



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

Appeal Number: EA/03057/2017

THE IMMIGRATION ACTS

**Determined on the papers at:
Field House
On 24 February 2020**

**Decision & Reasons
Promulgated
On 6 March 2020**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

ANNIE MWENGE SHIMBI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Proceedings

1. This is an appeal against the First-tier Tribunal's decision dismissing the appellant's appeal challenging the SSHD's decision to refuse her an EEA Residence Card.
2. The appeal originally came before on 22 October 2019. On that occasion Ms Aboni (acting on behalf of the SSHD) sought an adjournment on the basis that the Court of Appeal were to imminently hear an appeal in SZ (Afghanistan) C9/2019/0659 which, she asserted, would be determinative of the relevant law to be applied in the instant case. It was further accepted that on the basis of the legal position as currently identified in ZA (Reg 9. EEA Regs; abuse of rights) Afghanistan [2019] UKUT 281 (IAC)), the First-tier Tribunal's decision should be set aside, and the appellant's appeal should be allowed.

3. Although it seemed to me to be appropriate for the Tribunal to proceed on the basis of the law as currently understood, Mr Hodgetts (acting on behalf of the appellant) did not seek to resist the SSHD's adjournment application. In all the circumstances, and having considered the overriding objective, I acceded to the application to adjourn the proceedings to await the Court of Appeal's decision in SZ.
4. As it turned out, by way of an Order of the 9 December 2019 the proceedings in SZ in the Court of Appeal were compromised. I subsequently directed that absent agreement between the parties, the matter should be re-listed for hearing.
5. The SSHD has now agreed to issue the appellant with an EEA Residence Card. As a consequence, Ms Aboni invites the Tribunal (in a letter of 12 February 2020) to treat "*the case as withdrawn*". Although not explicit in the aforementioned letter, given that Ms Aboni represents the SSHD I take this to mean that she invites the Tribunal to treat the SSHD's case as withdrawn.
6. Whether or not the SSHD's case is treated as withdrawn, the conclusion in this case is inevitable if the ratio of ZA is applied. As alluded to above, applying the law as it is currently understood (set out in ZA) it is plain that the FtT erred in its approach to the legal issues in the case and that on a proper approach the appellant's appeal must be allowed. This, presumably, is why the SSHD has now agreed to issue the appellant with an EEA Residence Card.

Notice of Decision

For the reasons given above, the decision of the FtT is set aside

Upon remaking the decision in the appeal, I allow the appeal on the basis that the SSHD's decision leads to a breach of the Community Treaties.

Fee Award

Insofar as it is necessary for me to do so, I make a full fee award to the appellant

Signed

Mark O'Connor
Upper Tribunal Judge O'Connor

Date 24 February 2020