



IAC-AH-CJ-V1

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

Appeal Number: IA/02893/2014

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower Decision & Reasons Promulgated  
Birmingham  
On 26<sup>th</sup> August 2015 On 15<sup>th</sup> September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FRENCH**

**Between**

**SHARON EDITH QUANSAH  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, who is a citizen of Ghana, had applied for a derivative residence card under the Immigration (European Economic Area) Regulations 2006 as the primary carer of her daughter who is a British citizen. The Appellant contended that if she were not allowed to remain in this country her daughter would also be unable to remain. The relevant Regulation is 15A(4A). The application was refused as it was not accepted that the Appellant had established that she was the primary carer of the

child or that her removal would oblige the British citizen child to leave the United Kingdom or the European Union.

2. The Appellant's appeal against that decision was heard before First-tier Tribunal Judge Broe. In a decision promulgated on 2<sup>nd</sup> September 2014 the appeal was dismissed. Judge Broe accepted that the Appellant was the child's primary carer and that the child's father might not play such an active role in her life but he did not accept that it was established that the father would not care for the child if the Appellant were obliged to leave. He made no decision under Article 8 ECHR.
3. The Appellant, through her representatives, applied for permission to appeal that decision. It was contended that the First-tier Tribunal Judge had not taken sufficient notice of the quality of life which the child would encounter should the Appellant be required to leave, citing **Hines v London Borough of Lambeth [2014] EWCA Civ 660**, that it had not been shown that the father was a responsible parent and that the judge had not considered the impact on other members of the family under Article 8. It was asserted that the Respondent was in a position to make a removal decision and Article 8 should have been considered although in the absence of removal directions the judge had declined to do so.
4. In granting permission First-tier Tribunal Judge Nicholson considered that at that stage it was an open question as to whether Article 8 was potentially engaged and he granted permission on that basis. He did not refuse permission on other grounds but said that in light of the factual findings it was far from clear that the case of **Hines** could assist the Appellant. A response under Upper Tribunal Procedure Rule 24 by the Respondent asserted that the judge's findings were clear and properly reasoned and it was open to him to conclude that Article 8 was not engaged.
5. When the appeal was called on for hearing before me there was no attendance by or on behalf of the Appellant. I was satisfied that she had been served with notice of the hearing both at her address registered with the Tribunal and through her representatives ASIRT. I was satisfied that she had notice of the hearing. I considered that it was in the interests of justice to proceed and exercised my discretion under Upper Tribunal Procedure Rule 38 to do so. Mr Richards brought to my attention that on 4<sup>th</sup> February 2015 the Appellant had been granted leave to remain for a period of 30 months under the parent route in the Immigration Rules. That might explain her decision to fail to attend the hearing as she already had a grant of leave. However as Section 104 of the Nationality, Immigration and Asylum Act 2002 does not apply to appeals under the EEA Regulations the appeal did not fall to be treated as abandoned and required to be decided.
6. In brief submissions Mr Richards relied upon the Rule 24 response. The decision had been properly reasoned. He said that Article 8 was not engaged and in that regard he relied upon the recent Upper Tribunal

decision in **Amirteymour and Others (EEA appeals; human rights) [2015] UKUT 00466 (IAC)**. That decision of a panel of the Upper Tribunal chaired by the President makes it clear that in appeals such as the current one an Appellant cannot bring a human rights challenge to removal.

7. The essence of the other basis of challenge was as to the judge's finding that the Appellant had not established that the child would be unable to remain with the father if she were to leave. The judge noted that the Appellant had not made enquiries of mutual friends to see whether the father could be contacted to see whether he would care for the child, whose paternity he acknowledged. In reaching his conclusion the judge relied upon the judgment of the Court of Appeal in **Harrison (Jamaica) v Secretary of State for the Home Department [2012] EWCA Civ 1736**. In that judgment Lord Justice Elias stated (at paragraph 63) as follows:

"I agree with Mr Beal QC, Counsel for the Secretary of State, that there is really no basis for asserting that it is arguable in the light of the authorities that the *Zambrano* principle extends to cover anything short of a situation where the EU citizen is forced to leave the territory of the EU. If the EU citizen, be it child or wife, would not in practice be compelled to leave the country if the non-EU family member were to be refused the right of residence, there is in my view nothing in these authorities to suggest that EU law is engaged ..."

The judge at first instance was satisfied that the Appellant had not discharged that burden. He gave adequate reasons for reaching that conclusion. There was no material error of law in his decision.

8. The First-tier Tribunal Judge made an anonymity direction. I could see no reason why that would need to be continued and I make no anonymity order.

### **Notice of Decision**

There was no material error of law in the decision of the First-tier Tribunal Judge and his decision that the appeal be dismissed therefore stands.

No anonymity order is made.

Signed

Date 04 September 2015

Deputy Upper Tribunal Judge French