



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/00058/2014

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Manchester

On 30th June 2014

Determination

Promulgated

On 3rd July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**Ethel Simon
(no anonymity order made)**

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: -

For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Tanzania date of birth 6th October 1971. She appeals against the decision of the First-tier Tribunal (Judge Brunnen) to remove her from the United Kingdom pursuant to section 10 of the Immigration and Asylum Act 1999.
2. The decision to remove the Appellant followed from the Respondent's decision to reject her claim to asylum. The Appellant had initially claimed to be Somali but when her fingerprints showed her to in fact be a Tanzanian student she withdrew that part of her account. Instead she advanced a claim

based on the fact that since her arrival in the UK she had given birth to two children with a white father, Irish national Mr Anthony Hegarty. She feared return to Tanzania because her children may suffer persecution because of their mixed race. They may, for instance, be kidnapped by witches in order to use their body parts. Judge Brunnen noted the country background material which indicates that children with albinism can be subject to such persecution in Tanzania, but since the Appellant's children are not albino, he found there to be no such risk in this case. At paragraph 21 of the determination Judge Brunnen goes on to say this:

"I have considered whether there is any other basis on which the Appellant has any viable claim to remain in the UK. I have considered whether she has any right arising from European Law but I am satisfied that she does not. Mr Hegarty is not residing in the UK so she has no rights based on the right to reside here with him. Her children are Irish citizens but none of the circumstances which give rise to a derivative right of residence applies in this case. It may well be that the Appellant would be able to establish a right to reside with her husband and children in Ireland. However that cannot assist her in the present appeal".

3. There is no challenge to the findings on the human rights/asylum claim. The grounds of appeal seek to challenge paragraph 21 of the determination. In essence the grounds rely on Chen (C-200/02) and Zambrano (C-34/09). It is submitted that the children are Irish nationals living in the UK and that if their mother is forced to leave the UK they will be forced to leave the EEA; the decision to remove their mother therefore interferes with their right of residence.

Error of Law

4. There is no error in this determination. The grounds of appeal suggest that the Appellant should be given leave to remain in the UK because her Irish children need her in order to live here. That is not the test. The test was whether her Irish children need her to live *within the EU*. Unlike the children in Zambrano, these children have one parent who has a right to reside in the EEA, namely their Irish father who "loves them unconditionally" [paragraph 16 of the determination recording the Appellant's evidence]. The decision cannot be said to have the effect of compelling them to leave the EEA, since they can go to Ireland to live with their father. As Judge Brunnen notes it may well be that the Appellant would be able to establish a right to reside there with them, however the UK is under no such obligation. The First-tier Tribunal was therefore quite correct to find that "none of the circumstances which give rise to a derivative right of residence applies in this case".

Decision

5. The decision of the First-tier Tribunal contains no error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce

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