



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/02295/2015

THE IMMIGRATION ACTS

Heard at Field House
On 23rd November 2015

Decision & Reasons Promulgated
On 4th January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SIDNEI BECKER
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms Brocklesby-Weller, Home Office Presenting Officer
For the Respondent: None

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but nonetheless for the purposes of this determination I will refer to the appellants as they were described before the First-tier Tribunal that is the Secretary of State as the respondent and Mr Sidnei Becker as the appellant.

The Appellant

2. The appellant is a citizen of Brazil born on 23rd November 1971 and married to Maria Longhinotti Felipe who is an Italian national. On 4th October 2014 he made an application for confirmation of a right of residence as the spouse of an EEA national

exercising treaty rights in the UK. That application was refused on 29th December 2014 on the basis of Regulation 4 of the Immigration (European Economic Area) Regulations 2006.

“4. (1) In these Regulations

- (a) “worker” means a worker within the meaning of Article 39 of the Treaty establishing the European Community(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 43 of the Treaty establishing the European Community;*
- (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;*
- (d) “student” means a person who –*
 - (i) is enrolled at a private or public establishment, included on the Department for Education and Skills' Register of Education and Training Providers(2) or financed from public funds, for the principal purpose of following a course of study, including vocational training;*
 - (ii) has comprehensive sickness insurance cover in the United Kingdom; and*
 - (iii) assures the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence.*
- (2) For the purposes of paragraph (1)(c), where family members of the person concerned reside in the United Kingdom and their right to reside is dependent upon their being family members of that person –*
 - (a) the requirement for that person to have sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence shall only be satisfied if his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden;*
 - (b) the requirement for that person to have comprehensive sickness insurance cover in the United Kingdom shall only be satisfied if he and his family members have such cover.*

- (3) *For the purposes of paragraph (1)(d), where family members of the person concerned reside in the United Kingdom and their right to reside is dependent upon their being family members of that person, the requirement for that person to assure the Secretary of State that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence shall only be satisfied if he assures the Secretary of State that his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden.*
- (4) *For the purposes of paragraphs (1)(c) and (d) and paragraphs (2) and (3), the resources of the person concerned and, where applicable, any family members, are to be regarded as sufficient if they exceed the maximum level of resources which a United Kingdom national and his family members may possess if he is to become eligible for social assistance under the United Kingdom benefit system."*

3. It was stated that the appellant had not provided evidence that he and his EEA family had comprehensive sickness insurance in the United Kingdom. It was also stated that he had not provided evidence by means of a declaration or such equivalent means that his EEA family member had sufficient resources not to become a burden on the social assistance of the United Kingdom during his period of residence. He had not provided evidence that he would have sufficient funds as his EEA national family member was 5,561.21 Euros in debit. It was concluded that he had failed to provide sufficient evidence to demonstrate that the EEA family member was currently a qualified person in the United Kingdom as a student and therefore it was decided to refuse to issue confirmation that he sought with reference to Regulation 6 of the Immigration (European Economic Area) Regulations 2006.
4. The appellant appealed and submitted that his wife was currently studying for a PhD in London and that she had a student bank loan of about 10,000 Euros. Further in addition the appellant had a temporary job for helping fund the stay in the United Kingdom.
5. The appeal was heard on the papers by First-tier Tribunal Judge Anthony. He recorded at paragraph 4 of his determination that the appellant had provided evidence of a European health insurance card for the spouse as evidence of comprehensive sickness insurance. The appellant also referred to the EHIC card for himself and his son Alex to the notice of appeal.
6. The appellant also submitted that the respondent had misread the bank statement as the bank statement represents a student loan to the EEA family as of September 2014 they still had 10,042.79 Euros to spend.
7. Judge Anthony found at paragraph 8 of his determination that there was ample evidence that the appellant had sufficient resources not to be a burden on the social assistance system further the appellant had employment which provided income. The appellant's spouse satisfied the definition of student pursuant to Regulation

4(1)(d) and that she was a qualified person in accordance with Regulation 6 of the EEA Regulations. He therefore allowed the appeal.

8. An application for permission to appeal was made on the basis that the appellant was refused a residence card on the basis his sponsor was not in possession of comprehensive sickness insurance and this was a requirement of Regulation 4. The judge accepted that the EEA sponsor had possessed a European Health Insurance Card but this was not sufficient for the purposes of the EEA Regulations further to **Ahmed v Secretary of State for the Home Department [2014] EWCA Civ 988**.
9. The refusal letter gives a second reason to refuse that no declaration had been provided in line with Regulation 4(1)(d)(iii). At the hearing the judge took into account a bank statement dated 28th September 2014 showing a balance of approximately 10,000 Euros. In **Boodhoo and Another (EEA Regulations: relevant evidence) [2013] UKUT 00346 (IAC)** the Upper Tribunal found the relevant date for an in-county appeal in respect of the 2006 Regulations was the date of the hearing.
10. It was submitted that there was an error of law.
11. Submissions by the Appellant were made in opposition to the appeal to the Upper Tribunal. He pointed out that the application form itself confirmed that a European Health Insurance Card fulfilled the requirements for comprehensive sickness insurance.
12. Indeed at the hearing Ms Brocklesby-Weller conceded that the guidance for the Home Office indicated that the European Health Insurance Card was acceptable as evidence of sickness insurance for the appellant's sponsor. She made the point however that further to Regulation 4(2)(b) the European Health Insurance Card did not extend to a non-EEA national and only covered the sponsor herself. The appellant could not rely on the EHIC card as a family member and he had no evidence of comprehensive sickness insurance.
13. I can see force in this argument and note that at the hearing before me the appellant did not provide any evidence of comprehensive sickness insurance but evidence of an EHIC card personal to himself.
14. However in relation to the family funds I accept the explanation that the family had sufficient funds and also had provided a declaration. I accept that the Home Office had misread and misinterpreted the bank statement and this indeed was recorded by the judge at paragraph 8 of his determination
15. I note that the appellant stated he produced a second bank statement dated 6th January 2015. The bank statement dated 28th September 2014 showed that that the appellant had sufficiency of funds in order not to become a burden on the United Kingdom during his period of residence. The total loan was Euros 15620 and the family had spent Euros 5,561.21. . The income of the appellant can also be taken into account if he is in the UK in accordance with the EEA Regulations and this income the judge took into account at the time of his decision [8].

16. That said however the question of comprehensive sickness insurance in respect of the appellant was raised. Ms Brocklesby-Weller submitted that he could not rely on the European Health Card of his wife but it is quite clear from Regulation 4(d) that although a student, meaning the EEA national, should have comprehensive sickness insurance cover in the United Kingdom further to 4(1)(d)(ii) that an EHIC card is sufficient on a temporary basis. Ms Brocklesby-Weller acknowledged that that family were only in the United Kingdom on a temporary basis and the EHIC card was sufficient for the wife.

17. Ms Brocklesby-Weller submitted that further to paragraph 4(2)

“4. (2) For the purposes of paragraph (1)(c), where family members of the person concerned reside in the United Kingdom and their right to reside is dependent upon their being family members of that person

(a) the requirement for that person to have sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence shall only be satisfied if his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden;

(b) the requirement for that person to have comprehensive sickness insurance cover in the United Kingdom shall only be satisfied if he and his family members have such cover”

The appellant, however, did produce an EHIC card from Italy for himself and I see no reason why if his wife can rely on the EHIC card, he cannot rely on his own EHIC card for the purposes of sickness insurance. Ahmed refers to comprehensive sickness insurance rather than insurance on a temporary basis.

18. I also note from updated guidance on Comprehensive sickness insurance for family members of EEA students the following

‘Prior to amendments to the EEA Regulations which came into force on 6th April 2015, EEA nationals who were residing in the UK as students were required to hold CSI for themselves, but the Regulations did not require such persons to also hold CSI for any family members who are residing in the UK with them. This is in contrast to the requirements for self-sufficient persons, who are explicitly required to hold CSI for themselves and any family members’.

19. There was no suggestion that the wife was in the United Kingdom without health insurance in accordance with the EEA Regulations and as this decision was promulgated on 26th March 2015 I am not persuaded that it would have been caught by the amendment.

20. The application form used by the appellant for the Registration Certificate and Residence Card EEA2 stated

‘You must provide either a private comprehensive sickness insurance policy document that covers for medical treatment in the majority of circumstances, or a European Health

Insurance Card (EHIC). The EHIC is only valid when your stay in the UK is on a temporary basis'.

21. The appellant had not indicated that his stay in the UK with his student wife was anything other than temporary and Ms Brocklesby-Weller, as I noted, indicated that it was accepted that the stay was temporary and I thus find that there was no error of law and the decision should stand.

Signed

Date 21st December 2015

Deputy Upper Tribunal Judge Rimington