



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/29081/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Field House

Decision & Reasons

Promulgated

On: 10 November 2017

On: 28 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MS FANNY FLORENCE SIKE ESSOME
(ANONYMITY DIRECTIONS NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Al Rashid of Counsel
For the Respondent: Ms J Isherwood, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Cameroon born on 1 December 1978. She appeals against the decision of the respondent dated 23 April 2014 refusing to issue her with a derivative Residence Card under the 2006 EEA regulations and in a decision of 7 August 2015 to refuse her leave to remain under Article 8 of the European Convention on Human Rights.
2. First-tier Tribunal Judge CM Phillips in a decision dated 5 September 2016 dismissed the appellant's appeal under the 2006 regulations and under Article 8 of the European Convention on Human Rights.
3. Permission to appeal was granted by Upper Tribunal Judge Plimmer on 14 September 2017 stating that it is arguable that they Judge failed to

attach significant weight to the qualifying child's residence of over seven years pursuant to the guidance in **MA Pakistan v SS HD [2016] EWCA Civ 705** and also arguably to take into account the correct approach to reasonableness under section 117B (6) of the Nationality Immigration and Asylum Act 2002 when considering a child who is qualifying child as well as an EEA citizen.

4. It was accepted that the appellant does not meet the requirements of the 2006 EEA regulations because she does not meet the definition of "family member" in the Directive or in the 2006 regulations which is restricted to spouses and those who have contracted a registered partnership on the basis of the legislation of the member State. The application for a derivative residence card was considered and properly refused under the child route in section 15A (3) of the 2006 regulations and there is no permission to appeal against that decision.
5. Therefore, the only issue in the appeal was whether the appellant has a genuine and subsisting relationship with her French national son and whether it would be reasonable to expect her French national son to go to Cameroon with the appellant.
6. The undisputed evidence before the third Judge was is that the appellant has three children with three different nationalities. The first is a Cameroon and is almost 18. The second child lives in South Africa but comes to London for two months every summer in terms of the consent order for contact made in 2008 that excludes contact in Cameroon. The third was born in the United Kingdom on 14 March 2009 and has a French national father and has been issued with the French passport. He has now been resident in the United Kingdom for over seven years.
7. The Judge stated that the consent order made in 2008 for contact with the appellant's British national child who lives in South Africa with his father was not before him. The Judge found stated however that this evidence is consistent with the fact that the appellant's British national son having visited the United Kingdom regularly. At the hearing the consent contact order was produced which made clear that the court has ordered that contact for the appellant's British child cannot be in Cameroon and must always be in the United Kingdom.
8. The First-tier Tribunal Judge found that it would be reasonable for the appellant's French national qualifying son to accompany her to Cameroon because that is the country where she comes from and it is also where her daughter lives. That however is not the whole story because there are other factors which have not been taken into account by the Judge such as that the appellant's French national son is an EEA national and should not be required to leave the United Kingdom.
9. The Judge in his proportionality assessment gave great weight to the fact that the appellant's immigration history is appalling and

precarious, which no doubt it is as the appellant came to this country as a visitor and after her visa expired on 29 May 2008 she never left and remained here unlawfully. The Judge found that little weight should be placed on a person's family and private life whilst in the United Kingdom unlawfully and whilst the person's immigration status is precarious.

10. Had the Judge considered the case of **R(on the application MA (Pakistan) and Others) v Upper Tribunal (Immigration and Asylum Chamber) and Another [2016] EWCA Civ 705**, the decision might have been different. It was held in that case that when assessing the best interests of the child, it was inappropriate to treat the child as having a precarious status merely because that was true of the parents. The observation that people arriving in the UK on a temporary basis could be expected to leave could not be true of a child. They were not to be blamed for the fact that their parents had overstayed illegally, and the starting point was that their status should be legitimised unless there was good reason not to do so.
11. I am far from saying that the appellant will succeed but the appeal needs to be considered again on the correct legal principles based on the updated evidence. I direct that the appeal be remitted to the First-tier Tribunal for findings of fact to be made at a renewed hearing. I direct that the appeal be placed before any First-tier Tribunal Judge other than Judge CM Phillips.

Decision

The appeal be remitted to the First-tier Tribunal

Signed by

A Deputy Judge of the Upper Tribunal
Mrs S Chana
November 2017

This 27th day of