



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

Appeal Number: IA/19429/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 9 March 2015

On 27 March 2015

Determination prepared 9 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR AZIZ BAHAA TALIB AL-TAIE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Presenting Officer

For the Respondent: Mr K Gayle, Counsel

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State for the Home Department and the Respondent is referred to as the Claimant.
2. The Claimant, a national of Iraq, date of birth 6 November 1982, appealed against the Secretary of State's decision dated 11 April 2014 to refuse an application for permanent residence under Regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006.

3. The appeal against that decision was allowed by First-tier Tribunal Judge N Paul, (the judge), on 2 December 2014 on the basis that the Claimant met the relevant requirements of Regulation 6 of the 2006 EEA Regulations.
4. On 24 January 2015 First-tier Tribunal Judge Foudy gave permission to appeal on the basis that it was arguable that the judge had failed to properly consider Regulation 6 requirements so as to conclude that the Claimant had remained a worker at the material times.
5. The Secretary of State's objection to the decision is somewhat tersely set out and essentially amounts to this, in the period between November 2012 and March 2013 the Claimant whilst looking for work did not "sign on" so as to be duly recorded in involuntary unemployment and had registered as a jobseeker with the relevant employment office. Further the judge did not go on to consider additional requirements of conditions A and B of Regulation 6.
6. I note that the Claimant was not claiming to be a self-employed person or a self-sufficient person or a student at the material time.
7. Mr Gayle drew attention to a letter, dated 7 January 2014, from a business known as Plumbing Town, by its director Mr H Ihsan confirming an application made by the Appellant for a post of sales assistant and offering an interview at the end of January. This Mr Gayle said was evidence that the Appellant was genuinely seeking a position and that the Appellant, with the skills he had, had a very real prospect of obtaining such employment.
8. Mr Clarke submits that quite simply without even having to determine the issues of whether the Claimant met conditions A or B the fact of the matter was that the Claimant had not been recorded in involuntary unemployment nor had the Claimant been registered as a jobseeker with the relevant employment office.
9. The judge dealt with his consideration of the matter at paragraph 8 of the decision. Mr Gayle's submissions were plainly addressing that factual position. Mr Clarke submits that absent of the due registration the Claimant could not meet the requirements to be a worker for the purposes of Regulation 6. The fact that in this period the Claimant was paying his way without recourse to jobseeker's allowance does not change his status nor was there any evidence to show he could be treated as either self-sufficient or as a self-employed person.
10. Mr Gayle relied on Regulation 6(7) of the 2006 Regulations which states:

"A person may not retain the status of a worker pursuant to paragraph (2)(b), ... for longer than six months unless he can provide compelling evidence that he is continuing to seek employment and has a genuine chance of being engaged."
11. It was submitted by Mr Gayle that there was no requirement to register bearing in mind that the Claimant's period of unemployment was some five months between November 2012 and March 2013. Therefore, even though he did not register his involuntary unemployment nor as a

jobseeker, it did not matter because he had not at that stage been unemployed for a period longer than six months.

12. I do not read Regulation 6(7) as in effect exempting a person from having to record, for a period under six months their involuntary unemployment and/or being a registered jobseeker for the purposes of Regulation 6. It may be that as a fact a self-sufficient person meeting other requirements under the Regulations, chooses not to register unemployed or claim jobseeker's allowance, even assuming they would be entitled to do so but the Claimant was not such a person. I find Regulation 6(7) is intended to put an 'end point' on status as a worker unless the worker is able to show with compelling evidence that they are still seeking employment and have a genuine prospect of being engaged.
13. I find that the judge's decision is in error of law because he did not address the effect of non-registration by the Claimant as a jobseeker. Accordingly the judge's findings in relation to Regulation 6(4) that the Claimant is a jobseeker was only half of the issue and it is the requirements to meet Regulation 6(2)(b) that are the important consideration which the judge has not addressed.
14. In the circumstances it was agreed that I could remake the Tribunal's decision on the papers before me. The fact that the Claimant was providing some evidence that he was continuing to seek employment and had a genuine chance of being engaged does not answer the point that he had failed to be duly recorded in involuntary unemployment and had registered as a jobseeker with the relevant employment office. Accordingly the Claimant could not succeed under the 2006 Regulations.
15. The Original Tribunal's decision cannot stand. The following decision is remade.
16. The appeal on immigration grounds is dismissed.
17. No anonymity order was sought or required.

Signed

Date 23 March 2015

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal has failed and accordingly no award is appropriate.

Signed

Date 23 March 2015

Deputy Upper Tribunal Judge Davey