



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/08476/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd November 2015**

**Decision & Reasons Promulgated
On 9th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

And

**MRS GABRIELLA BARRETO CARVALHO AFONSO
(NO ANONYMITY DIRECTION MADE)**

Appellant

Representation:

For the Appellant: Ms S Sreeraman, Home Office Presenting Officer

For the Respondent: None. The appellant and her husband Dr Artur Zanellato attended in person

DECISION AND REASONS

The Appellant

1. The application for permission to appeal was made by the Secretary of State but for the purposes of this decision I shall refer to the parties as they were described before the First Tier Tribunal, that is Mrs Afonso as the appellant, and the Secretary of State as the respondent.
2. The appellant is a citizen of Brazil born on 5th March 1982. On 10th October 2014 she made an application for a residence card under the Immigration

(European Economic Area) Regulations 2006. She is the spouse of Dr Artur Zanellato an Italian national. (They are both medical doctors and currently live in London W12). Her application was refused by the respondent on 16th February 2015. That refusal recorded that the G-mail AMEC UK job offer contract letter for the sponsor and the bank statements, could not be considered as evidence of the EEA national's treaty rights, as they were photocopies. Further 'AMEC oil and gas limited' the stated prospective employer could not be traced on the system. Secondly and in the alternative, the appellant stated her husband entered the UK as a jobseeker but there was no evidence of comprehensive medical insurance. There was no evidence submitted to show that at the date of the respondent's decision the appellant continued to be a jobseeker.

3. First tier Tribunal Judge Cockrill determined the matter on the papers on 12th June 2015 and allowed the appeal on 19th June 2015. At paragraph 10 he recorded that

'There was documentation from MediLink Consulting concerning her sponsor/husband's employment at Queen Elizabeth Hospital in Woolwich in the capacity of a locum doctor. He was working in fact as a Senior House Officer and Specialist Registrar in the surgery department. The appellant also provided a bundle which contained a significant number of original documents, notably a document from a Public in Brazil which confirmed her position, amongst other things, as a medical practitioner and also her marriage to the sponsor.

4. At paragraph 11 the judge found

'What has been shown perfectly plainly by the appellant is that her sponsor/husband is now employed as a doctor'.

5. An application for permission to appeal was made by the respondent submitting that the judge had failed to address the issue of comprehensive medical insurance which was a relevant requirement. Permission to appeal was granted by Designated First-tier Tribunal Judge John Macdonald stating with regard to medical insurance

'... the issue was clearly raised in the refusal letter and the Judge has made no findings in respect of it'.

6. On reviewing this file and hearing Ms Sreeraman, I find that there is no arguable error of law. The appellant stated that she entered with her husband as a jobseeker who was hoping to work with a company called AMEC. He was however, the victim of a scam as there was no job offer from AMEC. The judge noted this but found clearly that the husband subsequently found alternative work as a doctor with MediLink and he was working by the date of the hearing. The judge noted the original documentation produced. The documents included payslips, bank statements and a contract letter dated 21st April 2015 from MediLink assuring work within the NHS for a 12 month period. This was before the First tier Tribunal.

7. The decision by the Secretary of State was taken on 12th February 2015 but in line with **Boodhoo and another (EEA Regs: relevant evidence)** [2013] UKUT 00346 (IAC) a tribunal has power to consider any evidence which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision. Although the appellant may have obtained a job offer which was not effective on his arrival and his appeal was then based on being a jobseeker, by the time of the appeal hearing he had clearly obtained work and the judge accepted this on the evidence before him.
8. The appellant is a family member further to Regulation 7 of the EEA Regulations, and those Regulations also set out as follows:

...

Issue of EEA family permit

12.— (1) *An entry clearance officer must issue an EEA family permit to a person who applies for one if the person is a family member of an EEA national and—*

(a) *the EEA national—*

(i) *is residing in the UK in accordance with these Regulations;...*

...

Extended right of residence

14.— (1) *A qualified person is entitled to reside in the United Kingdom for so long as he remains a qualified person.*

(2) *A family member of a qualified person residing in the United Kingdom under paragraph (1) or of an EEA national with a permanent right of residence under regulation 15 is entitled to reside in the United Kingdom for so long as he remains the family member of the qualified person or EEA national.*

...

“Qualified person”

6.— (1) *In these Regulations, “qualified person” means a person who is an EEA national and in the United Kingdom as—*

(a) *a jobseeker;*

(b) *a worker;*

(c) *a self-employed person;*

(d) *a self-sufficient person; or*

(e) *a student.*

(2) **[Subject to [regulations 7A(4) and 7B(4)...**

...

“Worker”, “self-employed person”, “self-sufficient person” and “student”

4.— (1) In these Regulations—

(a) “worker” means a worker within the meaning of [Article 45 of the treaty on the Functioning of the European Union] 1 ;

(b) “self-employed person” means a person who establishes himself in order to pursue activity as a self-employed person in accordance with [Article 49 of the treaty on the Functioning of the European Union] 1 ;

(c) “self-sufficient person” means a person who has—

(i) sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence; and

(ii) comprehensive sickness insurance cover in the United Kingdom;...

9. As Ms Sreerahan correctly conceded at the hearing the issue of comprehensive medical insurance was irrelevant bearing in mind the findings of the judge in relation to the sponsor which was that Dr Zanellato was working and exercising his treaty rights at the date of the Judge Cockrill’s decision. The appellant is a family member of a qualified person who is residing in the UK in accordance with the EEA Regulations.

10. There is no error of law in the decision of Judge Cockrill and it shall stand.

Signed

Date 3rd November 2015

Deputy Upper Tribunal Judge Rimington