IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000692
FTT no: EU/51417/2023
LE/01984/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5th June 2024

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Kulsoom Khan
(No anonymity order made)

Respondent

Representation:

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondent: Mr Holt, Counsel instructed by Turpin Miller Solicitors

Heard at Manchester Civil Justice Centre on 24 May 2024

DECISION AND REASONS

1. The Respondent is a national of Pakistan. On the 22nd February 2024 the First-tier Tribunal (Judge McClure) allowed her appeal on *Zambrano* grounds, having found as fact that she was full time carer for her disabled British husband.

2. The Secretary of State was granted permission to appeal against that decision on the 22nd February 2024.

Ground 1: Misdirection (i)

3. The central ground upon which permission was granted was that at his paragraph 46 Judge McClure arguably misdirects himself to the appropriate test. As the parties agreed, the burden lay on the Respondent to demonstrate that if she were not given permission to reside in the UK her husband *would* be compelled to leave this country, thus undermining his (now historic) right to

reside within the EU. In the latter part of his paragraph 46 Judge McClure appeared equivocal about whether this test was met, saying:

> 46. Taking all the evidence into account I find that the sponsor would not be able to live in the UK without the care and support of the appellant and **may** be forced to leave the UK. Accordingly I find that the appellant is entitled to a right to reside in accordance with the EU Immigration Rules and the guidance in the case of Zambrano

(emphasis added)

4. In the written grounds the Secretary of State points out that whether someone "may" decide to leave is not good enough.

5. I am satisfied, having had regard to the decision as whole, that the use of the word "may" was an unfortunate slip. I am wholly satisfied that Judge McClure understood what he was being asked to consider, namely whether the Sponsor would be compelled to leave. I say this because he refers to that test again and again throughout his decision (see for instance his §3, 4, 6(b), 8, 10). The entire decision is focused on answering the right question, until you reach this final 'round up' paragraph. I agree with Mr Holt that the sentence cited in the grounds is simply incompatible with the rest of the decision – it does not reflect the rest of the reasoning. I set it aside as a slip and substitute the word "may" with the word "will".

Ground 2: Misdirection (ii)

6. The second point made in the grounds is that Judge McClure had "excessive regard to the question of whether equivalent alternative care would be available".

7. Judge McClure made very clear findings about the extent of help required by the Sponsor and provided by his wife. She bathes him, assists him in toileting, cooks for him, administers his medication, does the laundry, and in fact attends to his every daily need. He is entirely dependent upon her. None of that is challenged. In his exploration of the impact that her absence would have on the Sponsor, Judge McClure quite properly considered whether the Sponsor could simply turn to someone else, or a government agency, to replace her care. It was part and parcel of his focused assessment on the Zambrano question: does the Sponsor need his wife to remain in the UK in order to enjoy his own right to reside? There is no error in that.

Ground 3: Velaj/Akinsanya

8. The final ground is expressed like this:

> The Court of Appeal decision in Velaj is cited at [7], but the Judge does not put its ratio into practice. There has been no proper analysis of whether at this point in time the appellant in fact faced at all the prospect of enforced departure from the UK. She has not tested the possibility of leave to remain via an application for

leave to remain under Article 8 based on the potentially stronger family life considerations now asserted.

9. As Mr McVeety accepts, the Respondent does not fall into the class of applicant impacted by the decision in Akinsanya v Secretary of State for the Home Department [2022] EWCA Civ 3. She has never had leave to remain on Article 8, or any other, grounds. In light of that judgment the Secretary of State now accepts that her notional ability to make such an application does not negate her *Zambrano* right to reside. Mr McVeety does not therefore pursue this ground.

Decisions

10. The appeal is allowed only to the extent identified at my §5 above.

11. The decision in the appeal is re-made as follows: the appeal is allowed.

12. There is no order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
26th May 2024