



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01428/2015

THE IMMIGRATION ACTS

Heard at : (UT)IAC Birmingham

Decision and Reasons Promulgated

On : 13 September 2018

On : 18 September 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

JOJOFANA MENGUE OWONA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Azmi, Counsel

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Cameroon born on 25 November 1988. 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 derivative residence card under the Immigration (European Economic Area) Regulations 2006 as the primary carer of a child who is the child of an EEA national, in education in the UK. First-tier Tribunal Judge Morris dismissed her appeal.

2. The appellant entered the UK on 22 October 2012 with leave to enter as a Tier 4 student until 21 March 2014. On 29 April 2015 she applied for a derivative residence card under the Immigration (European Economic Area) Regulations 2006 as the primary carer of the child of an EEA national, namely her daughter who was born on 10 August 2014 and whose father was a Polish national.

3. The respondent refused the application on 29 October 2015. The respondent considered that the appellant had failed to satisfy the requirements of regulation 15A(3)(b) of the EEA Regulations as she had failed to provide evidence to demonstrate that her daughter had resided in the UK at a time when her father was a worker as defined under European Union law. The respondent considered that the appellant had also failed to satisfy the requirements of regulation 15A(3)(c) of the EEA Regulations as she had failed to provide evidence to demonstrate that her daughter was in education in the UK. It was considered that her daughter was too young to have started her education. The respondent considered further that the appellant had failed to meet the requirement in regulation 15A(7)(b)(i) as she had failed to provide evidence that she was solely responsible for the care of the child and had therefore failed to demonstrate that she was the child's primary carer. Furthermore, the appellant had failed to meet the requirement in regulation 15A(4)(b) as she had failed to show that her daughter would be unable to continue to be educated in the UK should she be required to leave the UK. Accordingly the respondent considered that the appellant had failed to satisfy the requirements of the criteria for a derivative right of residence.

4. The appellant appealed against that decision and her appeal was heard by First-tier Tribunal Judge Morris on 23 February 2017. The appellant appeared in person without a legal representative. She gave evidence that her daughter's father was a Polish national who was working in the UK. They had separated in July 2015. The judge found that the appellant did not meet the requirements of Regulation 15A(2),(3),(4),(4A) and (5) and that the respondent's decision was therefore not in breach of her rights under the EU Treaties. She dismissed the appeal.

5. The appellant sought permission to appeal that decision to the Upper Tribunal on the basis that the wider implications of European law had not been considered as her removal from the UK meant that her Polish child was being deprived of the benefits of her EU citizenship contrary to the principles in Ruiz Zambrano (European citizenship) [2011] EUECJ C-34/09.

6. Permission was granted on 15 December 2017 on the basis that the First-tier Tribunal had arguably failed to address the applicable approach to the situation where the appellant was the primary carer of an EEA child who would be forced to leave the EEA with her parent.

7. At the hearing before me, I asked Mr Azmi to clarify whether the appellant had produced evidence to the respondent that her child was an EEA national, as it appeared to me that her application had been made on the basis that she was the primary carer of a child who was the child of an EEA national, not that she was the primary carer of an EEA child. Permission had been granted on the basis of the appellant being the primary carer of an EEA child, no doubt as a response to the assertion by the appellant in her grounds that her daughter was a Polish child, but I could find nothing in the papers before me to suggest that the application had been made, or decided, on that basis.


8. Mr Azmi took instructions from the appellant and confirmed that no evidence had been provided to the respondent of the child being an EEA national. He advised me that he had assumed that the respondent had accepted that the child was an EEA national, in light of the birth certificate and identity card of her father, and his submissions on Article 20 of the TFEU had been based upon that assumption. In the circumstances he could not add anything further by way of submissions.

9. I did not need to hear from Mrs Aboni as it was clear that permission had been granted on a misunderstanding of the situation. There was no evidence that the appellant's child was an EEA national. The appellant's application had not been made on the basis of her being the primary carer of an EEA national, which would have fallen under regulation 15A(2). Her application was made on the basis that she was the primary carer of the child of an EEA national, which fell within regulation 15A(3). That was the basis upon which the application had been considered. Mr Azmi conceded that the judge had dealt with the regulations correctly and indeed that is the case. The judge's conclusion, that the appellant could not meet the requirements of the EEA regulations, was a proper one on the evidence before her. The arguments made about the principles of EU law, Article 20 of the Treaty and Zambrano clearly have no application as they apply to the situation where the child is an EEA national.

10. Accordingly, and given that that was the only basis of challenge to the First-tier Tribunal Judge's decision, the judge plainly dealt with all relevant issues and made no errors of law in her decision. I therefore uphold her decision.

DECISION

11. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: 
Upper Tribunal Judge Kebede

Dated: 13 February 2018