



16 December 2019

## PRESS SUMMARY

**Patel (Appellant) v Secretary of State for the Home Department (Respondent)**  
**Secretary of State for the Home Department (Respondent) v Shah (Appellant)**  
**[2019] UKSC 59**  
*On appeal from: [2017] EWCA Civ 2028*

**JUSTICES:** Lady Hale (President), Lord Carnwath, Lord Briggs, Lady Arden, Lord Sales

### BACKGROUND TO THE APPEAL

These two appeals raise common issues regarding the scope of the *Ruiz Zambrano v Office national de l'emploi* (Case C-34/09) [2012] QB 265 (“*Zambrano*”) principle. *Zambrano* states that a non-member state national (“TCN”) parent of a European Union (“EU”) citizen child resident within the EU is entitled to reside in the EU. This is solely to avoid the EU citizen child being deprived of the substance of their Union citizenship rights on removal of the TCN parent from the EU [1].

The first appeal is Mr Patel’s. Mr Patel is an Indian national who has no right to remain in the UK. He cares for his parents, who are British citizens. Mr Patel has been trained to help with his father’s kidney dialysis, and he cares for his immobile mother. Mr Patel’s parents are reliant on him. The medication required for dialysis may not be available in India. The First-tier Tribunal (“FTT”) found that Mr Patel’s father would not return to India with Mr Patel; instead, he would continue to receive medical treatment in the UK, although that would not give him the same quality of life as Mr Patel’s care. Mr Patel was unsuccessful in invoking the *Zambrano* principle in the FTT, the Upper Tribunal (“UT”) and Court of Appeal (“CA”) [5]. Mr Patel appeals.

The second appeal is Mr Shah’s. Mr Shah is a Pakistani national. He is the primary carer of his British citizen infant son. Mr Shah’s wife is also a British national. Mr and Mrs Shah live with their son. Mrs Shah works full-time. Whilst Mrs Shah works, Mr Shah cares for their son. The FTT found that if Mr Shah were to return to Pakistan, Mrs Shah would not remain in the UK; she would accompany her husband to Pakistan. Their child would also leave the UK. As a result, the FTT and UT found that Mr Shah was entitled to remain. The CA disagreed and held that Mrs Shah could look after the son in the UK; the requirement for compulsion to leave the UK was therefore not satisfied [6]. Mr Shah appeals.

### JUDGMENT

The Supreme Court unanimously allows Mr Shah’s appeal and dismisses Mr Patel’s appeal. Lady Arden writes the sole judgment [33].

### REASONS FOR THE JUDGMENT

Article 20 of the Treaty on the Functioning of the European Union (“TFEU”) provides for a right to EU citizenship. This lies at the heart of the EU legal architecture [9]. Article 20 alone does not confer any rights on a TCN (see *R (Agyarko v Secretary of State for the Home Department)* [2017] 1 WLR 623) [10]. However, the CJEU in *KA v Belgium* (Case C-82/16) [2018] 3 CMLR 28 (“*KA*”) emphasised the importance of the right to EU citizenship and stated that a TCN might acquire a derived right of residence if their removal could deprive an EU citizen of their citizenship rights (*KA*, paras 47 – 50)

[15]. The TCN's derived right of residence is only provided to ensure that the EU citizen's rights are effective. This limits the entitlement of a TCN to reside in the EU. There must be a "relationship of dependency" between the EU citizen and the TCN [16].

*KA* draws a distinction between the case of an EU citizen who is an adult and one who is a child (*KA*, para 76) [13] – [14], [23]. A TCN can have a relationship of dependency with an adult EU citizen sufficient to justify a derived right of residence only in exceptional circumstances (quoting *KA*, para 65) [17]. What lies at the heart of the *Zambrano* jurisprudence is the requirement that the EU citizen be compelled to leave the EU territory if the TCN, with whom the EU citizen has a relationship of dependency, is removed [22]. With that context, the judgment examines Mr Patel and Mr Shah's respective cases in turn.

Regarding Mr Patel, the FTT concluded that Mr Patel's father would not accompany him to India. Unless Mr Patel could argue that some case law from the CJEU, including *Chavez-Vilchez v Raad van Bestuur van de Sociale verzekeringsbank* (Case C-133/15) [2018] QB 103 ("*Chavez-Vilchez*"), relaxes the level of compulsion required in the case of adults, and thus provides assistance to Mr Patel, his appeal must fail. However, any possible qualification *Chavez-Vilchez* makes to the general principle of compulsion does not apply in the case of adults. *Chavez-Vilchez* is about children. *KA* makes clear that children and adults are treated separately and a TCN will only have a derivative right of residence by reference to a dependant relationship with an adult EU citizen in exceptional circumstances. *Chavez-Vilchez* does not relax the level of compulsion required in the case of adults. It is of no assistance to Mr Patel. His appeal must fail as his parents would not be compelled to leave the UK [27].

*Chavez-Vilchez* does not impact Mr Shah's appeal. That appeal depends on the FTT's findings of fact and whether the CA correctly identified the relevant findings for the purposes of the compulsion test. The FTT found that Mr Shah was the primary carer of his son; as such, the child had the relevant relationship of dependency with Mr Shah. Further, Mrs Shah's evidence was that if Mr Shah were removed from the UK then the family would move out of the EU. This was accepted by the FTT, who held that it was an inescapable conclusion that the son would have to leave with his parents. Therefore, the FTT found the requirement of compulsion was met [28].

The CA used the fact that Mrs Shah's decision to leave the EU was voluntary and she could look after the child without Mr Shah to justify holding that there was no question of compulsion [29]. The Supreme Court disagreed. The overarching question is whether the son would be compelled to leave with his father, who was his primary carer, because of his dependency on his father. In answering that question, the Supreme Court had to take into account the child's best interests and his relationship with each parent, as explained in *Chavez-Vilchez*, para 71. The compulsion test is practical. It is to be applied to the actual facts. The FTT found the son would be compelled to leave. That is sufficient compulsion for the purposes of *Zambrano* [30]. Therefore, Mr Shah's appeal was allowed [32] – [33].

*References in square brackets are to paragraphs in the judgment*

**NOTE:** This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>