



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004361

First-tier Tribunal No: EA/09146/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 1<sup>st</sup> of December 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**FATOUMATA KOROMA**  
**(no anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Adophy, Counsel

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Heard at Field House on 20 November 2023**

**DECISION AND REASONS**

1. The appellant is a citizen of Guinea born on 17 September 2001. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse to issue her with a residence card under the EU Settlement Scheme (EUSS).

2. In an application form dated 4 May 2021 the appellant applied for settled status under the EUSS as a person with a *Zambrano* right to reside in the UK on the basis of having completed a continuous qualifying period of 5 years in the UK as a person with a *Zambrano* right to reside and being a dependent child under the age of 18 of the primary carer of a British citizen child, her bother Mohamed Koroma. The relevant

primary carers named in her application were her father Sheku Gibril Koroma, a British citizen, and her mother Halimatou Kouyate. The appellant made her application at the same time as her mother, Halimatou Kouyate and her four siblings, all of whom were granted pre-settled status under the EUSS as persons with a *Zambrano* right to reside.

3. The appellant's application was refused on 13 July 2022 because she did not meet the definition of a 'person with a *Zambrano* right to reside' in Annex 1 of Appendix EU of the immigration rules, with reference to Regulation 16 of the Immigration (European Economic Area) Regulations 2016. The reason given by the respondent as to why she did not meet that definition was because, unlike her siblings, her continuous qualifying period as a 'person with a *Zambrano* right to reside' ended on 17 September 2019 when she became 18 years of age and was therefore not continuing at the date she applied to the scheme, on 4 May 2021.

4. The appellant appealed against the respondent's decision under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020 on the grounds that the decision was not in accordance with the EUSS rules.

5. The appellant's appeal was heard in the First-tier Tribunal by Judge Beg on 16 August 2023. It was submitted before the judge that the appellant, who had entered the UK with her mother and siblings on 17 September 2013, qualified for settled status under the EUSS as she had completed five years of continuous residence in the UK prior to the age of 18, from the birth of her younger brother in July 2014 until July 2019. The judge noted that the appellant and her mother and siblings had all been granted leave to enter the UK from 28 August 2013 to 28 May 2016 and then further leave under Appendix FM of the immigration rules until 2 May 2019, and had remained in the UK without leave until making their applications under the EUSS on 4 May 2021 under the *Zambrano* ruling. They had all been granted pre-settled status under the EUSS whilst the appellant's application had been refused.

6. Judge Beg found that the appellant was without leave from 2 May 2019 and noted that, at the date of her application under the EUSS on 4 May 2021 she was over the age of 18 years. The judge noted that Annex 1 of Appendix EU required that the applicant be under the age of 18 years at the time of the application and observed that an applicant was only able to rely on past continuous residence in the UK as a person with a *Zambrano* right to reside if she was a person who had a *Zambrano* right to reside before the specified date which continued until 11pm on 31 December 2020. Judge Beg found that the appellant's qualifying period as a 'person with a *Zambrano* right to reside' had ceased on her 18<sup>th</sup> birthday on 17 September 2019 and was therefore not continuing at the date she applied to the scheme, on 4 May 2021. The judge accordingly found that the appellant did not meet the requirements of the EUSS and she dismissed the appeal.

7. The appellant sought permission to appeal to the Upper Tribunal on the grounds that there had been a failure to interpret or properly to apply EU11 or EU14. The grounds asserted that the appellant did not lose her *Zambrano* right upon attaining the age of 18 as she was a child who was dependent on a person with a *Zambrano* right to reside, and that 'child' in Appendix EU was defined as someone under the age of 21 years. It was asserted that the appellant's rights had continued up to the date of her application in May 2021.

8. Permission was granted in the First-tier Tribunal. The respondent produced a rule 24 response opposing the appeal.

9. The matter came before me for a hearing. Mr Adophy was reminded that he had failed to comply with the Tribunal's directions to produce a consolidated, indexed bundle for the hearing, despite being provided with the relevant directions and guidance on three occasions. Having provided an explanation and apologised for his oversight, Mr Adophy was advised that further such breaches may well be met with a wasted costs order or a requirement to attend a hearing to explain the breach, but he was otherwise permitted to proceed with the appeal on this occasion. Mr Melvin had all relevant documents to enable him to proceed. Both parties then made submissions.

10. In his submissions Mr Adophy again relied upon the definition of a 'child' in Annex 1 of Appendix EU as being 'the direct descendant under the age of 21 years of a relevant EEA citizen' and submitted that the relevant age should have been 21 and not 18, so that the appellant's *Zambrano* rights were continuing at the date of her application. Mr Melvin relied upon the rule 24 response and submitted that Mr Adophy's reading of the Regulations was incorrect.

## Discussion

11. It is relevant to note that the appellant's case is now pursued on a slightly different basis to that which was presented before Judge Beg. Before Judge Beg it was argued by Mr Adophy that the appellant qualified for settled status under the EUSS on the basis that she had completed a five year continuous period with a *Zambrano* right to reside prior to her eighteenth birthday, from 2014 to 2019. However, as the judge properly found, the appellant, as with her mother and siblings, had leave to remain under Appendix FM until 2 May 2019 and remained in the UK without leave from that time, so that there was no question of there having been a continuous period of five years as a person with a *Zambrano* right to reside during that period. That particular finding does not appear to form part of the grounds of challenge currently pursued and, in any event, the argument could not have assisted the appellant given that the continuous qualifying period as a 'person with a *Zambrano* right to reside' had to have been continuing at the specified date, namely 31 December 2020, and through to the date she applied to the scheme in order to meet the relevant definition in Annex 1 of Appendix EU.

12. It was Judge Beg's finding that the appellant's qualifying period as a 'person with a *Zambrano* right to reside' ceased on her 18<sup>th</sup> birthday on 17 September 2019 such that she no longer met the relevant requirements at the time she applied to the scheme on 4 May 2021. The grounds challenge that finding and it is the appellant's case that the judge was wrong to find that the appellant's *Zambrano* rights ended on her 18<sup>th</sup> birthday. It is asserted for the appellant that she had applied as a dependent child of a primary carer and that the definition of a 'child' in Annex 1 focussed on the age of 21 rather than 18. Mr Adophy argued that, in the circumstances, considering the relevant age to be 21 and not 18, the appellant continued to be a 'person with a *Zambrano* right to reside' at the time she made her application. I am entirely in agreement with the respondent's view, however, as expressed in the rule 24 response, that Mr Adophy's interpretation is wrong and that the judge's findings on that matter were entirely in accordance with the relevant provisions of the EEA Regulations 2016 and Appendix EU.

13. As stated at [4] of the rule 24 response, any right which the appellant may have previously enjoyed was a derivative right based on the terms of regulation 16(6)(c) of the 2016 EEA Regulations which was capped to applicants under the age of 18 years, by effect of Regulation 16(6)(a). Accordingly the appellant ceased to enjoy that right at her 18<sup>th</sup> birthday. The application made by the appellant under the EUSS was as a 'person with a *Zambrano* right to reside' which is defined in Annex 1 of Appendix EU at

sub-paragraph (b) and makes no reference to the definition of a 'child' or to the upper age limit of 21 years, but again refers to the requirement to be under the age of 18 years. As the respondent says at [5] of the rule 24 response, the definition of 'child' applies where a person has applied under Appendix EU to the Immigration Rules as either a 'family member of a relevant EEA citizen' or a 'joining family member of a relevant sponsor', neither of which was the basis for the appellant's application. As such, the appellant stopped holding a regulation 16(6) right on reaching 18, which meant that she did not meet the requirement to have commenced a 'continuous qualifying period' before 31 December 2020 which continued to her date of application for the purposes of meeting the definition of a 'person with a *Zambrano* right to reside' in Annex 1 of Appendix EU.

14. For all these reasons, the judge's conclusion, that the appellant did not meet the requirements of the EU Settlement Scheme, was entirely correct and was in accordance with the provisions of the immigration rules in Appendix EU. The judge was fully and properly entitled to reach the decision that she did. Accordingly I uphold her decision.

### **Notice of Decision**

15. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

20 November 2023