



16 December 2020

## PRESS SUMMARY

**Robinson (Jamaica) (Appellant) v Secretary of State for the Home Department (Respondent)**  
**[2020] UKSC 53**  
*On appeal from [2018] EWCA Civ 85*

**JUSTICES:** Lady Black, Lord Lloyd-Jones, Lord Sales, Lord Burrows, Lord Stephens

### BACKGROUND TO THE APPEAL

This appeal concerns the extent to which a non-member state national, who is the parent of a dependent European Union (“EU”) citizen child, is protected against deportation from the territory of the EU pursuant to the principle in *Ruiz Zambrano v Office national de l'emploi* (Case C-34/09) [2012] QB 265 (the “*Zambrano* principle”, and a person protected pursuant to it a “*Zambrano* carer”). The issue is whether a *Zambrano* carer enjoys enhanced protection, such that she can only be deported in “exceptional circumstances”. Ms Robinson is a Jamaican national. She was convicted and imprisoned of a serious criminal offence in the UK of dealing in cocaine and subsequently made the subject of a deportation order. Prior to her removal, she gave birth to a boy, D who is a British national and an EU citizen. Ms Robinson thereafter applied for leave to remain. The Secretary of State refused that application. That is the decision which is the subject of these proceedings.

On appeal to the Upper Tribunal, Ms Robinson argued that she had a right to reside in the EU derived under the *Zambrano* principle from D’s rights as an EU citizen. As she was D’s effective carer, her removal would require D to accompany her to Jamaica. D would thereby be deprived of the enjoyment of his rights as an EU citizen. The Upper Tribunal agreed. It held that her protection from deportation was absolute. The Secretary of State appealed to the Court of Appeal. Before the appeal was heard, the Court of Justice of the EU (the “CJEU”) delivered judgment in two cases which restricted the extent of the *Zambrano* principle. In *S v Secretary of State for the Home Department* (Case C-304/14) [2017] QB 558, (“CS”), it held that “in exceptional circumstances a member state may adopt an expulsion measure provided that it is founded on the personal conduct of that third-country national, which must constitute a genuine, present and sufficiently serious threat adversely affecting one of the fundamental interests of the society of that member state, and that it is based on consideration of the various interests involved, matters which are for the national court to determine” (para 50).

On that basis, the Court of Appeal allowed the appeal and remitted the case to the Upper Tribunal for redetermination. The Court of Appeal held that the phrase “exceptional circumstances” in CS was not an additional requirement which the state must satisfy, but merely summarised an exception to the general rule that D, an EU citizen, cannot be compelled to leave the territory of the EU. Ms Robinson appeals to the Supreme Court contending that the phrase created an additional hurdle to deportation.

### JUDGMENT

The Supreme Court unanimously dismisses the appeal and holds that the phrase “exceptional circumstances” does not import an additional hurdle before a *Zambrano* carer can be deported from the territory of the EU. The case is remitted to the Upper Tribunal for redetermination on that basis. Lord Stephens gives the judgment, with which all members of the Court agree.

## REASONS FOR THE JUDGMENT

The *Zambrano* principle applies in very specific situations where, if a third-country (ie non-member state) national were not given a right to reside in the EU, a dependent EU citizen would be forced in practice to leave the territory of the EU. The EU citizen would then be deprived of the genuine enjoyment of the substance of the rights conferred by EU citizenship [42]-[43]. The right of residence of a *Zambrano* carer therefore derives from the rights of the dependent EU citizen. It flows from article 20 of the Treaty on the Functioning of the EU [1], which establishes EU citizenship. The CJEU has recognised the significance of EU citizenship, while confirming that it is subject to limitations [31]. The United Kingdom's withdrawal from the EU has no impact on this appeal, but the legal principles to be applied may change after 31 December 2020 [30].

The case law of the CJEU shows that a national court must consider three questions. The first question is to determine whether a third-country national has a right of residence under the *Zambrano* principle. If a right of residence is established, then the second and third questions address whether the third-country national can still be deported. Accordingly, **the first question** is whether there is a relationship of dependency between the third-country national and the EU citizen, such that the EU citizen would be forced to accompany the third-country national and leave the territory of the EU as a whole [44]. **The second question** is whether the third-country national's conduct or offence constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society of the host member state, which may justify, on the ground of protecting the requirements of public policy or public security, an order deporting them from the member state [45]. **The third question** arises if there is such a threat and requires the national court to carry out a balancing exercise. Against the nature and degree of the threat, it must balance the fundamental rights which the CJEU recognises as relevant in this context: in particular, the right to respect for private and family life in article 7 of the Charter of Fundamental Rights of the European Union. In a case involving children, account is to be taken of the child's best interests, and particular attention must be paid to their age, situation in the member state concerned, and the extent to which they are dependent on their parent. The national court must ensure that the principle of proportionality is observed [46]. The CJEU derived these limitations on the *Zambrano* principle from some of the language in articles 27 and 28 of Parliament and Council Directive 2004/38/EC (the "**Directive**") [32]-[37].

Ms Robinson argues that the CJEU's use of the phrase "exceptional circumstances" in *CS* demonstrates that the interests of a child of a *Zambrano* carer must carry great weight and can only be outweighed by particularly compelling circumstances. She relies on the Advocate General's opinion in *CS* that deportation of a third-country parent could only be justified "in exceptional circumstances" based on an "imperative reason relating to public security" (*CS*, AG Opinion para 177) [47]-[50].

The Supreme Court holds that the CJEU did not adopt the Advocate General's proposed test. In *CS*, the CJEU recognised "an exception" to the *Zambrano* principle "linked, in particular, to upholding the requirements of public policy and safeguarding public security" (*CS*, para 36). That is inconsistent with an "imperative grounds" test [51], derived from article 28 of the Directive, which the CJEU did not incorporate into the exception to the *Zambrano* principle [36]. Viewed in context, the CJEU's reference to "exceptional circumstances" in *CS* simply explains that, in the prescribed circumstances, an exception can be made to the rule that a *Zambrano* carer cannot be compelled to leave EU territory [57]. The CJEU repeated this formulation of the test in *Rendón Marín v Administración del Estado* (Case C-165/14) [2017] QB 495 [58] and in *KA v Belgische Staat* (Case C-82/16) [2018] 3 CMLR 28 [59]. Not once in any of these cases did the CJEU state that the "imperative grounds" test applies, or that there is an additional hurdle of "exceptional circumstances" before a *Zambrano* carer can be deported [60].

*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>