**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: EA/02377/2019

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 12th November 2019** | **On 15th November 2019** |

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**MIRABELLE [N]**
**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**
For the Appellant: Ms A Radford, of Counsel, instructed by Atlas Law Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Cameroon born in 1984. She arrived in the UK in 2010 as a student, in 2011 she met a German citizen with whom she had a child, HN, born in July 2012. HN, the appellant's child, is also a German citizen. In 2014 the appellant applied for a residence card on the basis that HN was self-sufficient in the UK and she was entitled to remain as her primary carer so she could exercise Treaty rights. This

application was refused in November 2014, and the appeal against that refusal was dismissed in a decision of Judge of the First-tier Tribunal A Cresswell promulgated on 28th May 2015.

2. In November 2015 the appellant was granted a residence card as a family member of an EEA national, HN's German father. In 2017 her relationship with him broke down, and her residence card was revoked.

3. In January 2019 she applied to remain based on derivative right of residence as the primary carer of an EEA national, her child HN, who is also a person in education in the UK. On 1st May 2019 that application was refused. Her appeal against the decision was dismissed by First-tier Tribunal Judge Carroll in a determination promulgated on the 18th July 2019.

4. Permission to appeal was granted by Judge of the First-tier Tribunal Chohan on 25th September 2019 on the basis that it was arguable that the First-tier judge had erred in law in failing to give adequate reasons why the appellant's child would be able to remain in the UK if she was forced to leave, and thus why the appellant did not qualify under Regulation 16 of the Immigration (EEA) Regulations 2016.

5. The matter came before me to determine whether the First-tier Tribunal had erred in law.

*Submissions – Error of Law*

6. The grounds of appeal contend, in summary as follows. The First-tier Tribunal found that the appellant was her daughter, HN's, primary carer and that she was a single mother. The First-tier Tribunal erred in law however in not finding that HN would be forced to leave the UK with the appellant as it was wrong to criticise the appellant for not bringing HN's father as a witness and complaining about a lack of evidence of his identity when the respondent had clearly accepted this in the past when granting the appellant a residence card as his family member. It is also said that the best interests of the child assessment by the First-tier Tribunal is entirely inadequate.

7. Mr Avery accepted that the best interests of HN had not been considered when finding that she would not be forced to leave the UK if the appellant was compelled to go, and also that there was a lack of consideration of the appeal in relation to the application for HN to remain based on her being in full time education in the UK. He argued that it was possible that the First-tier Tribunal had found that the oral evidence of the appellant was vague (a reason given for finding that the appellant could be cared for by her father in the UK), but accepted that this oral evidence was not set out in the decision nor any evidence or example of that vagueness provided.

8. At the end of the submissions I informed the parties that I found the First-tier Tribunal had erred in law, and it was agreed that we could proceed immediately to remake the appeal. I preserved the findings of the First-tier Tribunal that the appellant was a single mother and the primary carer for HN as there was no challenge to the validity of these findings.

*Conclusions – Error of Law*

9. To qualify for a derivative right of residence to reside in the UK under Regulation 16(2) of the Immigration (EEA) Regulations 2016 the requirements are, firstly, that the appellant is the primary carer of an EEA national, and secondly that the EEA national would be unable to remain in the UK if the appellant left for an indefinite period of time. The First-tier Tribunal addresses both of these issues at paragraph 12 of the decision. The first issue is decided in the appellant's favour: she is found to be HN's primary carer and a single parent.

10. The First-tier Tribunal finds against the appellant with regards to the second matter as it is found there is insufficient evidence that HN's father would not care for her as there is only a statement without any form of identity document attached to it from the father, and the appellant's evidence is said to be very vague and lacking in concrete detail. I find that this is insufficient reasoning and on the face of the available evidence irrational as in fact the written statement at pages 11 to 13 of the appellant's bundle is detailed, for instance giving examples of how the appellant tried to engage HN's father in her upbringing, and there is no example or account of the oral evidence supporting it being vague. Further, the First-tier Tribunal erred as there is a failure to engage in a consideration of the best interests of the child, which ought to have informed whether HN would have to leave the UK so as to be able to stay with her mother given the finding that she has been her primary carer since the breakdown of her parent's relationship in 2017 and in the context of HN being just 7 years old.

*Evidence & Submissions - Remaking*

11. The appellant's evidence, in summary, is as follows. That she came to the UK as a student, and met her partner, a German citizen, in March 2011. Their daughter HN was born in July 2012, and has German citizenship through her father. She was granted a residence card as the partner of HN's father valid from November 2015 to November 2020, but in January 2017 she separated from him and he has since married another woman, and they have a child. HN returned to Cameroon between December 2016 and August 2018 as the appellant was studying in the UK, but returned at that point as her parents were no longer willing to care for her in Cameroon. HN has been in school in the UK since November 2018. HN's father continues to work in the UK as a gas engineer.

12. HN's father does not play a significant role in her life. He is obliged by the Child Support Agency to provide for her financially, and only sees her occasionally. He last saw her in August 2019, and sees her less than once every three months. When HN saw her father last the visit was only for about 1 hour and the appellant remained there with her throughout the visit.

13. The appellant believes that it would be very traumatic for HN if she left the UK without her as she is HN's primary carer, and as a result she would be detrimentally psychologically affected if she were abandoned in the UK to live with a father and step-mother she hardly knows and who have not expressed a desire or willingness to have regular and close contact with her. As a result, the appellant argues, if she were forced to leave the UK HN would also be forced to leave too. Further it would not be in HN's best interests to return to Cameroon as there would be no free education and only inadequate healthcare, and further she, the appellant, would struggle to find work to support her and accommodation in that country, and she, the appellant, would be without her network of good friends who provide her with psychological support as a single mother in the UK. HN is doing well at school in the UK, and her education would be detrimentally impacted by transferring to Cameroon.

14. Mr Avery submitted that he relied upon the refusal letter, although he accepted that the evidence had moved on since the time when it was written. The refusal letter contests that the appellant is HN's primary carer and contends that the appellant had failed to show that HN would be unable to continue to attend school in the UK if she left for an indefinite period of time, because her father remains in the UK and pays maintenance for her, and so it was believed that she could remain in the UK with her father.

15. Ms Radford submitted that the appeal should be allowed as the appellant can show that she meets the requirements of Regulation 16(3) and Regulation 16(4) of the Immigration (EEA) Regulations 2016. It is accepted that HN's father is a German citizen who has worked in the UK, and that there is clear evidence that HN is at primary school in the UK. It is accepted that the appellant is HN's primary carer, and she argues that HN would not be able to continue in education in the UK if the appellant left the UK for an indefinite period of time.

16. The reason why HN would not be able to continue in education in the UK if the appellant left is because she could not reasonably be expected to join her father and his new wife as she has had no substantial contact with that family, and the evidence is that her father is not willing to allow her to join them. Further given her age and the close relationship with the appellant, her mother, she would have to leave the UK if the appellant were not allowed to remain as it would not be in her best interests to be separated from her mother and because she is, and has been for many years, her primary carer.

*Conclusions – Remaking*

17. I find that the appellant is a credible witness. She has provided a detailed written witness statement, and answered all questions put to her orally in a direct way. There was no submission by Mr Avery that her evidence should not be treated as reliable.

18. It is uncontested that the appellant can meet the requirements of Regulation 16(3) of EEA Regulations 2016. Her father is a Germany national who was granted a residence permit on the basis of his being a worker, a gas engineer, by the respondent, and the appellant's evidence is that he continues to work in this country, and as a result is in a position to fulfil his obligations via the Child Maintenance Service to pay her maintenance for HN. These payments are documented by a letter from the Child Maintenance Service and the appellant's bank statement showing payments from HN's father. A copy of HN's father's German passport also appears in the respondent's bundle, along with a copy of her own German passport. There is oral and documentary evidence that HN has attended [~] Primary School since November 2018.

19. In relation to Regulation 16(4) of the EEA Regulations 2016 I have preserved the findings from First-tier Tribunal that the appellant is a single mother, and HN's primary carer. The only live issue in this appeal is whether, under Regulation 16(4)(b), HN would be unable to continue with her education in the UK if the appellant were to leave the UK for an indefinite period of time.

20. I find that this would be the case as I accept the written and oral evidence of the appellant that HN's father is not willing to care for her or have more to do with her than a short contact visit every three months or so as he has moved on and has a new wife and child. This is supported by the witness statement HN's father submitted, which is signed with the same signature as that on his German passport. It is also supported by the fact that the appellant has had to use the Child Maintenance Service to obtain financial support from HN's father and the fact that there is no arrangement for regular contact with HN.

21. Further I find that it would not be in HN's best interest to be cared for in the UK solely by a father (and possibly his new wife) whom she has spent very little time with in the absence of her mother who has been her primary carer, and with whom she has her primary parental bond. I find that for the appellant to leave the UK without HN would be detrimental to HN's psychological well-being as a seven year old child, as it is in the best interests of all children to have continuity of care and care, if possible and where there are no counterindications as in this case, from both parents particularly at this young age. If the appellant were to return to Cameroon I find that HN would have at least an extended period of time where she would have no face to face contact with the appellant whilst she re-established herself in employment and found accommodation so she could afford to sponsor HN to visit her

there in that country, and that this would be upsetting and disturbing to HN, and would probably impact negatively on her education.

22. On the basis of all of the evidence I therefore conclude that HN would not be able to continue in education in the UK if the appellant were to be forced to leave the UK for an indefinite period of time, as she would have to leave with the appellant, and that therefore the requirements of Regulation 16(4) of the EEA Regulations are also all met.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal dismissing the appeal.
3. I re-make the decision in the appeal by allowing it under the Immigration (EEA) Regulations 2016.

Signed: Fiona Lindsley Date: 12th November 2019
Upper Tribunal Judge Lindsley