



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/00296/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 4 March 2019**

**Decision & Reasons
Promulgated
On 19 March 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**OLALEKAN SAHEED KAZEEM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: No appearance

DECISION AND REASONS

1. Mr Kazeem, to whom I shall refer hereafter as “the appellant” (and I shall refer to the Secretary of State as “the respondent” as he was before the judge) was successful in an appeal before the First-tier Judge where he challenged the respondent’s refusal of his application for a derivative residence card.
2. The application was based on the relationship that the appellant has with his son and his partner Ms Dos Santos.
3. The Secretary of State challenged the decision of the judge, and at a hearing on 20 December 2018 I found that there were errors of law in the

judge's decision with regard to his assessment of the documentation purporting to show that Ms Dos Santos was working as claimed and that the evidence was sufficient to enable the couple's child to show that she was residing in the United Kingdom as a self-sufficient person. Accordingly, I set aside the decision and directed that it be re-made in the Upper Tribunal.

4. On 28 February 2019 a letter was received from the representatives of Mr Kazeem stating that they had his instructions to withdraw the appeal before the Tribunal as he had decided to make a fresh application for a residence card in the United Kingdom.
5. An email was sent to his representatives on 28 February 2019 informing them that the judge could not consider the application to withdraw the appeal as it was the Secretary of State's appeal, Mr Kazeem's appeal having been allowed by the First-tier Judge. It was said that accordingly the appeal was that of the Home Office who would need to approve a withdrawal and in the absence of such the matter would proceed to hearing.
6. Mr Avery made it clear that the Secretary of State did not wish to withdraw the appeal but wanted the matter to be determined bearing in mind the points made in the error of law decision. I am satisfied that it had been made clear to the appellant that the hearing date had not been vacated and that as a consequence it was appropriate to proceed to determine the appeal in the appellant's absence.
7. It is clear in my view that the appeal is to be dismissed. The documentary evidence provided to which I have referred in some detail in the error of law decision, was not such as to show that the child was residing in the United Kingdom as a self-sufficient person. It is clear that the vast majority of Ms Dos Santos' income is derived from public funds and that is inconsistent with the child being able to show that he is self-sufficient bearing in mind the definition in Regulation 4(1)(c)(i) of the Immigration (European Economic Area) Regulations 2016 that a self-sufficient person has to be somebody who has sufficient resources not to become a burden on the social assistance system of the United Kingdom during the person's period of residence.
8. It has not been shown that Ms Dos Santos could not restructure her work or make use of childcare services, and therefore it has not been shown that the child would be unable to remain in the United Kingdom if the appellant left for an indefinite period. No Zambrano-type claim can therefore succeed.
9. Accordingly, I find that the appellant has not made out the challenge to the Secretary of State's decision, and his appeal against that decision is dismissed.
10. No anonymity direction is made.



Signed

Date 14 March 2019

Upper Tribunal Judge Allen

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed and therefore there can be no fee award.



Signed

Date 14 March 2019

Upper Tribunal Judge Allen