



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/10136/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 21 September 2018**

**Decision & Reasons
Promulgated
On 11 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MOHAMMAD KARIM SAHAK
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms L Kenny, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. Although it was the Respondent who brought the appeal to the Upper Tribunal, I shall refer to the parties as they were before the First-tier Tribunal.
2. This is the remaking of a decision in the Appellant's appeal following my error of law decision, promulgated on 24 May 2018 (annexed to this decision, below).
3. After the error of law hearing, an oral case management hearing was conducted on 5 July 2018. Issues were discussed and directions issued. The most important question in the Appellant's case was whether he had

acquired a permanent right of residence in the United Kingdom under the relevant Immigration (European Economic Area) Regulations 2006 either because of a work history between 2006 and 2011 or alternatively on the basis that he had been forced to permanently cease work in 2011 due to ill-health. Mr Sahak did his very best, together with the assistance of his family members, to obtain further documentary evidence. Some further evidence was sent in prior to the case management hearing and some additional evidence has been produced at the resumed hearing. All of this evidence has been admitted under Rule 15(2A) of the Upper Tribunal Procedure Rules.

Re-making the decision

4. Whilst I do recognise that the Appellant has attempted to find further evidence to support his case, I am not satisfied that he has in fact acquired a permanent right of residence in the United Kingdom. My reasons for this are as follows.
5. In respect of whether he resided in the United Kingdom for a continuous period of five years as a worker between his arrival in the United Kingdom and 2011, the precise dates relating to this period are important. I accept that the Appellant arrived here in December 2006. On his case he had to stop work because of ill-health in May 2011. That period is therefore less than five years in total. On that basis a permanent right of residence could not have been acquired. Further, there is no documentary evidence before me in relation to the claimed employment during the period in any event. I appreciate that HMRC may not have been able to provide information themselves due to the passage of time, but there is simply no paperwork of any sort in relation to the claimed employment. On balance I am not satisfied that there was continuous employment during this period.
6. In respect of the permanent cessation of work in 2011, the medical evidence before me is unclear and in my view insufficient to support the claim that work was no longer possible, on a permanent basis, due to ill-health. I have looked carefully at the GP letter and the limited GP record printouts that have been provided by the Appellant. There is mention of "vertigo" and "dizziness" but it is by no means clear either what the cause of this was or, more importantly for the purposes of this appeal, whether the consequence of any conditions was such that work was no longer possible on a permanent basis. In respect of the GP records, there is mention in 2011 of what is described as "primary prevention of cardiovascular disease" but no further detail is provided. I have no letters from specialists or such like. I appreciate that the Appellant has sought to try and obtain further information from the Department of Work and Pensions and it may be that they no longer hold relevant information on his circumstances in 2011. However, on the evidence that I do have I am not satisfied that health conditions were such at that point that any employment was simply not possible on medical grounds. In light of the above I conclude that the Appellant has not been able to satisfy the

requirement of Regulation 15(1)(a) or 15(1)(c) of the 2006 Regulations. On this basis his appeal must fail.

7. I do wish to add a couple of further points, however. In initially refusing the Appellant's application, the Respondent had doubted the claimed relationships between the Appellant and certain family members residing in the United Kingdom, in particular his wife and four children. Over the course of proceedings through the First-tier Tribunal and in the Upper Tribunal it has become very clear that there are genuine familial relationships here. Aside from documentary evidence supporting the claim, family members have attended the three hearings before me and Ms Kenny has very fairly taken no issue with the claimed relationships at the remaking hearing. I find as a fact that the Appellant is the husband of his wife and the father of his four children, all of whom reside in this country. Furthermore, I am willing to accept that the family unit all reside together. On the basis of the registration document provided by the Appellant at today's hearing I also find that his eldest son, Pajwak Sahak, was issued with a document confirming a permanent right of residence on 31 July 2018.
8. Whilst it is of course a matter for the Appellant and his family it may be that they would consider submitting a new application to the Respondent on the basis of the Appellant's relationship with other members of his family. That is a matter that the family needs to think about and may wish to seek legal advice upon.

Notice of Decision

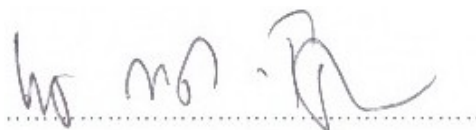
The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I re-make the decision by dismissing the Appellant's appeal.

No anonymity direction is made.

Signed



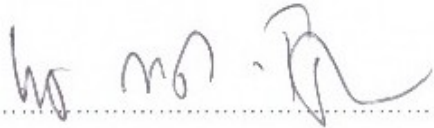
Date: 8 October 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.



Signed

Date: 8 October 2018

Deputy Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/10136/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 15 May 2018**

Decision & Reasons Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MOHAMMAD KARIM SAHAK
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: No representation

DECISION AND REASONS

1. I shall refer to the parties as they were before the First-tier Tribunal. Therefore the Secretary of State is once more the Respondent and Mr Sahak is the Appellant. This is a challenge by the Respondent against the decision of First-tier Tribunal Judge Dineen (the judge), promulgated on 19 February 2018, in which he allowed the Appellant's appeal against the Respondent's decision of 8 August 2016, which in turn was a refusal to issue a registration certificate as confirmation of a right to reside in the

United Kingdom under the Immigration (European Economic Area) Regulations 2006.

2. The Appellant is a Dutch national. It appears as though he arrived in this country in 2006. By an application made on 11 May 2016 he sought a registration certificate. The application was put forward on the basis that he had retained his status as a worker in this country as a result of having to cease employment due to illness. In October 2015 he became entitled to a state pension once he had reached the age of sixty-five. The Appellant had also stated that he was married and had three children, two of whom were over the age of twenty-one. In refusing the application the Respondent stated that the Appellant had failed to provide evidence of past employment and had failed to provide evidence that he was unable to work due to illness. The Respondent also rejected the claimed familial relationships asserted by the Appellant in his application.

The judge's decision

3. The Appellant was unrepresented at the hearing. It is unclear what was actually said before the judge as the decision is particularly brief (as is the Record of Proceedings). It seems as though the Appellant had at some point asserted that he was actually a self-sufficient person under the Regulations and therefore qualified for a registration certificate on that basis. The judge records that a schedule of income and expenses had been provided at the hearing showing that the joint family income was in excess of the expenses (that schedule is on file as a handwritten document). The judge then concludes that the Appellant was indeed a self-sufficient person "operating within that family household" and was therefore a qualified person under Regulation 6 of the Regulations. The appeal was allowed on that basis.

The grounds of appeal and grant of permission

4. The grounds contend that the judge had failed to address the question of whether the Appellant had had comprehensive sickness insurance, as required by Regulation 4 of the Regulations. It is also said that the judge failed to address the issue of whether the Appellant was in fact dependent upon other members of his family unit (assuming that there was a family unit).
5. Permission to appeal was granted by First-tier Tribunal Judge Boyes on 22 March 2018.

The hearing before me

6. The Appellant attended the hearing along with his family members (I appreciate that the Respondent does not accept the relationships, but for ease of reference I shall refer to them in this way for present purposes). He remains unrepresented. With the assistance of a Pashtu interpreter I provided a full introduction as to the nature of the proceedings and the relevant issues to be discussed.

7. Mr Clarke relied on the grounds of appeal and submitted that there was simply no evidence of any sickness insurance. He also submitted that there were no findings on the familial relationships. I then asked the Appellant a number of questions in order to try and clarify certain issues. He quite candidly accepted that he had never had sickness insurance in the United Kingdom. He confirmed that he had come to this country in 2006. Initially he told me that he had stopped work in October 2015 after which he received a state pension. He then corrected this and told me that he had in fact finished work in 2011 when illness (in particular vertigo) prevented him from continuing in employment. He told me that prior to this he had been an employee and paid all of his taxes. He said that he had very little evidence of his work. When asked whether he had relevant medical evidence relating to the vertigo he showed me two pages of GP patient record printouts.

Decision on error of law

8. I conclude that the judge materially erred in law. When making his decision the judge approached the Appellant's circumstances on a different basis from that put forward in the application and considered by the Respondent at first instance. A judge is in principle permitted to consider alternative scenarios provided of course that a fair opportunity is given to both parties to address the issues.
9. The problem in this case is that once the judge decided to look at the issue of self-sufficiency, all of the relevant requirements under Regulation 4 had to be complied with before the Appellant could be considered a qualified person under Regulation 6. One of these requirements is that the Appellant had held comprehensive sickness insurance. The judge did not deal with this issue and it is now clear that the Appellant has never had such insurance. On this basis the Appellant could not have been a self-sufficient person and the judge erred in concluding otherwise.
10. In light of this I conclude that I should set aside the judge's decision.

Disposal

11. I have considered whether the case should be remitted to the First-tier Tribunal and have concluded that there is no need for this. I appreciate that no factual findings have been made as regards the claimed familial relationships, but in my view I can quite easily undertake this exercise for myself. In any event, in my view this issue is not at the core of the Appellant's appeal. Rather, there is a real possibility that the Appellant has acquired a permanent right of residence in the United Kingdom, an issue so far overlooked by everyone concerned. On the face of it the Appellant arrived in this country in 2006. He claims to have been employed up until 2011 at which point he ceased his activity due to illness (vertigo). If this is the case he might either have acquired a permanent right of residence as a "worker" for five continuous years, or under Regulation 5(3) of the Regulations and with reference to Regulation 15(1) (c). Before a proper conclusion can be reached on this core issue further evidence is required. Ideally all of this would have been anticipated and

relevant evidence submitted for this hearing. However, the Appellant is not only unrepresented but the issue of permanent residence has not been flagged up previously.

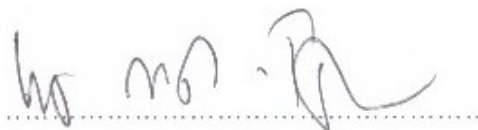
12. In light of the above I have decided to retain this appeal in the Upper Tribunal and adjourn the remaking decision in order that the Appellant has the opportunity to obtain relevant evidence. As I made clear to him at the hearing itself, this evidence will consist of the following:
 - (a) a letter from HMRC relating to his employment history in the United Kingdom from 2006 to 2011;
 - (b) any employment evidence that he may already have in his possession;
 - (c) GP records including, importantly, hospital letters, relating to the Appellant's medical conditions (in particular vertigo) from 2011 or thereafter.
13. This evidence should be sought as quickly as possible. In my view it would be right to hold a Case Management Hearing in order that the evidential position could be reviewed in due course. Depending on what emerges, it may be that the Respondent takes a view of the Appellant's case or that a further oral hearing is required.
14. I will issue more detailed directions as a separate document.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I adjourn this appeal for a Case Management Hearing before me on a date to be confirmed.

No anonymity direction is made.



Signed

Date: 22 May 2018

Deputy Upper Tribunal Judge Norton-Taylor