



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

Appeal Number: EA/01418/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 8th April 2019**

**Decision & Reasons Promulgated
On 9th April 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

ALMAS [R]

Respondent

Representation:

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer
For the Respondent: In person, through an interpreter.

DETERMINATION AND REASONS

1. By a decision promulgated on 17th August 2018, First-tier Tribunal judge Meyler allowed Ms [R]'s appeal against a decision by the SSHD to refuse her a derivative residence card. It was not in dispute that Ms [R], a Pakistani national, was the primary carer of her three Italian citizen children who were exercising Treaty Rights in the UK (at school). In support of her application for a derivative residence card, Ms [R] had relied upon EHIC cards for each child. She did not have such a card for herself. The First-tier Tribunal judge found that the possession of such a card was

adequate evidence of comprehensive health insurance, as required under the Immigration (European Economic Area) Regulations 2016.

2. The SSHD sought and was granted permission to appeal on the grounds that an EHIC card was only applicable where the EEA national was in the UK for temporary purposes; that was not the case for these three children who were attending school and not here for temporary purposes.
3. The First-tier Tribunal judge erred in law in her finding that the EHIC card was sufficient for health insurance purposes in this case; I set aside the decision to be remade.
4. Ms [R] produced comprehensive health insurance for her, and the children taken out with Aviva and effective from November 2018 together with her bank statement showing payment of the direct debits required under the plan. Mr Bates did not object to the submission of these documents despite an application under Rule 15 not being made. Mr Bates accepted the plans were operative. His only objection was whether the plans were sufficient given they excluded treatment for kidney dialysis.
5. Ms [R] gave oral evidence that neither she nor her children had any significant health problems; they had not sought any treatment for anything other than minor childhood illnesses. I accept her evidence and find that there are no significant ailments such as would not be covered by the health insurance.
6. Mr Bates made no direct submission with regard to the kidney dialysis. He acknowledged that the instruction to caseworkers was rather vague and that *fully* comprehensive health insurance was not required; he was content to leave to me the decision whether the health insurance taken out by Ms [R] was adequate.
7. The guidance to Home Office caseworkers and the application form require health insurance to cover the “majority of risks while they are in the UK”. I was not aware of any statistical records that indicate that the risk of this appellant and her children being in need of kidney dialysis was such that the health insurance plan she had taken out was inadequate. I am satisfied that the family are in good health and there are no indications that one or more of them is going to require kidney dialysis in the near or distant future.
8. In the circumstances I am satisfied that the health insurance taken out by Ms [R] is adequate to fulfil the criteria that she and the children are self-sufficient.
9. In the light of that finding and that she is the primary (in fact sole) carer of the children, her appeal against the decision by the SSHD to refuse her a derivative residence card is allowed.

Conclusions:

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; I re-make the decision in the appeal against the refusal of the SSHD to issue Ms [R] with a derivative residence card by allowing it

Date 8th April 2019

A handwritten signature in black ink, appearing to read "Jane Coker", enclosed within a thin black rectangular border.

Upper Tribunal Judge Coker