



FIRST-TIER TRIBUNAL

SOCIAL ENTITLEMENT CHAMBER

Held at: Edinburgh

~~on 14 March 2018~~

Before: Judge L D Boyd

Appellant: [redacted]	Tribunal Ref: SC0014710283
	NI No: SJ 86 73 71 D
Respondent: The Secretary of State for Work and Pensions	

DECISION NOTICE

1. The appeal is allowed.
2. The decision made on 10 August 2017 is set aside.
3. The appellant has a right to reside in the UK, is habitually resident in the UK and is a person who is in Great Britain and is entitled to Universal Credit in this regard from 2 August 2017. This is based on a derivative right to reside as the primary carer of children of a migrant worker who have established themselves in general education in the UK.
4. Article 10 of Regulation 492/2011 provides:

"The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.

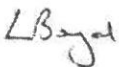
Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions."
5. Regulation 10 was interpreted by the European Court of Justice in the cases of London Borough of Harrow v Ibrahim and Secretary of State for the Home Department (Case C-310/08) (Ibrahim) and Teixeira v London Borough of Lambeth and Secretary of State for the Home Department (Case C-480/08) (Teixeira). These cases established that the right derived solely from Article 10 of Regulation 492/2011 and did not depend upon any conditions in the Directive also being satisfied. The right is not conditional on the child or his parents/carers having either sufficient resources to avoid becoming a burden on the social assistance system of the United Kingdom or having comprehensive sickness insurance. The child's right under Article 10 continues for as long as is necessary for him or her to complete his studies. One of the

child's parents must have worked in the United Kingdom as an employee; self-employment is not sufficient. The child must have been living in the United Kingdom during the exercise by his parent of rights of residence as a migrant worker, but it is not necessary for the child to have been in education at the same time as a parent was a worker. The right applies to children of former migrant workers as well as current migrant workers (Ibrahim paragraph 39 and Teixeira at paragraph 50). The Tribunal was satisfied that the father of the appellant's children was a worker and her children have rights under Article 10.

6. The primary right under Article 10 of Regulation 492/2011 is conferred on the child in education. However, the child's primary carer can derive a right to reside. The appellant is the primary carer of her children. In the case of Baumbast and R v Secretary of State for the Home Department (Case C-314/99) the European Court of Justice stated the following at paragraph 73:

"The right conferred by Article [10 of Regulation 492/2011] on the child of a migrant worker to pursue, under the best possible conditions, his education in the host Member State necessary implies that that child has the right to be accompanied by the person who is his primary carer and, accordingly, that that person is able to reside with him in that Member State during his studies. To refuse to grant permission to remain to a parent who is the primary carer of the child exercising his right to pursue his studies in the host Member State infringes that right."

7. Regulation 16 of the Immigration (European Economic Area) Regulations 2016 provides that a person who is not an exempt person is entitled to a derivative right to reside in the UK as long as the person satisfies the relevant criteria. The appellant satisfies the relevant criteria. However, "exempt person" is defined as a person "who has a right to reside in the United Kingdom as a result of any of the provisions of these Regulations". A right to reside as a jobseeker is covered by the 2016 Regulations. The appellant had a derivative right to reside as the primary carer of children of a migrant worker who have established themselves in general education in the UK prior to claiming Universal Credit. It was argued in the written response that this derivative right could not exist when she claimed Universal Credit and started to look for work because then she had a right to reside as a jobseeker, became an exempt person and could no longer have a derivative right to reside under regulation 16. A claimant does not have a right to Universal Credit if that claimant's only right to reside is as a jobseeker (regulation 9(3) of The Universal Credit Regulations 2013). The Tribunal was satisfied that in the particular circumstances of the appellant her exemption from a derivative right to reside does not accord with the requirements of Article 10. In particular, this does not "encourage all efforts to enable such children to attend these courses under the best possible conditions", as required by Article 10, but significantly jeopardises her children's ability to do so.

Signed Tribunal Judge: 	Date: 15 March 2018
Decision Notice issued to	Appellant on: Respondent on: