



First-tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: [REDACTED]

THE IMMIGRATION ACTS

Heard at Taylor House
On 24 May 2019

Decision & Reasons Promulgated

18.06.2019

Before

JUDGE OF THE FIRST-TIER TRIBUNAL BREWER

Between

[REDACTED]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara, Counsel
For the Respondent: Ms A Heirs, Home Office Presenting Officer

© CROWN COPYRIGHT 2014

Appeal Number: [REDACTED]

DECISION AND REASONS

1. The appellant in this case is [REDACTED]. The appellant is a Brazilian national born on [REDACTED] [REDACTED]. He appeals against the respondent's refusal to grant him a derivative residence card as the primary carer of a British citizen under the Immigration (European Economic Area) Regulations 2016 (the Regulations).

Procedural History

2. The appellant applied for a residence card under regulation 16(5) of the Regulations on 25 July 2018.
3. The appellant is married to the sponsor, [REDACTED], a British national. They have two children together and the sponsor a child from a previous relationship who also lives with the family.
4. The respondent refused the application with detailed reasons on 24 October 2018.
5. The appellant appealed, and that appeal came before me.

Decision of the Secretary of State

6. The application was refused on the ground that the appellant had not provided evidence that he is the primary carer of the child or that, if he were returned to Brazil, his children would be unable to reside in the United Kingdom or in another EEA State.

Grounds of appeal

7. The grounds of appeal are essentially that the decision was wrongly made and on the evidence the appellant is entitled to his residence card under regulation 16.

Law

8. The relevant part of the Regulations are as follows:

Derivative right to reside

16. – (1) A person has a derivative right to reside during any period in which the person –
(a) is not an exempt person; and
(b) satisfies each of the criteria in one or more of paragraphs (2) to (6).

(3) The criteria in this paragraph are that –

- (a) the person is the primary carer of a British citizen ("BC");
(b) BC is residing in the United Kingdom; and

(c) BC would be unable to reside in the United Kingdom or in another EEA State if the person left the United Kingdom for an indefinite period.

2

Appeal Number: [REDACTED]

Zambrano

21. The **Zambrano** case determined that Article 20 of the Treaty on the Functioning of the EU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen. This has been transposed into UK law by what are now the 2016 Regulations.

Regulation 16(1)

22. Regulation 16(1) simply requires that the applicant, the appellant in this case, "satisfies each of the criteria in one or more of paragraphs (2) to (6)". The appellant relies upon regulation 16(5).

Regulation 16(5)

23. Turning then to regulation 16(5), I consider it poses 3 questions:

- (i) Is the appellant the primary carer of a British citizen ("BC")?
(ii) Is the BC is residing in the United Kingdom? And;

(iii) Would the BC be unable to reside in the United Kingdom or in another EEA State if the appellant left the United Kingdom for an indefinite period?

24. In my judgment the appellant has shown that at the date of application he was, and in my view remains, the primary carer for his 2 children and his step-daughter all of whom are British citizens.

25. All 3 children reside in the UK.

26. I have considered the case of **Patel v SSHD [2017] EWCA Civ 2028** which in turn considers a number of post-**Zambrano** cases. The Court of Appeal considered the decision in **Chavez-Vilchez and Others v Raad van Bestuur van de Sociale Verbekeringsbank & Others (Case C-133/15) (Grand Chamber) [2017] 3 CMLR 35**.

In that case it was stated as follows:

70. In this case, in order to assess the risk that a particular child, who is a Union citizen, might be compelled to leave the territory of the European Union and thereby be deprived of the genuine enjoyment of the substance of the rights conferred on him by Article 20 TFEU if the child's third-country national parent were to be refused a right of residence in the Member State concerned, it is important to determine, in each case at issue in the main proceedings, which parent is the primary carer of the child and whether there is in fact a

5