



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

Appeal Number: IA/33187/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 11<sup>th</sup> April 2016**

**Decision & Reasons  
Promulgated  
On 18<sup>th</sup> May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MS IMMACULATE MBOTIJI LONGCHI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Ogunnubi, Counsel, instructed by TM Legal Services  
For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant applies, with permission from First-tier Tribunal Judge McDade, against a decision of First-tier Tribunal Judge Eldridge, who dismissed the appellant's appeal against the refusal of the decision of the Secretary of State to refuse her a permanent residence card under the EEA Regulations.

2. The appellant is a citizen of Cameroon who was born on 10<sup>th</sup> October 1977 and she was issued on 13<sup>th</sup> December 2003 with a residence card valid for five years. On 9<sup>th</sup> February 2010 when she applied for a permanent residence card her application was refused. She made a similar application on 11<sup>th</sup> October 2010 but again her application was refused and she appealed this decision but her appeal was dismissed. She was appeal rights exhausted.
3. On 2<sup>nd</sup> April 2012 she again applied for a permanent residence card but this was again refused on 13<sup>th</sup> September 2012. Although that decision was certified under Regulation 26(5) of the Immigration (European Economic Area) Regulations 2006 she was afforded a right of appeal and the matter was heard by First-tier Tribunal Judge Eldridge. As he identified, the only issue concerned whether, during the part of the necessary five year period, the EEA national on whom the appellant relied for her rights of residence, had comprehensive sickness insurance cover (CISC) when he was a student.
4. In her application she stated that she lived with her former husband in this country from 2003 until 2010 when they were divorced. It was common ground he was initially a qualified person until 2006 but in that year he became a student and remained so in 2010. They divorced in 2010. As Judge Eldridge found, it was a requirement for a person who was an EEA national and who was a student to meet the requirements of Regulation 4 and to have comprehensive sickness cover. This was confirmed in **Ahmad v Secretary of State for the Home Department [2014] EWCA Civ 988**.
5. The grounds for permission to appeal asserted that the First-tier Tribunal Judge had made an error in failing to consider the appellant's private life in the United Kingdom and failed to consider her rights under Article 8 of the ECHR. This was notwithstanding that at paragraph 5 it is recorded in the decision that:

*"No other ground of appeal appears to have been identified and, pertinently, this was the only ground relied upon by Ms Asanovic during the appeal before me. She specifically informed me at the beginning of this hearing that the appellant was **not now seeking to rely upon any rights under the European Convention on Human Rights** ('the European Convention'). I have determined the appeal on that basis."*
6. Clearly the judge dealt with the one issue in respect of the comprehensive insurance and the challenge in relation to the decision contradicting the Directive 2004/38/EC Article 7.2 and indeed no permission was granted in respect of that.
7. As Mr Ogunnubi confirmed, no Section 120 notice was served in the reasons for refusal and therefore there is no question of removal of the

appellant. The Court of Appeal explained the point succinctly in **TY v SSHD [2015] EWCA Civ 1233**

*27. 'Since there is no section 120 one stop notice, the appellant is confined to the subject matter of the original decision. That is a decision that the appellant does not fulfil the requirements of the EEA Regulations'.*

8. The appellant's appeal in relation to the EEA Regulations was decided and the appellant is unable to raise Article 8 grounds. As Mr Melvin pointed out, should she wish to make an application for leave to remain in relation to her private or family life under the Immigration Rules she needs to make an application with the appropriate fee.
9. There is no material error of law and the decision of First-tier Tribunal Judge Eldridge shall stand.

Signed

Date 12<sup>th</sup> May 2016

Deputy Upper Tribunal Judge Rimington