Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/02745/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11th April 2018	**On 23rd April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MS LDNR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Lau, Solicitor
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Colombia born on [ ] 1977. On 29th September 2015 the Appellant had applied under Regulation 15A(2) of the Immigration (EEA) Regulations 2006 for a derivative residence card on the basis that she was the parent/carer of an EEA national child who claims to be exercising treaty rights as a self-sufficient person in line with Directive 2004/38/EC as defined in Regulation 4(c) of the Immigration (EEA) Regulations 2006. The Appellant's application was refused by Notice of Refusal dated 18th February 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Judge Boyes sitting at Hatton Cross on 8th August 2017. By a decision promulgated on 23rd August 2017 the Appellant's appeal was dismissed. The First-tier Tribunal Judge granted the Appellant anonymity.

3. On 7th September 2016 Grounds of Appeal were lodged to the Upper Tribunal. On 15th February 2018 Judge of the First-tier Tribunal Farrelly granted permission to appeal. Judge Farrelly noted that after hearing evidence the judge concluded that the Appellant was her daughter's primary carer and the child would have to leave the United Kingdom if the Appellant were required to leave. The judge also accepted that there were sufficient resources not to be a burden on the state social assistance scheme. However, the judge dismissed the appeal on the sole basis that the Appellant did not hold comprehensive sickness cover. The Appellant had produced private health cover but the judge had concluded this was not comprehensive as it only covered elective surgery and related treatment.

4. It was noted that the grounds contended that the question of comprehensive sickness insurance related to the EEA national rather than the Appellant and that it was not argued that the insurance cover taken out whilst arguably not comprehensive in relation to the Appellant, who is diabetic, was adequate for her child, who was not. Judge Farrelly found that the application raised an arguable point of law.

5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. Prior to the hearing I was handed a detailed letter from Mr Farhat, Legal Director and Head of Appeals in Public Law at the Appellant's instructed solicitors, Gulbenkian Andonian. That letter made two points. Firstly it accepted that his firm of solicitors remained on the court record and that no application had been made to remove themselves from the court record. It further set out that they had been without instruction from the Appellant since December 2017. Miss R does not appear. I am satisfied, having heard the Appellant's legal representative, that attempts have been made to notify her both by email and letter to her last known address of this hearing. I am satisfied that she has been properly served.

6. Secondly Mr Farhat points out personal circumstances, which means that he is not in a position to attend court. I am appreciative of the time he has taken to write such letter and that his assistant, Mr Lau, attends on his behalf. I further acknowledge the position in which Mr Lau finds himself. Firstly he is not familiar with this matter. Secondly he is not a litigator and thirdly his instruction to attend in this matter has come at the shortest of notice. What, however, he does is to produce a skeleton argument on behalf of the Appellant running to some nine pages which I have considered in its entirety. That skeleton is produced by Mr Farhat.

7. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier

Tribunal Judge. As mentioned, Mr Lau appears on behalf of the Appellant. The Secretary of State appears by her Home Office Presenting Officer, Mr Clarke.

Submissions/Discussion

8. This concentrates largely on the requirement of an EEA national to be self-sufficient and it forms the basis of the skeleton argument provided by Mr Farhat and of the submissions made by Mr Clarke. Mr Clarke, and also by way of reference to the skeleton, takes me through the relevant law. The starting point is to be found in Section 15A of the Immigration (EEA) Regulations 2006. That states:

> *"(1) A person who is not an exempt person and who satisfies the criteria in paragraph (2), (3), (4), (4A) or (5) of this Regulation is entitled to a derivative right to reside in the United Kingdom for as long as the person satisfies the relevant criteria.*
>
> *(2) A person satisfies the criteria in this paragraph if -*
>
> *(a) A person is the primary carer of an EEA national; and*
>
> *(b) the relevant EEA national -*
>
> *(i) is under the age of 18;*
>
> *(ii) is residing in the United Kingdom as a self-sufficient person; and*
>
> *(iii) would be unable to remain in the United Kingdom if P were required to leave."*

9. That sets out the basic criteria for a derivative right and from there it is appropriate to turn to paragraph 4 of the 2006 Regulations, which sets out at 4(1)(c) to define the term "self-sufficient person". The Regulation therein states:

> *"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."*

10. That paragraph thereafter leads me to consider whether or not there is appropriate comprehensive sickness insurance and the relevant Section therein of the 2006 Regulations is paragraph 4(2)(b), which states:

> *"For the purposes of paragraph (1)(c) or (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:-*
>
> *(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 member have such cover."*

11. It is Mr Clarke's submission that comprehensive should be given its natural meaning and that consequently when given due consideration paragraph 4(2)(b) shows that the Appellant needs sickness insurance and that this has not been met. He further briefly addresses the issue of what constitutes exclusions on a policy and pre-existing conditions, referring me to the decision of the Court of Appeal in *Ahmad [2014] EWCA Civ 988* and points out that from that decision you cannot construe a policy to show no burden on the NHS and therefore he submits that in this instant case the policy is not comprehensive within the meaning of the Court of Appeal decision in *Ahmad*.

The Law

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

14. I start by reminding myself that I am not retrying this issue. I am merely considering whether the First-tier Tribunal Judge has materially erred in law in his decision. His conclusions with regard to comprehensive sickness cover start at paragraph 20. He has begun by noting the decision in *Ahmad*, where it was held that the requirement that comprehensive sickness cover be held had to be strictly complied with and could not be satisfied by the EEA citizen's entitlement to free healthcare from the NHS. Thereafter he has gone on to consider the arrangements made for private health insurance and to give due consideration to the exclusions on the policy. Thereafter it was submitted by the Secretary of State's representative that in the light of the policy exclusions the insurance that

had been obtained was not comprehensive. Judge Boyes noted that there is no legislative definition of what will or will not amount to comprehensive insurance and that it is therefore a matter of fact. Thereinafter he set out details of the Appellant's medical history and concluded that the policy's cover was actually very limited.

15. Based on that I am satisfied that this is a judge who has given very thorough analysis to the position with regard to the cover but more importantly, following the paper trail that is explained in some detail to me by Mr Clarke, I agree with his submission that it has been evidenced that the Appellant needs to show the sickness insurance cover and that this has not been shown to the satisfaction of the First-tier Tribunal Judge and consequently they do not meet the requirements of the EEA Regulations. Therefore, when I look at this matter in the round and whilst having given consideration to the submissions made in the skeleton argument and to the authorities referred to therein, I am satisfied that this is a judge who has not materially erred in law and has made findings to which he was entitled to and for which he has given full and proper reasons. In such circumstances the decision of the First-tier Tribunal discloses no material error of law and the Appellant's appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal discloses no material error of law and the Appellant's appeal under the EEA Regulations is dismissed.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and the anonymity direction remains in place.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris