



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/09203/2014

Appeal Number

THE IMMIGRATION ACTS

**Heard at Centre City Tower
On 7th April 2015**

**Determination Promulgated
On 23rd April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**CASSANDRA ELSADA KELLY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Azmi (Counsel, instructed by J M Wilson, Solicitors)

For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant applied for leave to remain in the UK as the primary carer of a British national child. The application was refused and the Appellant appealed. The appeal was heard by First-tier Tribunal Judge Beg at Birmingham on the 28th of August 2014 and dismissed in a determination promulgated on the 16th of September 2014.
2. The Judge found that the Appellant's removal from the UK would be proportionate without addressing the point that the child was a British national and whether the Appellant's removal would lead to the child having to leave the UK.
3. The Grounds of Appeal assert that the Judge erred in relation to the nationality of the child and the derivative right of residence. The Judge should have made a decision on the Zambrano point, the grounds of refusal - that ability of the father to care for the child and the Appellant's convictions disqualifying her, had not been addressed. Article 8 was similarly flawed.

4. Permission having been granted the error was conceded at the Upper Tribunal hearing. It was accepted that the Appellant's child is a British national and that the Judge had failed to address the issues raised in the appeal. Given the circumstances it was agreed that the decision could not stand and that it would have to be set aside. It was also agreed that given that the matter would have to be revisited from the start it would be better to remit the appeal to the First-tier Tribunal for re-hearing with no findings preserved.
5. Given the obvious and fundamental errors in the decision and with the agreement of the parties the case is remitted to the First-tier Tribunal for re-hearing, this case is not to be heard by Judge Beg.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

The decision is set-aside and remitted to the First-tier Tribunal for re-hearing on all issues.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In remitting the matter to the First-tier Tribunal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 22nd April 2015