



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/01251/2015
HU/07683/2015
HU/07701/2015
HU/07711/2015

THE IMMIGRATION ACTS

Heard at Field House

On 3 July 2017

**Decision &
Promulgated
On 21 July 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**CLOVIS [H]
SAMUEL [C]**

[I C]

[C C]

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr N Garrod, Counsel instructed by Staines & Campbells
Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of the appellants, [Clovis H] and her husband and children, against in her case the decision of the respondent of 5 June 2015 and I think that may be the decision that applies to the entire family

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refusing applications for leave to remain in the United Kingdom. The appeal was heard by Judge Courtney at Hatton Cross in November last year and all the appeals were dismissed.

2. In the grounds of appeal to the First-tier Tribunal in respect of which permission was granted by Judge McClure, the essential point is that at paragraph 3 referring to the respondent's policy of August 2015 which it may be helpful if I quote:-

“11.2.3. Would it be unreasonable to expect a British Citizen child to leave the UK? Save in cases involving criminality, the decision maker must not take a decision in relation to the parent or primary carer of a British Citizen child where the effect of that decision would be to force that British child to leave the EU, regardless of the age of that child. This reflects the European Court of Justice judgment in Zambrano.”

3. The relevance of this is with respect to the first two appellants' eldest child, [IC], who was born in [] 2006 and at a point before the decision was made in this case had become a British citizen, so she is a British citizen child to whom the policy is relevant in this case, and as I say, Judge McClure granted permission on that basis, and today very helpfully Mr Jarvis on behalf of the Secretary of State accepts that there is an error of law in the judge's decision in this regard, although as he says the policy may perhaps go beyond what is required by **Zambrano**. In fact, the facts of this case fall very much within **Zambrano** I think in that neither parent has any settled status in the United Kingdom and there are decisions refusing them leave to remain. The case then falls squarely within the policy.
4. The judge erred in law and as Mr Garrod, on behalf of the appellants, points out there seems little need for anything more to be said than that the consequence of the error is in a sense the remaking of the decision as well.

Notice of Decision

5. In light of the policy and its application to the facts of this case, it is clear in my view that the appeal falls to be allowed under Article 8 and therefore for the judge's decision dismissing the appeal, this substituted a decision allowing it under Article 8.

No anonymity direction is made.

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Appeal

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A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed
Upper Tribunal Judge Allen

Date 21/07/2017