



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

Appeal Number: EA085002016

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 22 June 2017**

**Decision Promulgated  
On 26 June 2017**

**Before**

**Deputy Upper Tribunal Judge Pickup  
Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**RITA ADOMAH  
[No anonymity direction made]**

Claimant

**Representation:**

For the claimant: Not represented

For the appellant: Mr G Harrison, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The claimant, Rita Adomah, date of birth 27.3.85, is a citizen of Ghana.
2. This is the appeal of the Secretary of State against the decision of First-tier Tribunal Judge Pacey promulgated 14.11.16, allowing the claimant's appeal against the decision of the Secretary of State, dated 22.6.16, to refuse her application for a derivative Residence Card, pursuant to Regulation 15A(4A) of the Immigration (EEA) Regulations 2006, as amended.
3. The Judge heard the appeal on 9.11.16.

4. First-tier Tribunal Judge O'Garro refused permission to appeal on 27.3.17. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Kopieczek granted permission to appeal on 21.4.17.
5. Thus the matter came before me on 22.6.17 as an appeal in the Upper Tribunal.

### **Error of Law**

6. For the reasons briefly summarised below, I found such error of law in the making of the decision of the First-tier Tribunal as to require the decision of Judge Pacey to be set aside.
7. Judge Pacey accepted that the appellant is the primary carer of her child E, now 18 months of age, who is a British citizen and present in the UK, and concluded that the child would be unable to reside in the UK or another EEA member state if the appellant were required to leave.
8. In reaching that conclusion, the judge failed to provide a direct answer to and clear reasoning for the crucial issue, despite citing Ayinde and Thinjom (careres - Reg 15A - Zambrano) [2015] UKUT 00560 (IAC), at [20] of the decision. The judge appears to have justified the decision allowing the appeal by finding that removal of the mother would seriously impair the quality and standard of the child's life, relying on the decision of Maureen Hines v LB Lambeth [2014] EWCA Civ 600, in which the Court of Appeal held that in answering the question as to whether the child would be unable to reside in the UK or another EEA member state, it was necessary "to consider the welfare of the British citizen child and the extent to which the quality or standard of his life will be impaired if the non-EU citizen is required to leave."
9. However, the judge misdirected herself in law in failing to appreciate that the Court of Appeal did not alter the fundamental test to be applied, and that as explained in Harrison v SSHD [2012] EWCA Civ 1736, "nothing short of a situation where the EU citizen is forced to leave the territory of the EU" is sufficient to engage the Zambrano principle. The Court of Appeal expressly did not state that impairment of quality of life is the test, but that it is relevant to the strict test required under the regulations.
10. As Judge Kopieczek noted in granting permission to appeal, "It does not appear that any consideration was given to the question of whether her son would be able to remain in the UK to be cared for by his father.
11. In the circumstances, the decision cannot stand and must be set aside for material error of law.
12. In remaking the decision, I adopt the findings of the First-tier Tribunal that the child E is a British citizen present in the UK and for whom the appellant is the primary carer.
13. I heard oral evidence from the appellant, cross-examined by Mr Harrison.

14. She has two other children, still in Ghana, aged 7 and 9, who live with their father's family. She was previously married to an EEA citizen (Belgian), but he is not the father of her child E and there are no children from that relationship, which began in the UK. The father of the child lives in Northampton and has had little to do with E, having only seen him twice since birth. Apparently, he has another partner and children, but does not live with them. The Social Services in Northampton have prevented the appellant from taking the child E to live with his father. It is not clear why, and there is no documentation in support, but the appellant told me it was something to do with his partner and children in Northampton. They have refused to give her any further details. She understands that even if they wanted, the child E would not be able to live with or be cared for by his father. As she described it, the father is father in name only.
15. The appellant lives alone with the child in Bolton. She works as a care support worker on a zero hours contract. She produced receipts for nursery fees for the child E. She is able to work flexibly to enable her drop off and collect her child from nursery.
16. On the evidence, taken as a whole, I am satisfied that not only is the appellant the primary carer, but the sole carer, with no financial or other support from the father of the child, who takes no role in his care. It is not entirely clear why the Social Services would not consent to the child living with the father, but in any event, it is clear that the father does not and I am satisfied would not agree to care for the child. In all the circumstances, including the young age of the child E, I am fully satisfied that if the appellant were to be required to leave the UK, the child E would be forced to leave and would not be able to remain in the UK or any other member state.
17. It follows that the appellant is entitled to the derivative residence card sought.

**Conclusions:**

18. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by allowing it.

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

**Signed**

**Deputy Upper Tribunal Judge Pickup  
Dated**

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. Given the circumstances, I make no anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

I make no fee award.

Reasons: The appellant failed to provide adequate evidence to enable the Secretary of State to make a decision informed by the true facts of the case.



**Signed**

**Deputy Upper Tribunal Judge Pickup  
Dated**