



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/10829/2015**

**Appeal Numbers:**

**H**

**U/10835/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 7 November 2017**

**On 15 November 2017**

**Before**

**THE HONOURABLE MR JUSTICE DINGEMANS  
DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**HINA KHAN (FIRST APPELLANT)  
J R B (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr E Waheed, Counsel instructed by M A Consultants  
(London)

For the Respondent: Mr C Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is a transcript of the extempore judgment given on 7<sup>th</sup> November 2017. This is an appeal against a decision of First-tier Tribunal Judge Woodcraft given on 25 April 2017. As the oral submissions before us from Mr Waheed on behalf of the appellants and Mr Avery on behalf of the Secretary of State developed, and I should record that we are very grateful

to both of them for the helpfulness of their submissions, it became clear that the appeal was irresistible.

2. There are a number of grounds of appeal which it is not necessary to deal with because of this reason. It became clear that one of the appellants is a child and British citizen having acquired citizenship in the United Kingdom. It is apparent from the judgment of the First-tier Tribunal Judge at paragraph 21 that the first appellant and sponsor have two children, one of whom is a Pakistani citizen and the other is a British citizen, having been born in this country on 19 December 2012. The First-tier Tribunal Judge went on to say the family could return as a unit if they so wished:-

“Whilst M has not had any experience of life in Pakistan, and J’s experience is very limited (she arrived when she was 6 months old) the focus of both children will be on their parents who will be able to assist them to readjust to life in Pakistan. Whilst therefore the Appellant has a genuine and subsisting parental relationship with both her children, it is reasonable to expect them to return to Pakistan with her”.

3. That was a reasonable and straightforward formulation on the old law, but there have been material developments in the relevant jurisprudence. Those development include the case of **MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2016] EWCA Civ 705, [2016] 1 WLR 5093**, in particular at paragraph 35, and a more recent decision of **SF, OSF and XF v The Secretary of State for the Home Department [2017] UKUT 120**, following the judgment of the CJEU in **Zambrano v Office National de l’Emploi** (Case C-34/09) [2012] QB 265.
4. In the light of those decisions it is apparent that the First-tier Tribunal Judge did not ask the right legal question. Further in the light of those decisions the Home Office decision maker must not take a decision in relation to the parent or primary carer of a British citizen child where the effect of the decision would be to force that British child to leave the EU regardless of the age of that child. This reflects the approach of the CJEU in **Zambrano**. As we have said, it became common ground that that ground of appeal, and we say nothing more about the other grounds of appeal, meant that the appeals of the two appellants in this case would succeed.

### **Notice of Decision**

5. There was then some short discussion about disposal, but in the end it is clear that given that there is no other issue involving the second appellant’s parents, one of whom is a British citizen, the right disposal is to follow what occurred in **SF**, which is therefore to set aside the decision of the First-tier Tribunal, substitute a decision allowing the appeals of the two appellants and leave the period of leave is to be determined by the Secretary of State.

6. We are very grateful for all the submissions and that is our judgment in this case.
7. No anonymity direction is made.

Signed

Date

Mr Justice Dingemans