



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

Appeal Number: EA/02962/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 13 August 2019**

**Decision & Reasons Promulgated
On 29 August 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**MARY [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Ms [M] against the Secretary of State's decision of 24 February 2017 refusing to issue a derivative residence card. I won't go into the history in any detail. There was a hearing before the First-tier Judge, I set that decision aside following a hearing on 17 April 2019 because the judge had, in essence, taken the view that the Appellant had to show was the sole primary carer of her child rather than, as is now clear from the decision of the Court of Justice in Chavez-Vilchez and as set out in amendments to the Immigration EEA (European Economic Area) Regulations 2016 amendment to those Regulations enshrining the conclusions in Chavez-Vilchez, that being a primary carer is sufficient.
2. The point of concern was that it was not at all clear before the First-tier Judge whether she had shown that she had responsibility as a primary carer rather than having to be the primary carer for her son and therefore matters adjourned for a further hearing to give her an opportunity to provide further evidence. She had not attended that hearing on the basis

that there were difficulties in affording the cost of travel and getting childcare and she has not attended the hearing today. There has been no application for an adjournment and indeed no further communication from the appellant. I am satisfied that notice of the date, time and place of the hearing were sent to her and her representatives, so in my view it is appropriate to go ahead and deal with the matter today.

3. Things have moved on somewhat as Mr Lindsay, who appeared on behalf of the Secretary of State has helpfully provided me with a copy of the letter to the appellant on 25 July 2019, granting her a period of 30 months' limited leave to remain on the ten year parent route and it may very well be that she has decided that that is the route to go down rather than the EEA route. The main difficulty that she would face in any event under EEA law, since it is clear that she now has this period of leave, is that one can see from the guidance of 1 August 2019, again helpfully provided by Mr Lindsay, it is clear that a person cannot be considered a person with Zambrano right to reside if they have been granted a period of leave to enter or remain and that of course is now the position of the appellant and it is clear from Chavez-Vilchez itself that such a circumstance will preclude a derivative right of residence because it is clear that in that circumstance where the parent has got leave in the United Kingdom the child would not become a Zambrano child and there would be no pressure to leave the United Kingdom. An issue might arise again subsequently after the period of leave had come to an end, but that, if it ever arises, is an argument for another day as things stand. That immediacy which is required for a Zambrano positive decision for an appellant does not exist in this case.
4. As Mr Lindsay says, in the alternative it is difficult to see how the claim could succeed, there just is not the necessary evidence of the appellant being a primary carer for her child, there is somewhat elderly evidence that was produced for the hearing before the First-tier Judge but there has been nothing subsequently and certainly nothing up-to-date. That of course does not in any sense impinge on her rights in relation to the limited leave to remain that she has, I simply find that she has not produced evidence to show that she is a primary carer and again, as I say, if the issue ever arose in the future it would be open to her to produce such evidence, but as matters stand she is a person with 30 months' limited leave to remain, she cannot satisfy the requirements of European law on a derivative rights basis and nor has she shown in the alternative that she is a primary carer for her child and therefore the appeal against the decision to refuse a residence card is dismissed.
5. No anonymity direction is made.



Signed
Upper Tribunal Judge Allen

Date
16 August 2019