



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

Appeal Number: EA/01053/2019 (P)

**THE IMMIGRATION ACTS**

**Decided under Rule 34  
On 25 August 2020**

**Decision & Reasons Promulgated  
On 26 August 2020**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**TAMILARASI ASOKAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

1. The appellant, a citizen of India, appealed to the First-tier Tribunal against a decision of the Secretary of State to refuse her application for a residence card. The First-tier Tribunal, in a decision promulgated on 9 July 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. Upper Tribunal Judge Frances directed to 2 July 2020 that the parties make representations as regards the disposal of this appeal under rule 34 without a hearing. Both parties have made written submissions and having considered those submissions and file carefully, I have resolved to determine the question of error of law without a hearing.
3. The Secretary of State, in her written submissions of 23 July 2020, acknowledges that the First-tier Tribunal made a material error of law by failing to follow the guidance provided by the Upper Tribunal in *ZA [2019]*

UKUT 291 (IAC) when determining this appeal. The Secretary of State reserved her position as regards the evidence given at the hearing before the First-tier Tribunal; the Secretary of State does not have access to the presenting officer's record of proceedings and is unable to comment on whether the appellant did or did not state that she had not lived with her daughter in France. The Secretary of State invites the Upper Tribunal to provide a copy of the First-tier Tribunal record proceedings.

4. I have considered the Secretary of State's request but I do not consider it necessary or consistent with the overriding objective, at least this stage, to arrange for the record of proceedings to be transcribed. That is because I agree with the respondent that the decision of the First-tier Tribunal is, in any event, materially flawed on account of the judge's failure to follow ZA. For that reason alone, the decision should be set aside. There will need to be a new fact-finding hearing before the First-tier Tribunal. If the Secretary of State still requires a transcript of the previous tribunal's proceedings, no doubt she can renew her request to the First-tier Tribunal and the request may be dealt with at a Case Management Review prior to a final hearing.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that tribunal to remake the decision at or following a hearing *de novo*. **(listing directions: First-tier Tribunal at Birmingham; any judge except Judge Burns; 1.5 hours; Tamil interpreter)**

Signed

Date 25 August 2020

Upper Tribunal Judicial decision maker  
Judge C Lane