



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

**Appeal Number: IA/36119/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 April 2015**

**Decision and Reasons Promulgated  
On 12 May 2015**

**Before**

**Upper Tribunal Judge Southern  
Upper Tribunal Judge Finch**

**Between**

**ABBAS ALTAMIMI**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Ms A. Brocklesy-Weller, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant has been granted permission to appeal against the decision of First-tier Tribunal Judge Asjad who, by a determination promulgated on 17 December 2014, dismissed his appeal against refusal to issue him with a document recognising that he had acquired a right of permanent residence on the basis that he had resided in the United Kingdom in accordance with the Immigration (EEA) Regulations 2006 ("the EEA Regs") for a continuous period of five years.

2. The main issue that arises in this appeal is a narrow one. Does the period of four years during which the appellant was a jobseeker in receipt of Job Seeker's Allowance count towards the period of five years residence in accordance with the EEA Regs that must be demonstrated to meet the requirements of Reg 15 and so establish an entitlement to recognition of a permanent right of residence?
3. The appellant, who was born in Iraq on 13 January 1971, is now a citizen of the Netherlands. He arrived in the United Kingdom on 29 April 2009 as a job seeker and has resided here since then. He was unable to secure any work and so remained a job seeker in receipt of Job Seeker's Allowance until 17 April 2013 when he registered as self-employed.
4. On 26 July 2014 he submitted an application for a document certifying a right to permanent residence. That was refused by the respondent by a decision made on 4 September 2014. The respondent gave a number of reasons for refusing the application. It was not accepted that the evidence submitted established that the appellant had been economically active in the United Kingdom for five years. In respect of the period claimed as a self employed person the respondent said:

"You have failed to submit any evidence of work carried out such as invoices, audited accounts, business bank statements clearly showing payments received or any advertisements that you may have in order to generate work. It is therefore concluded that you have failed to provide sufficient evidence."

And in respect of the four year period during which the appellant was a jobseeker:

"Regulation 6(2)(b) stipulates that a person who claims to be a qualified person in the United Kingdom as a jobseeker must:

- (i) *have registered as a jobseeker with the relevant employment office and have been employed for one year or more before becoming unemployed*
- (ii) *have been unemployed for no more than six months, or*
- (iii) *provide evidence that they are seeking employment in the UK and have a genuine chance of being engaged.*

Your application has been considered and the following has been ascertained from the evidence provided:

- You have not evidenced that you were employed in the United Kingdom for one year or more before becoming unemployed.
- You have been a jobseeker for a period in excess of six months"

The respondent concluded that as the appellant had been a job seeker for about four years he did not meet the requirements of the regulations.

5. As was the position before us, the appellant appeared in person before the First-tier Tribunal and he was not represented. The judge took as his starting point regulation 6(7) of the EEA Regs:

A person may not retain the status of a worker pursuant to paragraph (2)(b), or jobseeker pursuant to paragraph (1)(a), for longer than the relevant period unless he can provide compelling evidence that he is continuing to seek employment and has a genuine chance of being engaged.

The judge noted that the “relevant period” for these purposes was 182 days.

6. The judge then set out some clear findings of fact:

“The appellant came to the UK on the 11 April 2009 from Holland, with an intention to look for work.... Since coming to the UK, the appellant has never been employed – though he did begin self employment from April 2013, as a Chartered Accountant...

... it transpired that the appellant was already a qualified accountant when he came to the UK- but he had to re-qualify to work in the same capacity in the UK. The appellant began an on-line course with the University of London in 2010 - this was a conversion course that enabled the appellant to register with the AAC.

... From 2009 to 2012, the appellant made unsuccessful applications for the following types of roles:

- 2009 – Job application with Bloomberg
- 2011 – Arrears Portfolio Officer
- 2012 – Accounts Receivable / Credit Control
- 2012 – Credit Controller
- 2012 – Credit Controller / Customer Service
- 2012 – Financial Credit Controller
- 2012 – Credit Controller”

7. At the hearing before the First-tier Tribunal, the appellant recognised that, on its face, regulation 6(7) represented a significant obstacle to him because it plainly made reference to both workers and to jobseekers:

A person may not retain the status of a worker pursuant to paragraph (2)(b), or jobseeker pursuant to paragraph (1)(a), for longer than the relevant period unless he can provide compelling evidence that he is continuing to seek employment and has a genuine chance of being engaged.

The judge recorded the argument advanced by the appellant:

“It was the appellant’s argument that this provision only applied to individuals who were seeking to retain a period of job seeking or worker status and not to someone in his circumstances who had never worked and was not seeking to retain a previous period of unemployment.”

8. That argument, which was rejected by the judge, is not altogether easy to understand but it is unnecessary to examine it any further. That is because, as we shall see, the outcome of this appeal turned upon the question of whether the appellant had demonstrated that there had been a genuine chance of him finding work. At paragraph 16 of her determination the judge set out some further clear findings of fact that are of particular significance:

“It seemed that despite being so important to his future work success the course was done at a seemingly leisurely pace – particularly for someone who already had the qualification in another language. I found that the attempts that the appellant made to look for work supported this fact and that although he was a jobseeker – this was merely a means of providing an income whilst he kept his options open – picking and choosing jobs as he went along and rejecting other types of possible employment as unsuitable.”

The judge noted that the appellant had ceased to apply for jobs in 2012 and observed that:

“The Job Centre did not advise him to stop applying for such roles and the appellant accepted that he could have applied for other jobs but did not... By restricting the type of roles that he was looking for, the appellant had lowered the chances of being engaged and therefore in my view did not have “a genuine chance of doing so.”

Which led the judge to conclude:

“For the reasons given therefore, I find that the period of residence that the appellant needs in order to satisfy the criteria of permanent residence is not met because he has not shown compelling evidence that he was continuing to seek employment and had a genuine chance of being engaged.”

The judge found also that as a consequence the only period of job-seeking that could be taken into account was 182 days so that when added to the period of self employment, which the judge accepted had been established, the period during which the appellant had been residing in the United Kingdom in accordance with the EEA Regs was significantly shorter than the period of five years demanded by reg 15.

9. In seeking permission to appeal to the Upper Tribunal the appellant said that it should have been accepted that reg 6(7) did not apply to him because he *had* provided compelling evidence that he continued to seek employment throughout his period of unemployment and that it was not open to the judge to find otherwise. In his submissions to us he pointed out that he had done everything that the Job Centre asked of him and it had never been suggested that he had not done so. He produced his “Jobseeker’s Agreement”, a document that set out his obligations. He said the judge was wrong to hold against him that he had only applied for a narrow category of work, because the Jobseekers Agreement recorded the types of work he was to apply for, those being “Credit Controller, Finance Officer or Accountant”. The appellant then submitted that the judge was in fact wrong to determine the appeal with reference to reg 6(7) because that was not in force at the date he submitted his application.
10. The appellant faces two insurmountable obstacles in his challenge to the outcome of his appeal. First, the finding of the judge that the appellant had not established that there had been a genuine chance of him being engaged in work during his period of unemployment is unassailable and that is a complete answer to his challenge. This was a finding of fact for the judge to make and, as she heard oral evidence from the appellant, she was best placed to do so. She dealt with the appellant’s submission that there had been no complaint by the job centre about his efforts to find work and gave sustainable and legally sufficient reasons for finding that was not sufficient to establish what was required. It was plainly open to the judge to arrive at that conclusion, given that the appellant had not worked, at all, for four years; that he was at the same time “leisurely” pursuing a course with the London University; that he restricted his attempts to find work to a narrow category of roles in an area in which he was at the same time seeking to secure qualifications that were recognised in the United Kingdom and that when he did eventually enter into work it was not because he had found employment but because he had secured some work on a self employed basis.

11. The second obstacle facing the appellant is that whatever version of the regulations one has regard to there would still be a requirement that, in order that he be treated as a job seeker, there must be shown to have been a genuine chance of him being engaged. Thus, although the decision maker has regard to the regulations in force at the date of the decision, even if one accepts that he is correct to say that the judge should not have determined the appeal by reference to regulation 6(7), because that was not in force at the relevant time, that error was immaterial because the regulation previously in force was, for these purposes, in identical form, that being regulation 6(4):

For the purpose of paragraph (1)(a), "jobseeker" means a person who enters the United Kingdom in order to seek employment and can provide evidence that he is seeking employment and has a genuine chance of being engaged.

12. Once it is accepted, as it must be, that it was open to the judge to make the findings of fact that she did, the only rational outcome was that the appeal fell to be dismissed. The appellant cannot count as part of the continuous period of residence in accordance with the EEA Regs in the United Kingdom the four years of unemployment during which, for the reasons given by the judge, there was not a genuine chance of him being engaged because he was distracted by his studies and was unnecessarily restricting the scope of his efforts to secure work.
13. We recognise that the appellant expresses disagreement with those findings of fact and he has repeated before us the arguments that were rejected by the judge. But it is not open to us to disturb those findings unless they disclose legal error, which they do not.

Summary of decision:

14. The Judge of the First-tier Tribunal made no error of law and the determination shall stand.
15. The appeal to the Upper Tribunal is dismissed.

Signed



Upper Tribunal Judge Southern

Date: 30 April 2015