizen renders the British citizen no longer able to reside in the United Kingdom or in another EEA state. This requires the carer to establish as a fact that the British citizen will be forced to leave the territory of the Union; (iii) The requirement is not met by an assumption that the citizen will leave and does not involve a consideration of whether it would be reasonable for the carer to leave the United Kingdom. A comparison of the British citizen's standard of living or care if the appellant remains or departs is material only in the context of whether the British citizen will leave the United Kingdom' (iv) The Tribunal is required to examine critically a claim that a British citizen will leave the Union if the benefits he currently receives by remaining in the United Kingdom are unlikely to be matched in the country in which he claims he will be forced to settle.

19. The evidence in this case dwells on the reunification of mother and daughter and the relationship that they have established in the six years the appellant has been in the UK. There is a conflict created by the appellant's the evidence. The appellant claims that her mother cannot live without the care that appellant provides. In her oral evidence, the appellant claimed that her mother requires assistance with washing and bathing, household chores and shopping, and that the appellant's mother could not pursue the ordinary activities of daily living without the appellant's help. That evidence was drawn into stark contrast by the letter from the appellant's mother's GP dated 1 May 2014, which states "*she does not require any walking aids and is self-caring (Baths and cleans herself)*". Neither the appellant nor the appellant's mother could give a realistic explanation for the difference in opinion between the appellant and the doctor who treats the appellant's mother.

20. I did not find the appellant to be an impressive witness. She performed poorly under cross examination, providing answers which were vague and lacking specification. I did not find her to be a reliable witness. The appellant's mother's evidence was brief and lacked specification. The evidence of both the appellant and her mother differs from the opinion of the appellant's mother's GP, who is independent and impartial. When this case last called before the Upper Tribunal on 25 September 2015, directions were made to enable the appellant to lead further evidence. The appellant chose not to take advantage of those directions and produces no reliable evidence to challenge what is said by the appellant's mother's GP. I am not therefore persuaded that the appellant is the primary carer of a British citizen. I am not persuaded that if the appellant leaves the UK her absence will have any impact on the quality of care for the appellant's mother.

21. What is completely fatal to the appellant's case is the oral evidence of the appellant's mother. In cross-examination the appellant's mother was asked by Miss Holmes if she would leave the UK if the appellant had to leave the UK. She initially answered "yes". She was then reminded that when she gave evidence to the First-tier Tribunal in February 2015, she had given a different answer to the same question. I was concerned that the appellant's mother was becoming confused so I spoke to her directly. I explained the meaning of the question to the appellant's mother in the simplest possible terms. The appellant's mother told me that she would not leave the UK. When I asked her if she was sure about her answer, she started to explain that not only that she was sure about her answer, but also the reason she was sure about her answer.

22. The weight of reliable evidence indicates that the appellant's mother is not dependent upon the appellant for personal care and that she is able to pursue the ordinary activities of daily living independently. The weight of reliable evidence also indicates that if the appellant leaves the UK, the appellant's mother will remain in the UK.

23. In Amirteymour and others (EEA appeals; human rights) [2015] UKUT 00466 it was held that where no notice under section 120 of the 2002 Act has been served and where no EEA decision to remove has been made, an appellant cannot bring a Human Rights challenge to removal in an appeal under the EEA Regulations. Neither the factual matrix nor the reasoning in JM (Liberia) [2006] EWCA Civ 1402 has any application to appeals of this nature.

24. The respondent's decision refused the appellant's application by reference to the 2006 Regulations alone. No section 120 notice was served on the appellant and there are no removal directions. No competent ECHR argument can be advanced.

## **Decision**

25. I consider the case of new and substitute the following decision.

26. The appeal is dismissed under the Immigration (EEA) Regulations 2006.

Signed:

5 December 2015

DEPUTY UPPER TRIBUNAL JUDGE DOYLE