



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/12386/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 8 December 2014**

**Determination
Promulgated
On 9 December 2014**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

MS NATALIA FEDOROVA
Respondent

Representation:

For the Appellant: Mr I Jarvis, Home Office Presenting Officer
For the Respondent: Mr Nikolaos Gourouf, sponsor

DETERMINATION AND REASONS

1. The Appellant (the Secretary of State) appealed with permission granted on 13 October 2014 by First-tier Tribunal Judge Lambert against the determination of First-tier Tribunal Judge Cooper allowing the Respondent's appeal seeking the issue of a residence

card under regulation 7 of the Immigration (European Economic Area) Regulations 2006 (as amended) ("the EEA Regulations"). The determination was promulgated on 12 August 2014.

2. The Respondent is a national of Russia, born on 27 August 1981. It was accepted by the Secretary of State that the Respondent was married to an EEA national, Mr Nikolaos Gourof ("Mr Gourof"), a student studying in the United Kingdom, but the Secretary of State did not accept that the EHIC cards held by Mr Gourof and by the Respondent satisfied regulation 4(ii) of the Immigration (European Economic Area) Regulations 2006 (as amended), i.e., that the EHIC cards were evidence of comprehensive sickness cover in the United Kingdom. The appeal was determined on the papers as the Respondent had requested.
3. Permission for the onwards appeal was granted by Judge Lambert because she considered it arguable that the judge had erred by failing to apply Ahmad v Secretary of State [2014] EWCA Civ 988, which held that entitlement to NHS treatment is beside the point in that it does not establish the required element of self sufficiency under the Immigration (European Economic Area) Regulations 2006.
4. By notice under rule 24 of the Upper Tribunal Procedure Rules, the Respondent indicated that she opposed the application for permission to appeal.
5. Mr Jarvis for the Appellant submitted that the judge had manifestly failed to apply Ahmad (above), which had settled the comprehensive sickness point against the Respondent. The determination had to be remade, and that could only be done correctly by dismissing the appeal. As had been pointed out in the reasons for refusal letter, the Respondent had the option of obtaining the required insurance cover and submitting a fresh application under the EEA Regulations.
6. Mr Gourof, with the indulgence of the tribunal, sought to contest Ahmad. The rule 24 notice was expanded into a written submission of no less than 10 pages. The written submission was well presented and of a high standard. In summary Mr Gourof (who is not a qualified lawyer) argued that Ahmad was incorrectly decided by the Court of Appeal and was in any event distinguishable on the facts because the Respondent

was seeking a residence card, not a permanent residence card as in Ahmad. The Court of Appeal had not taken account of the European Commission's carefully reasoned position which was opposed to the United Kingdom's restrictive interpretation. Mr Gourouf had in effect severed his ties with Greece and had not himself been required to provide evidence of comprehensive sickness cover to the Secretary of State. Foreign students' health cover was provided via the tuition fees paid by them or on their behalf. The result was a double standard which was discriminatory. Preventing the Respondent from working by denying her a residence card stopped her from contributing to the United Kingdom economy and thus to the United Kingdom's welfare and sickness cover systems. Additionally Mr Gourouf submitted that the First-tier Tribunal judge had failed to consider his written submissions.

7. There was nothing which Mr Jarvis, who had provided a copy of Ahmad to the tribunal and to Mr Gourouf wished to add.
8. The tribunal indicated at this point that had Judge Cooper had his attention drawn to Ahmad (the Court of Appeal's judgment was reported on 16 July 2014, before promulgation of Judge Cooper's decision) then he would have had no option but to dismiss the appeal before him. Ahmad dealt authoritatively with the issues of principle which Judge Cooper mistakenly believed had not been decided. His failure to follow Ahmad was a material error of law. His determination must be set aside and remade.
9. The tribunal notes in passing Mr Gourouf's concern that Judge Cooper had not referred in any detail to the written submissions which were made to him. There was no cross appeal and indeed there could not have been one because Judge Cooper had allowed the appeal. The Respondent has had sufficient opportunity to raise all relevant points before the Upper Tribunal.
10. Mr Gourouf's submissions need not and indeed should not be addressed at any length here. The tribunal is satisfied that Ahmad was correctly decided after full argument. It is important that the AIRE Centre was permitted to intervene by the Court of Appeal, which was recognition of the importance of the issues. Guidance on the comprehensive sickness policy issue

has long been awaited from a suitable case and there is no doubt that the Court of Appeal intended to and did produce an authoritative decision. There is no material difference for present purposes between a residence card and a permanent residence card, so Mr Gourof's attempt to distinguish Ahmad on the facts must fail. No doubt some of his arguments may be raised in the event that the disappointed party in Ahmad seek and are granted permission to appeal to the Supreme Court or there is a reference to the CJEU, but they are incapable of persuading the tribunal that it should depart from Ahmad, even it had power to do so.

11. The tribunal accordingly remakes the original decision in the only way that it can, namely that the original Appellant was required to show that she held comprehensive sickness insurance cover while her sponsor was studying in the United Kingdom. She admitted that she held no such insurance, and so could not satisfy regulation 4(ii). Her appeal must be and is dismissed.
12. No application was made to the tribunal for an anonymity direction and the tribunal can see no need for any such order.

DECISION

There was a material error of law in part of the First-tier Tribunal's determination, which is set said. The Secretary of State's appeal is allowed. The following decision is substituted:

The original Appellant's appeal is dismissed

No anonymity direction is made

Signed

Dated

Deputy Upper Tribunal Judge Manuell

TO THE SECRETARY OF STATE **FEE AWARD**

The appeal was dismissed and there can be no fee award.

Signed

Dated

Deputy Upper Tribunal Judge Manuell