



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/36957/2014

THE IMMIGRATION ACTS

Heard at Field House
On 11 May 2015

Decision and Reasons Promulgated
On 19 May 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department
[No anonymity direction made]

Appellant

and

Vincent Chike F-Ekemezie

Claimant

Representation:

For the claimant: Not represented

For the appellant: Ms Emma Sage, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State against the determination of First-tier Tribunal Judge Boyd promulgated 8.1.15, allowing the claimant's appeal against the decision of the Secretary of State, dated 16.9.14, to refuse his application made on 17.7.14 for an EEA Residence Card as confirmation of a right to reside in the UK, pursuant to the Immigration (EEA) Regulations 2006. The Judge heard the appeal on 18.12.14.
2. First-tier Tribunal Judge Brunnen granted permission to appeal on 26.2.15.

3. Thus the matter came before me on 11.5.15 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons set out below I find that there was such error of law in the making of the decision of the First-tier Tribunal that the determination of Judge Boyd should be set aside and remade.
5. Judge Boyd, deciding the appeal on the papers, was in error at §12 to consider that evidence postdating the date of decision was not admissible. The additional evidence adduced by the claimant, payslips suggesting that his EEA sponsor had new employment were admissible. The judge had to decide at the date of the hearing whether the claimant met the requirements of the Regulations.
6. After sequentially eliminating other ways in which the EEA sponsor may have met the requirements of a qualified person as defined in regulation 6, Judge Boyd concluded at §17, for the reasons set out at §16, that the sponsor met the requirements of regulation 6(1)(e) as a student. However, the judge neglected to consider the definition of student in regulation 4(1)(d), which requires that the student has comprehensive sickness insurance cover in the UK, and 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 UK during his period of residence.
7. At the time of the hearing before Judge Boyd, the claimant did not have comprehensive sickness insurance. Neither had he made the required declaration. At §14 of the decision the judge found that there was no comprehensive sickness insurance cover. Further, at the time of the hearing there appears, from the information set out at §12 of the decision, to have been insufficient information to demonstrate that the claimant and sponsor's income at least matched the then current income support level. It follows that the application could never have succeeded. Regardless of the declaration and issues as to income, the complete absence of health insurance was fatal to the application. The appeal was doomed from the outset and it should have been dismissed in the First-tier Tribunal.
8. Having set the decision of the First-tier Tribunal aside, I proceeded immediately to remake the decision in the appeal. I heard evidence and submissions from both the claimant and his EEA sponsor, as well as the submission of Ms Sage. The claimant first relied on a EHIC Card, but Ahmad v SSHD [2014] EWCA Civ 988 makes it clear that an entitlement to free NHS treatment does not satisfy the requirement.
9. The claimant then produced a new insurance policy: WPA Flexible Health Premier, cover commencing just a few days ago on 1.5.15. However, on examination it is clear that this is not comprehensive sickness insurance in that it contained an excess clause and meets only 75% of any claim, described as "shared responsibility." Neither has the claimant made any declaration. He relied on the same pay slips put before the First-tier Tribunal as post-decision evidence, but there has been no appeal against the

First-tier Tribunal finding that they were entirely inadequate to demonstrate that the EEA sponsor is a worker.

10. It follows that the appeal must be dismissed. The sponsor does not meet the requirements of the regulations as a worker or self-sufficient person, for the reasons set out in the First-tier Tribunal decision. Neither can she meet the requirements for a student, for the reasons set out above. It may be that with a fresh application the claimant and the sponsor can marshal sufficiently cogent evidence to demonstrate that it can be demonstrated that she is a qualified person under the regulations. As matters stand at the present time, the evidence is woefully inadequate.
11. No Article 8 private and family life issue was raised in submissions before me. In any event, there is no removal decision. The claimant was advised in the refusal decision that if he wanted to claim a right to reside on that basis he must make a separate chargeable application. As there is no removal decision, a discussion as to whether such removal would be disproportionate is premature. As and when a removal decision is considered, the claimant will have the opportunity to make representations.

Conclusions:

12. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by dismissing it.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

23 July 2015

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.

I make no fee award.

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

A handwritten signature in black ink, appearing to read "James L. Pickup". The signature is written in a cursive style with a large initial "J" and "L".

Signed

Deputy Upper Tribunal Judge Pickup

Dated

23 July 2015