



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/25942/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 13 July 2015

Decision and reasons Promulgated  
On 31 July 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

**Shafiat Sobhan**

[No anonymity direction made]

Appellant

and

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the appellant: Ms S Bassiri-Dezfouli

For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

**ERROR OF LAW DECISION AND REASONS**

1. The appellant, Shafiat Sobhan, date of birth 7.4.77, is a citizen of Bangladesh.
2. This is his appeal against the decision of First-tier Tribunal Judge Scott-Baker promulgated 14.8.14, dismissing his appeal against the decision of the Secretary of State, dated 16.7.13, to refuse his application made on 26.7.12 for permanent residence as the family member of an EEA national, Evelina Iordanova Ivanova, a Bulgarian national, pursuant to the Immigration (EEA) Regulations 2006. The Judge heard the appeal on 13.5.14.

3. First-tier Tribunal Judge Astle refused permission to appeal on 24.9.14. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Chalkley granted permission, stating only that he believed that the grounds raised properly arguable issues which merit further consideration.
4. Thus the matter came before me on 13.7.15 as an appeal in the Upper Tribunal.

### **Error of Law**

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Scott-Baker should be set aside.
6. The issue in the appeal relates to the requirement for comprehensive sickness insurance cover (CSIC). On 18.9.04 the sponsoring spouse was issued with indefinite leave to remain (ILR) under the long-residence provisions of the Immigration Rules. She was naturalised as a British citizen on 15.12.06.
7. The refusal decision explained that for the appellant to be able to benefit from regulation 15(1)(b) not only does he have to have resided in the UK with the EEA national for 5 years, but she has to have exercised Treaty rights in the UK for a continuous period of 5 years. That she obtained ILR and later British citizenship does not automatically qualify the sponsor for the appellant's EEA permanent residence application. There was no sufficient evidence that the sponsor had exercised Treaty rights in the UK for 5 years and thus the appellant's application was refused.
8. Judge Scott-Baker noted at §36 of her decision that it was common ground that once the sponsor acquired an effective permanent right of residence she was no longer required to demonstrate that she was exercising Treaty rights. However, she failed to establish that she had acquired a permanent right of residence by failing to demonstrate that she was a self-sufficient person and that she held the requisite CSIC.
9. The appellant contended that both he and the sponsor acquired a right of permanent residence in the UK on Bulgaria's accession to the EU on 1.1.07, or in the alternative no later than 1.1.12. The judge concluded that the five-year period could only run from when the appellant married the sponsor in 2001 and thus there had to be a five-year period elapsing thereafter, during which time there had to be CISC. The judge found there was evidence of health insurance for the sponsor between 1.1.00 and 31.12.04, a five-year period, but the sponsor failed to establish that she had been self-sufficient within the meaning of the EEA Regulations, or that she held any CISC after 31.12.04, and that at no time did the appellant have CISC. For the appellant to rely on the sponsor's EEA rights she needs to demonstrate compliance with the Regulations, including CISC. The appeal was thus dismissed.
10. In refusing permission to appeal, Judge Astle noted that whether or not the sponsor was self-sufficient at the date of introduction of the concept of permanent residence

on 28.4.06, she did not have CSIC and thus she did not qualify for permanent residence. Further, the appellant also had to have CSIC, which he did not.

11. In his submissions Mr Tufan made a more fundamental point than the dispute as to periods of self-sufficiency or CISC. The appellant was not entitled to the EEA residence card issued in 2007, as at that time the sponsor was a British citizen. As held in EN & AN (EEA reg 12: British citizens) Kenya [2008] UKAIT 00028, "A British citizen, not being subject to any of the restrictions on residence in the UK implicit and explicit in the EEA regulations, cannot be regarded as "residing in the UK in accordance with these Regulations," for the purpose of reg 12, even if he has citizenship of another Member State as well." Mr Tufan submitted that by analogy this principle must apply to regulation 15, which uses the almost identical phrase, "EEA national who has resided in the United Kingdom in accordance with these Regulations." Deputy President Ockelton pointed out in EN that there is nothing in the definition of "EEA national" that prevents a person being an EEA national if he has dual nationality, one of the nationalities being nationality of the UK. However, as a British citizen has no restrictions on the purposes for which he may be in the UK or the length of time for which he may be here, he cannot properly be described as a person residing in the UK under the Regulations.
12. It follows that in 2007 the appellant was not the family member of an EEA national residing in the UK in accordance with the Regulations. He was the spouse of British citizen who first obtained ILR on the basis of long-residence and then British citizenship outside the provisions of the Regulations. It also follows that the appellant cannot now claim permanent residence on the basis of the sponsor's purported residence in the UK in accordance with the Regulations.
13. The appellant points to the Immigration (EEA) (Amendment) Regulations 2012, Schedule 1(d) of which changed the definition of EEA national to mean one who is not also a UK national. However, the transitional provisions of Schedule 3, paragraph 2, provides that where the right of a family member (F) to be admitted to or reside in the UK pursuant to the 2006 Regulations depends on the fact that a person (P) is an EEA national, P will continue to be regarded as an EEA national for the purpose of the Regulations where the criteria set out thereunder are met, for as long as they remain satisfied in accordance with paragraph 2(5) of Schedule 3. Those criteria include where F was on 16.7.12 a person with a right to reside in the UK under the 2006 Regulations and held a valid EEA Residence Card. Whilst the appellant has held an EEA Residence Card from 2007 and valid until 26.7.12, Mr Tufan's point was that he was not in fact entitled to that Residence Card and that it should not have been issued. Therefore the transitional provisions do not assist the appellant.
14. In any event, in the alternative, even if the Regulations apply, the appellant did not himself have CSIC and therefore cannot claim to be a person who is himself not an EEA national but who has resided in the UK with the EEA national in accordance with these regulations for a continuous period of 5 years. Regulation 4(2)(b) provides that the requirement of a self-sufficient person as defined in regulation 4(1)(c) to have

CSIC is not satisfied unless he and his family members also have such cover. The appellant never had any CSIC at any time and thus the sponsor never met the CSIC requirement and therefore she never was a self-sufficient person within the meaning of the Regulations. As the Court of Appeal held in Kamau (Kenya) [2010] EWCA Civ 1302, the requirement of CSIC is not a mere formality, "it is an integral part of the concept of self-sufficiency under the Regulations. The Regulations give effect to the United Kingdom's obligations under EU law to facilitate the free movement, not merely of workers and those who are self-employed, but also those who are self-sufficient together in each case with their family members." It was held in that case that reliance on the UK's NHS is "no more self-sufficient than a person whose resources are inadequate so that he may become a burden on the United Kingdom's social assistance system." The Court of Appeal endorsed this view in Ahmad v SSHD [2014] EWCA Civ 988, where Lady Justice Arden found nothing to make the requirement for CSIC disproportionate and found that the argument that entitlement to free NHS care could satisfy the requirement for CSIC is fundamentally inconsistent with the purpose of the requirement of the Directive.

15. It follows that the appeal could not have succeeded, whether or not the First-tier Tribunal Judge was correct in concluding that the sponsor failed to demonstrate that she was self-sufficient. In the circumstances, there is no material error of law in the decision of the First-tier Tribunal.

**Conclusion & Decision:**

16. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**