Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/02331/2019

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 8th February 2022	**On 20th May 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA
and
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

MISS SHAIDA KHDIR HAMAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Mohzam, instructed as agent by C B Solicitors
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq. On 23rd January 2019, she applied for a derivative residence card to confirm that she is the primary carer of her son, ("MT"), who is a British citizen and was born in July 2016. The application was refused by the respondent for reasons set out in a decision dated 7th May 2019. In the same decision, the respondent also

addressed the application for a derivative residence card made by the appellant's daughter, as her dependent. Her application was refused in line with the refusal of the appellant's application. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Butler for reasons set out in a decision promulgated on 10th September 2019.

Error of law

2. The appellant was granted permission to appeal to the Upper Tribunal by Upper Tribunal Judge Gleeson on 15th January 2020. The appeal was considered by Upper Tribunal Judge Owens without a hearing under Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008. Neither party had objected to the appeal being determined without a hearing. The respondent accepted the judge materially erred in failing to provide adequate reasons to support the finding that the appellant has not discharged the burden of proof that she was the primary carer of her British citizen son. Upper Tribunal Judge Owens was satisfied that the judge's finding that the appellant is not the primary carer of the children was inadequately reasoned. She set aside the decision of the First-tier Tribunal and directed that the decision will be re-made in the Upper Tribunal.

Remaking the decision

3. The matter was listed for a resumed hearing before us on 8th February 2022. At the conclusion of the hearing we reserved our decision. We informed the parties that our decision and reasons will follow in writing and this we now do.

4. Before we turn to the evidence before us, we note that in her decision, the respondent said that the appellant had not provided any 'recent official documents' that evidence that her child, MT, lives with her. The respondent noted the appellant had provided an 'NHS letter dated 16th October 2017' that shows MT's address, however that letter was written 15 months before the application and the respondent concluded it was insufficient evidence to establish that MT still lived with the appellant.

Furthermore, MT's birth certificate shows the name of MT's father and MT was presumably granted British citizenship on the basis that his father is a British citizen or has settled status in the UK. The respondent said the appellant had not provided any explanation for where MT's father is, nor why he could not care for MT in the event that the appellant has to leave the UK. The respondent was not satisfied that MT would be unable to reside in the UK if the appellant is refused a derivative right to reside. The respondent noted the appellant had previously claimed asylum and her claim was refused. Her appeal was dismissed by the First-tier Tribunal, and she had exhausted her rights of appeal on 5th July 2016. The respondent said that the birth of MT post-dates the refusal of the claim for asylum and the consideration of the appellant's Article 8 claim by the First-tier Tribunal, and the appellant must make a genuine attempt to regularise her stay as the primary carer of a British citizen child under the immigration rules before consideration can be given to whether she qualifies for a derivative right to reside under the EEA Regulations.

The evidence before us

5. We have before us the following documents:

a. The appellant's bundle comprising of 15 pages sent by the appellant's representatives in readiness for a hearing before the First-tier Tribunal on 3rd September 2019.

b. A supplementary bundle prepared by the appellant's representatives comprising of annexes A to G

c. A letter from the Home Office 'UK Visas and Immigration' addressed to the appellant and dated 15th January 2022

d. A copy of the decision of First-tier Tribunal Juss (Appeal number AA/10377/2015) relating to a decision of the respondent dated 10th July 2015 refusing the claim for asylum made by the appellant. The appellant's appeal was dismissed.

6. At the hearing before us, Mr Mohzam handed up two short statements in manuscript form that he had prepared. The first was a statement made by the appellant and the second is a statement made by a gentleman who we shall refer to as 'YKK' in this decision. We do so because YKK has an extant appeal before the Upper Tribunal against a decision of the respondent refusing his claim for international protection (PA/07147/2019). An anonymity direction has been made by the Tribunal in respect of that appeal. The appellant claims she is now in a relationship with YKK and there is reference in those statements to the birth of a child of that relationship, TYK, who was born on 27th October 2021.

7. Mr Bates did not object to that further evidence being admitted and we agreed to admit the evidence. We heard oral evidence from the appellant and YKK with the assistance of an interpreter who translated in Kurdish Sorani.

8. The appellant signed a copy of the unsigned version of her witness statement that appears in the appellant's bundle and confirmed that the content of that statement is true and correct. She confirmed that her relationship with Mr Hassan Mohammed, MT's father, ended in 2017 and that she has not seen him since. She said that MT has not seen his father since they separated when he was about six months old.

9. In cross-examination, the appellant confirmed that she receives child benefit for MT, and she had provided evidence of that to her representative. She referred to the letter from the Home Office Asylum Support Caseworker dated 15th January 2022 which confirms that the asylum support she receives includes payments in respect of her dependents, one of whom is MT. She said that her previous partner had applied for child benefit when MT was born and that she personally did not receive any money. The application was in the name of MT's father. The appellant said she was aware he had applied for child benefit and he was receiving the money. The appellant said that since they separated in 2017, MT's father has never paid any maintenance or support for his son. She said she had tried many times to apply for child support but had been unable to open a bank account for any allowances

to be paid into. She does not know what happened to the child benefit after they separated.

10. The appellant maintained that she has not seen MT's father since 2017 and has had no contact with him since then. The last contact was in February or March 2017. The appellant said MT's father was living in Wolverhampton when she last saw him, and she cannot now recall his address. The appellant said he had no family in the UK and that she has not tried to locate him since 2017. She was previously bringing up her daughter on her own and would do the same with her son.

11. In answer to questions put by us, the appellant said that she had moved from the address in Normanton Road, Derby, to Poultney Street, West Bromwich, on 18th January 2020, and the children had to change schools. She confirmed that there are no letters from the schools that the children currently attend. She said that her daughter is in year two at St John's School and that her son is in year one. They both attend the same school. The appellant said that she does not live with her new partner YKK. She lives alone with her children. YKK lives in Derby. There was no re-examination.

12. YKK confirmed that the content of the statement in manuscript dated 8th April 2022 is true and correct. He said that his relationship with the appellant began at the beginning of 2019. As far as his immigration status is concerned, we were provided with a copy of a decision of Deputy Upper Tribunal Judge Alis promulgated in Appeal Number PA/07147/2019, on 13 February 2020. The decision establishes that a claim for international protection made by YKK was refused by the respondent in July 2019. An appeal against that decision was dismissed by First-tier Tribunal Judge French for reasons set out in a decision promulgated on 8th October 2019. The decision of the First-tier Tribunal was set aside by Deputy Upper Tribunal Judge Alis for reasons set out in a decision promulgated on 13th February 2020 with a direction that the decision will be remade in the Upper Tribunal. We understand from Mr Mohzam that a hearing date is awaited.

13. In cross-examination, YKK said that, since he has been in a relationship with the appellant, he has not heard about any contact between MT and his father. He does not know of any attempts made by the appellant to locate MT's father. YKK said that he sees his own son, who was born on 27 October 2021, about two or three times each week. He visits him in West Bromwich.

14. In answer to questions put by us, YKK confirmed he lives at the address in Normanton Road, Derby, which was the appellant's previous address. He confirmed that he lived at that address with the appellant between 2019 and January 2021. He was asked why the appellant had moved out of that address. He said that the appellant was being helped by a Mr Rebwar, who owned the property alongside another person. Mr Rebwar had another relationship and asked the appellant to leave the property. The Home Office found alternative accommodation for the appellant to live in. He said that when the appellant was previously living at the same address as him, he treated the appellant's children as his own and would look after them. He said that between 2019 and January 2021, he, Mr Rebwar, an Iraqi national by the name of Mr Khadir Ali, and the appellant and her children lived at the address in Normanton Road. YKK said that he has never known the appellant's previous partner and has never seen him. There was no re-examination.

Submissions

15. On behalf of the respondent, Mr Bates refers to the decision of the Upper Tribunal in Geci (EEA Regs: transitional provisions; appeal rights) [2021] UKUT 00285 (IAC), in which the Tribunal held, *inter alia:*

> "Many of the provisions of the EEA Regulations are preserved (although subject to amendment) for the purpose of appeals pending as at 31 December 2020 by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations (SI 2020 1309), ("the EEA Transitional Regulations"). The preserved provisions and amendments made are set out in paragraphs 5 and 6 of Schedule 3 to the EEA Transitional Regulations.
>
> The effect of the amendments is that the sole ground of appeal is now, in effect, whether the decision under appeal breaches the appellant's rights under the EU Treaties as they applied in the United Kingdom prior to 31 December 2020."

16. Mr Bates submits the important date is therefore 31st December 2020. The respondent accepts the appellant has shared responsibility for 'MT', a child that is a British Citizen. There remains an issue as to the role played by MT's father. He submits the Tribunal is presented with a claim that MT's father plays no role in his left but, he submits, the appellant has failed to establish on the evidence that the father plays no role at all. Mr Bates submits MT's father made a claim for child benefit and there is no evidence before the Tribunal that the appellant has made any attempt to transfer the payment of child benefit to her or made any attempt to make a claim for child support. Mr Bates submits the appellant is not a credible witness. He submits steps would have been taken to pursue MT's father for support if there had been a genuine breakdown of the relationship between MT and his father. In any event, Mr Bates submits MT's father is likely to be in the UK and if the appellant's account is accepted, he has been given no opportunity to play a role in the child's life. There is no evidence that he would not care for his son. Mr Bates submits there is a lacuna in the evidence and as at the key date, 31st December 2020, the appellant has failed to discharge the burden upon her.

17. In reply, Mr Mohzam does not disagree with the submission made by Mr Bates as to the relevant date in light of the decision of the Upper Tribunal in Geci (EEA Regs: transitional provisions; appeal rights). He submits the respondent is requiring the appellant to provide evidence of the absence of a relationship, and, if there is no on-going relationship between MT and his father, the evidence will inevitably be limited. Mr Mohzam submits the appellant, as someone subject to immigration control, cannot claim child benefit, but there is evidence in the form of the letter from the Home Office dated 15th January 2022 that MT is a dependant of the appellant for the purposes of her claim for asylum support. He accepts the letters from 'Shining Stars Nursery' regarding MT's registration at the nursery, the letters from Arboretum Primary School, and the letter from 'NHS England' regarding MT's flu vaccination, do not refer to the appellant as being the sole carer for MT, but he submits, the evidence of the appellant is that her relationship with MT's father broke down in 2017 and we should accept her evidence to be credible. He submits the appellant has remained consistent

throughout in her evidence that MT's father left when MT was a few months old. He invited us to allow the appeal.

The Legal Framework

18. It is convenient to set out the relevant provisions of the Immigration (European Economic Area) Regulations 2016 relating to the derivative right to reside in the UK. Insofar as is relevant, Regulation 16 stated:

> **16.— Derivative right to reside**
>
> (1) A person has a derivative right to reside during any period in which the person—
>
> (a) is not an exempt person; and
>
> (b) satisfies each of the criteria in one or more of paragraphs (2) to (6).
>
> …
>
> (5) The criteria in this paragraph are that—
>
> (a)the person is the primary carer of a British citizen ("BC");
>
> (b)BC is residing in the United Kingdom; and
>
> (c)BC would be unable to reside in the United Kingdom or in another EEA State if the person left the United Kingdom for an indefinite period.
>
> …
>
> (7) In this regulation—
>
> (c) an *"exempt person"* is a person—
>
> (i) who has a right to reside under another provision of these Regulations;
>
> …
>
> (8) A person is the "primary carer" of another person ("AP") if—
>
> (a) the person is a direct relative or a legal guardian of AP; and
>
> (b) either—
>
> (i) the person has primary responsibility for AP's care; or
>
> (ii) shares equally the responsibility for AP's care with one other person.
>
> (9) In paragraph (2)(b)(iii), (4)(b) or (5)(c), if the role of primary carer is shared with another person in accordance with paragraph (8)(b)(ii), the words *"the person"* are to be read as *"both primary carers"* .
>
> …
>
> (11) A person is not regarded as having responsibility for another person's care for the purpose of paragraph (8) on the sole basis of a financial contribution towards that person's care.
>
> …

19. It is for the appellant to establish that she is the primary carer of MT. Here, to establish that she is the primary carer, Regulation 16(8) required the appellant to establish that she is a direct relative of MT; and, either (i) she has primary responsibility for MT's care; or (ii), she shares equally the responsibility for MT's care with one other person. There is no doubt the appellant is a direct relative of MT. Mr Bates accepts that the appellant is the primary carer because even if she does not have primary responsibility for MT's care, at the very least, she shares equal responsibility for MT's care with one other person. That is, his father. Here, there is no doubt that MT is residing in the UK. The issue is whether MT would be unable to reside in the United Kingdom or in another EEA State if the appellant left the United Kingdom for an indefinite period, as set out in Regulation 16(5)(c). If the appellant shares the responsibility for MT's care with one other person, Regulation 16(9) operates such that the appellant has a derivative right to reside if MT would be unable to remain in the United Kingdom if both his primary carers left the United Kingdom for an indefinite period. There is nothing in the evidence before us to suggest that MT's father is not in the UK and will not remain in the UK.

20. In Patel and Shah v SSHD [2019] UKSC 59, the Supreme Court considered the scope of the principle in Ruiz Zambrano v Office National de l'Emploi (ONEm) (C-34/09) EU:C:2011:124, [2012] Q.B. 265, under which a third-country national was entitled to a right of residence to avoid their Union citizen child, or Union citizen dependent adult, being deprived of the genuine enjoyment of their Union citizenship rights as a result of their being compelled, by the third-country national's departure, to leave Union territory.

21. The "compulsion" to leave must arise because of a relationship of "dependency" with the third country national parent. Although Lady Arden referred to Mr Shah, in the relevant appeal, having the "primary responsibility" for his British citizen son, it was not that per se which was the basis for the sustainable factual finding by the FtT, but, because of that 'primary care', there was a "relationship of dependency". That much is made clear by Lady Arden at paragraph [25] of her judgment where, having referred to the CJEU's case law in K A v Belgium (Case C-

82/16) [2018] 3 CMLR 28 and Chavez-Vilchez v Raad van bestuur van de Sociale verzekeringsbank (Case C-113/15) [2018] QB 103, she stated:

> "[b]ecause Mr Shah was the primary carer, the need for a relationship of dependency with the [third country national] was fulfilled." Of course, being the primary carer of the British citizen child is likely to establish the relationship of dependency which, if that parent were to leave the UK, founds the claim that it will also result in the child leaving the UK. It is, however, not a necessary condition to establishing the derivative right of residence. The necessary condition is that as a result of a "relationship of dependency" the child will be compelled to leave the UK if the third country national cannot remain in the UK."

22. Lady Arden said what lies at the heart of the Zambrano jurisprudence is the requirement that the Union Citizen would be compelled to leave the Union territory if the third country national, with whom the union citizen has a relationship of dependency, is removed. Lady Arden said:

> "30. ... The overarching question is whether the son would be compelled to leave by reason of his relationship of dependency with his father. In answering that question, the court is required to take account, "in the best interests of the child concerned, of all the specific circumstances ..." The test of compulsion is thus a practical test to be applied to the actual facts and not to a theoretical set of facts. ... on the FTT's findings, the son would be compelled to leave with his father, who was his primary carer. That was sufficient compulsion for the purposes of the *Zambrano* test. There is an obvious difference between this situation of compulsion on the child and impermissible reliance on the right to respect for family life or on the desirability of keeping the family together as a ground for obtaining a derivative residence card. ..."

23. The threshold set is a high one, namely whether, because of the denial of that right, the child would have to leave the territory of the European Union in order to accompany the third country national. In answering that question, a Court or Tribunal is required to take account of the best interests of the child concerned and all the specific circumstances. They include the age of the child, the child's physical and emotional development, the extent of his emotional ties both to the Union citizen parent and to the third-country national, and the risks which separation from the latter might entail for that child's equilibrium; *Chavez-Vilchez*.

Findings and conclusions

24. It is uncontroversial that the appellant is a primary carer of MT, who is a British citizen. The issue in this appeal is whether MT would be unable

to reside in the United Kingdom if the appellant left the United Kingdom for an indefinite period. We consider whether the decision under appeal breaches the appellant's rights under the EU Treaties as they applied in the United Kingdom prior to 31 December 2020.

25. We have had the opportunity of hearing the appellant give evidence, and seeing her evidence tested in cross-examination. In reaching our decision we have considered whether the appellant's account of events is internally consistent and consistent with any other relevant information. We have had regard to the ingredients of her account of events, and her story as a whole, by reference to the evidence available to the Tribunal. The evidence before us is very limited. We have had the opportunity of hearing the oral evidence of the appellant and YKK. For reasons which we shall go on to explain, we find both of them to be unreliable witnesses and we do not find either of them to be credible. The only evidence that we have of the lack of any ongoing relationship between MT and his father, is the oral evidence of the appellant, and a letter from the Asylum Support Caseworker.

26. Section 55 Borders, Citizenship and Immigration Act 2009 requires immigration functions to be discharged having regard to the need to safeguard and promote the welfare of children who are in the UK. The leading authority on section 55 is ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4. In her judgment, Lady Hale confirmed that the best interests of a child are "a primary consideration" which, she emphasised, was not the same as "the primary consideration", still less "the paramount consideration". In Azimi Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 197(IAC) it was held that "As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary" and "It is generally in the interests of children to have both stability and continuity of social

and educational provision and the benefit of growing up in the cultural norms of the society to which they belong."

27. We are quite prepared to accept that it is in the best interests of MT, taking them into account as a primary consideration, that he should be able to continue living with his mother and siblings in the UK. However that is a 'primary consideration' and not the 'paramount consideration'. *Zambrano* rights are exceptional. They are not typical Treaty rights, since they arise only indirectly and contingently in order to prevent a situation where EU citizen dependants are compelled to leave the EU.

28. The evidence of the appellant as set out in her witness statement is that she met MT's father in Birmingham when she was living in NASS accommodation in Selly Oak. He was living in Wolverhampton. She states in her statement that they had many friends living at different addresses in Birmingham and Wolverhampton. They met at Kurdish cafés in Birmingham and at a friend's house in Wolverhampton. She claims that following the birth of MT, she moved to an address in Wolverhampton where she lived with MT and her daughter. She claims "*NASS also allowed me to apply and get child benefit for [MT] and [the Wolverhampton address].".* The appellant claims MT's father did not live with them but lived "quite near" so they could be together most of the time. She claims he was happy about the birth of MT and was happy to put his name on the birth certificate and to assist in securing a passport for MT as a British citizen. The appellant claims that "*in the months after that and going into 2017"* she noticed MT's father was messaging another girl and she asked him to choose between them. She states that families she knew in Wolverhampton noticed she was upset and lonely, and they recommended an address in Leeds. The appellant claims she transferred her NASS support to an address in Leeds and she "gave new account details to receive [her] child benefit". She states that she lived in Leeds until March 2018, when her landlord left the country, and she was able to move to an address in Derby after

her landlord introduced her to 'Rebwar' who had a shop with a flat above it.

29. The appellant's account in her statement that she noted between September (2016) "*and going into 2017"* that MT's father was messaging another girl and that she then moved to an address in Leeds is internally inconsistent with the claim in that statement that she "left Wolverhampton at the end of 2016" and has had no contact at all with Hama since. In her oral evidence before us, the appellant claimed she last had contact with MT's father in February or March 2017.

30. The evidence of the appellant in her statement that she applied for child benefit when she was living at an address in Wolverhampton following the birth of MT is at odds with her oral evidence before us that it was MT's father who had made the claim for child benefit when MT was born and that she personally did not receive any money. Her oral evidence before us was that she was aware MT's father had applied for child benefit and that he was receiving the money.

31. The appellant's oral evidence before us regarding the 'child benefit' claim and the steps that she took to secure child support following the breakdown of the relationship with MT's father was very vague and lacked clarity. She claimed that she had tried many times to apply for child support but was unable to open a bank account and so MT's father has never paid any maintenance or support for his son. There is no evidence before us regarding any attempt made by the appellant to secure child support from MT's father and her claim that she has tried many times to apply for child support is difficult to reconcile with her oral evidence before us that she cannot recall the address at which MT's father lives.

32. In her witness statement, the appellant claims that she is trying to contact Hama because MT will start asking who his father is "*when he gets bigger".* The appellant claims that is very hard for her, but she is

doing that as a responsible parent. That is inconsistent with her oral evidence before us that she has not tried to locate MT's father since the relationship ended in 2017. Much of what is said by the appellant in her witness statement regarding her relationship with MT's father, and the addresses at which she has lived with MT is capable of being corroborated but there a distinct and noticeable absence of any evidence to support any of the claims made by the appellant.

33. We found the evidence of YKK to be equally vague and we do not accept his evidence that MT has had no contact with his father. YKK's evidence was that he had lived at the Normanton Road address in Derby with the appellant between 2019 and January 2021. That is at odds with the appellant's evidence that she moved from Derby to the Poultney Street address in West Bromwich in January 2020. YKK was very vague when giving his evidence regarding the attempts made by the appellant to locate MT's father, and in the end his evidence is that he does not live with the appellant but visits his son two or three times each week.

34. In the evidence before us, we have a letter dated 25th July 2018 from 'Shining Stars Nursery' (based in Derby) addressed to the appellant confirming that MT has a place to attend every afternoon, Monday to Friday, with the first visit to take place on 7th September 2018. We also have a letter dated October 2018 from Dr Belencsak of NHS England North Midlands, addressed to the appellant as 'Parent/Guardian of [MT], regarding his eligibility for a free NHS flu vaccine. We have been provided with a letter dated 10th May 2019 addressed to 'Parent/Carer' relating to the offer of a place for [WK] (*the appellant's daughter*), at the Arboretum Primary School in Derby for the September 2019 intake. We have also been provided with copies of 'Home School Agreements' with Arboretum Primary School dated 23rd May 2019 in respect of both MT and WK. All of this evidence is somewhat dated and does not provide us with an accurate picture of the current arrangements for education and physical care of the appellant's children. There is scant evidence before us to establish the address at which MT is recorded to be living at.

35. At the hearing before us, we were provided with a letter dated 15th January 2022 that is addressed to the appellant at an address in West Bromwich, from the Home Office Asylum Support Caseworker. The letter refers to the appellant now having three dependents, WK, MT and TYK. We are prepared to accept that the appellant's children have been recorded as 'dependents' of the appellant for the purposes of asylum support but that is not to say that the required 'relationship of dependency' is made out. As the appellant herself states, MT lived with her following his birth. His father did not live with them, but he lived nearby so they could spend most of their time together. During that time, on the appellant's own account, MT was recorded as a dependent of the appellant and she received NASS support and child benefit for him.

36. We are prepared to accept that the appellant's relationship with MT's father ended in 2017. There is evidence before us that the appellant is now in a relationship with YKK, who is an Iraqi national. The appellant's evidence is that she has been in a relationship with YKK since 2019 and there is evidence before us that there is a child of that relationship, TYK, who was born on 27th October 2021.

37. There is a paucity of evidence before us regarding the care of MT, his health and his education. There is a lack of evidence regarding how his physical and emotional needs are met, beyond the very general and vague claims made by the appellant. We acknowledge that being a primary carer of a British citizen is often a strong indicator of a relationship of dependency. However, although we are prepared to accept that the appellant is the primary carer of MT, who is aged 5, in the sense that MT lives with the appellant, we are not satisfied on the very limited evidence before us that the appellant has established that she has a 'relationship of dependency' with MT such that MT will be compelled to leave the UK if the appellant cannot remain in the UK. At the age of 5, we accept MT will undoubtedly have some dependence of the appellant, but we are not satisfied that we have been provided with

a reliable and honest account of the arrangements for his care and the role that his father plays in his life.

38. On the very limited evidence before us, we cannot be satisfied that MT's father plays no role at all in MT's life. Whilst MT may live with the appellant, we do not accept that she is his sole carer, or that on the evidence before us, she plays the greater role in his upbringing. The evidence that we have before us regarding the school attended by MT is, as the appellant herself accepts, dated. In her evidence before us, she said that following her move to an address in West Bromwich in January 2020, the children have moved school. It is in our judgment surprising that despite the passage of time, we have no up-to-date evidence from the school now attended by MT. The school would have been in a position to provide independent evidence regarding the contact details held in respect of MT's parents, the extent of MT's dependence on his mother, and the role played by his father in his education. Similarly we find it surprising that if, as the appellant claims, she is the sole carer of MT, there is no evidence from MT's GP or other health professionals to corroborate the claim that the appellant is, and has been since MT was 6 months old, solely responsible for his health and welfare. Whilst we accept that corroborative evidence is not required, the absence of such evidence that is capable of corroborating the very vague and general claims made by the appellant is striking.

39. We have no evidence before us regarding MT's physical and emotional development, and the extent of his physical and emotional ties to his father, and the risk which separation from the appellant might entail for his equilibrium. In our judgment, taking account of the best interests of MT and all the specific circumstances, particularly the paucity of evidence regarding MT's dependence on his mother to the exclusion of his father, the appellant has not established that MT has the required relationship of dependency with the appellant such that an he would be compelled to leave the leave the UK if the appellant is removed.

40. It follows that in our judgement the appellant has failed to establish an entitlement to a derivative right to reside in the UK and we dismiss the appeal.

Notice of Decision

41. The appeal is dismissed.

Signed **V. Mandalia** Date 26th April 2022

Upper Tribunal Judge Mandalia

FEE AWARD

As the appeal has been dismissed, we make no fee award.

Signed **V. Mandalia** Date 26th April 2022

Upper Tribunal Judge Mandalia