



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/06255/2017
EA/06265/2017

THE IMMIGRATION ACTS

Heard at Field House
On 15th June 2018

Decision & Reasons Promulgated
On 25 June 2018

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR REZAK HOCINE KERRAOUI
MRS IMANE MEFTAH
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer
For the Respondents: In person

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State I shall refer to the parties as in the First-tier Tribunal. The Appellants' appeals against the refusal of permanent residence cards was allowed by First-tier Tribunal Judge K Swinnerton on 16 March 2018 under Regulation 15 of the Immigration (EEA) Regulations 2016.

2. The judge concluded that the First Appellant had exercised Treaty rights for a continuous period of five years and had lived with the Second Appellant and their children during that period. The Respondent appealed on the grounds that the judge failed to engage with the reasons for refusal. The first reason was that the First Appellant did not have comprehensive sickness insurance whilst he was a student. The judge's failure to deal with this was a clear error of law.
3. Permission was granted by First-tier Tribunal Judge Osborne on 16 April 2018 on the basis that "In an otherwise careful and commendable succinct decision and reasons it is nonetheless arguable that the judge failed to deal with the issue of comprehensive sickness insurance cover in the UK which is raised in the Reasons for Refusal Letter. It is arguable that the judge erred in law in failing to consider that issue which was specifically raised."
4. Mr Walker submitted that the judge had failed to consider whether the First Appellant had comprehensive sickness insurance. This was essential for qualifying residence as a student. Since the judge had failed to appreciate this point, which was specifically relied on in the reasons for refusal, the judge had erred in law in allowing the appeal under the EEA Regulations 2016.
5. The First Appellant, Mr Kerraoui, accepted that he did not have comprehensive sickness insurance but stated that he was not aware that he needed to have any such insurance because whilst studying he was working part-time and paying taxes and therefore he had the benefit of NHS treatment. He had been living here for a considerable amount of time with his wife and children and he was concerned that their situation might well become precarious following Brexit. He had therefore applied for a permanent residence card to protect his position and that of his family.
6. I have a lot of sympathy for the First Appellant. He is working and currently exercising Treaty rights in the UK, as are his wife and children. They are entitled to reside in the UK under the EEA Regulations 2016.
7. There was no challenge to the judge's finding that the Appellant had studied full-time at university for four years, obtaining a masters' degree in July 2017, and prior to entering university between 2011 and 2013. However, the First Appellant on his own evidence accepted that he did not have comprehensive sickness insurance while he was a student. He was, therefore, unable to show that he met the definition of a student in Regulation 4 and that he was exercising Treaty rights in accordance with the EEA Regulations 2016 for a continuous period of five years.
8. Accordingly, the judge erred in law in allowing the appeal. I set aside the decision dated 5 March 2018 and promulgated on 16 March 2018 and remake it. The appeal is dismissed under the Immigration (EEA) Regulations 2016.

Notice of Decision

The Secretary of State's appeal is allowed.

The decision allowing the appeal dated 5 March 2018 is set aside.

The Appellant's appeal is dismissed.

No anonymity direction is made.

J Frances

Signed

Date: 22 June 2018

Upper Tribunal Judge Frances