



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

Appeal Number: EA/03642/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27<sup>th</sup> September 2018**

**Decision & Reason Promulgated  
On 5<sup>th</sup> October 2018**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**LETIZIA FRANCO**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G Mavrantonis of Legis Chambers

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant's appeal against the decision of the respondent to refuse her a residence card certifying permanent residence was dismissed by First-tier Tribunal judge Shamash for reasons set out in a decision promulgated on 6th June 2018. The appellant sought and was granted permission to appeal on the grounds that it was arguable that the appellant's Italian EHIC card satisfied the requirements for comprehensive sickness insurance for the purposes of regulations 4 and 15, contrary to the First-tier Tribunal Judge's findings that it did not.

2. The First-tier Tribunal judge relied upon *Ahmed v the Aire Centre* [2014] EWCA Civ 988 as authority for the proposition that her EHIC card did not satisfy the requirements.
3. *Ahmed* considered whether there was a requirement for comprehensive sickness insurance cover (“CSIC”) given that NHS treatment is free. The court found that an entitlement to free NHS treatment did not qualify as satisfying the requirement to have CSIC. The court concluded that the residence of a student would not be lawful unless s/he had CSIC whilst a student and would not be able to qualify for permanent residence unless that requirement had been strictly complied with.
4. The respondent’s policy guidance detailing the documentary evidence required to show CSIC includes “a valid European Health Insurance Card (EHIC) issued by an EEA member state other than the UK...”.
5. The judge considered that *Ahmed* meant that the possession of an EHIC card issued by a member state other than the UK did not meet the requirements of the regulations. He was incorrect.
6. The judge materially erred in law in finding that the Italian EHIC card did not meet the requirements of the regulations. I set aside the decision to be remade.

### **Remaking the decision**

7. The respondent did not dispute that the appellant had been working self-employed since July 2013 and that her Italian EHIC card satisfied the regulations as meeting the CSIC requirement from then. Nor did the respondent dispute that the appellant was, at the date of the decision two months shy of completing 5 years lawful residence as a self-employed person. Nor did the respondent dispute that the appellant had held a valid Italian EHIC card during May and June 2013 and thus, by the time of the hearing before the First-tier Tribunal Judge she had held a valid Italian EHIC card for the continuous period of five years prior to the hearing during which time she had been lawfully present in the UK as a student and as a self-employed person.
8. Ms Isherwood submitted that because for two months the appellant had been a student and was thus temporary then those two months did not qualify in the five year calculation. I must admit I found her reasoning difficult to follow when viewed in the context of the respondent’s very clear guidance and in the light of *Ahmed* which makes specific reference to residence under the regulations as a student for five years with CSIC enabling a successful claim for permanent residence.
9. An EHIC issued by another member state is clearly included in the respondent’s guidance as a valid compliance CSIC requirements.

10. This appellant was, at the date of the decision of the First-tier Tribunal, entitled to permanent residence. She had held the required CSIC for five years.

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 by allowing it.

Date 1<sup>st</sup> October 2018



Upper Tribunal Judge Coker