



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/07655/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 27th August 2019**

**Decision & Reasons
Promulgated
On 10th September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MRS PRANOM JONES
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation
For the Respondent: Ms Rushforth

DECISION AND REASONS

Introduction

1. The Appellant born on 15th March 1967 is a citizen of Thailand. The Appellant had made application for a residence card as the spouse of a British citizen who had been exercising treaty rights in Spain within the European Economic Area. The application had been made under the Immigration (EEA) Regulations 2016 and that application had been refused by the Respondent on 22nd November 2018. The Appellant appealed that decision and the appeal was heard on the papers before First-tier Immigration Judge Mensah sitting at Bradford on 1st March 2019. The

judge refused the application on the specific basis that the Appellant did not have comprehensive medical insurance which was required.

2. Application for permission to appeal was made by the Appellant and granted on 5th June 2019. It was said that it was arguable that the judge had erred in finding that comprehensive medical insurance was needed given that she found that the Sponsor was seeking work from the moment he entered the UK rather than being a self-sufficient person or a student.

Submissions at the Hearing

3. The Sponsor and Appellant were present before me but were not represented. In those circumstances I briefly heard submissions on behalf of the Respondent in which it was said that the judge had made a correct decision in that she had found when examining the decision in the round that the Sponsor did not qualify as a worker, nor did his evidence within the documents indicate that that was how he regarded himself on entry to the UK.
4. I explained to the Sponsor and the Appellant the specific issue in this case and the Sponsor gave some information concerning how he regarded himself at that point. At the conclusion I reserved my decision to consider matters and now provide my decision with reasons.

Decision and Reasons

5. The relevant provisions governing this case are the Immigration (European Economic Area) Regulations 2016 as amended by the Immigration (European Economic Area) (Amendment) Regulations 2017.
6. The Sponsor is a British citizen. The Appellant is a citizen of Thailand. The Appellant and Sponsor have been married for many years and there is no question as to the genuine and subsisting nature of their relationship. The Sponsor and Appellant lived together in Thailand for approximately twelve years before moving to Spain together, where they lived for a period of about two years before entry to the United Kingdom. The Sponsor did not seek to bring the Appellant to the United Kingdom under the terms of the Immigration Rules but rather under the terms of the EEA Regulations under what may be described as the **Surinder Singh** route. There appears to have been no issue in respect of Regulation 9.
7. The central question is in what capacity the Sponsor entered and remained in the United Kingdom specifically to answer the question as to whether or not the Appellant required comprehensive medical insurance.
8. Regulation 7 indicates that the Sponsor as a British citizen is not required to have such cover but there are circumstances where it may be required for the Appellant.
9. The Sponsor to be considered as a qualified person entering the UK must be an EEA national and in the UK as:

- (a) a jobseeker;
 - (b) a worker;
 - (c) a self-employed person;
 - (d) a self-sufficient person; or
 - (e) a student.
10. The thrust of the Sponsor's evidence in documents and that which was confirmed is that he has been for about fifteen years a self-employed person. The Sponsor is a writer who has written a substantial number of books, many of which have been translated into other languages, and also as audio books. He publishes via Amazon and potentially other mechanisms. There is no evidence of any other form of employment that he undertook during his twelve years in Thailand and his two or so years in Spain.
11. The Sponsor and Appellant entered the UK on 13th June 2018. The Sponsor entered as a self-employed writer and with the intent to continue in that capacity. There was evidence produced by the Sponsor demonstrating sale of e-books some months after he arrived in December 2018.
12. Shortly after arrival in the UK, on 3rd July 2018 the Sponsor sought to register as unemployed with the Jobcentre but was unable to do so as he had been in the UK for less than three months. He made a second application on 12th September 2018 and it could be said therefore that on that date he registered as a jobseeker.
13. By virtue of Regulation 9(7)(b) the Sponsor British citizen is required to show under the terms of Regulation 6 that they can continue to be treated as a qualified person under the Regulations in one capacity or another. The Sponsor was a self-employed person in Spain and the evidence indicates that he came to the UK in that capacity. The Sponsor's registration as a jobseeker about three months after arrival in the UK indicates that the Sponsor had not worked in the UK for at least twelve months prior to being registered as a jobseeker, nor can it be said that he had either been made voluntarily redundant, nor does the Sponsor point to any period of employment in the UK since his arrival in June 2018. Further and perhaps understandably in the circumstances, there has not been provided any evidence of the Sponsor seeking employment or producing evidence of having a genuine chance of being engaged.
14. Regulation 6(4) states that a person who is no longer in self-employment must continue to be treated as a self-employed person provided that the person;
- (i) has registered as a jobseeker with the relevant employment office; and
 - (ii) satisfies conditions (d) and (e). Condition (d) is that the person entered the United Kingdom as a self-employed person or in order to

seek employment as a self-employed person, and condition (e) is that the person provides evidence of seeking employment or self-employment and having a genuine chance of being engaged.

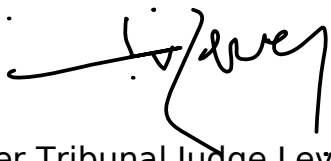
15. In summary the evidence points to the Sponsor being a self-employed writer for the last fifteen years and in particular residing in Spain exercising treaty rights in that capacity. He entered the United Kingdom in that capacity as a self-employed person. The fact that he registered at the Jobcentre does not in itself mean that he ceases to qualify or to be treated as a self-employed person and indeed produced evidence that thereafter he had continued in his self-employment capacity providing evidence of publications or income from publications in December 2018. On the other hand, the Sponsor whilst in Spain was not in employment and did not exercise treaty rights in Spain as a worker, nor has he had any employment in the UK since arrival, nor is there evidence that he has actively looked for such work and has been content to remain as he has been for many years a self-employed writer.
16. In those circumstances whilst he may not require comprehensive medical insurance as a British citizen his spouse, the Appellant, does require such comprehensive medical insurance in order to qualify for a residence card, that being the application that was made.
17. The First-tier Tribunal Judge whilst acknowledging that it was not necessarily clear what status the British citizen was claiming since entry into the UK, her analysis disclosed no arguable error and her conclusion that the appeal could not be allowed in the absence of evidence of comprehensive medical insurance was the correct decision. There was therefore no material error of law made by the judge in this case.
18. As an addendum I would note that I explained to the Sponsor and the Appellant that the refusal of their application for a residence card did not mean the Respondent's intent to remove the Appellant. That in part is clear from the absence of any necessity to look at this case within the terms of Article 8 of the ECHR.

Notice of Decision

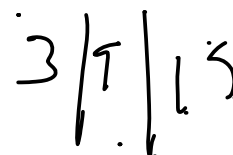
19. I find that no material error of law was made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed



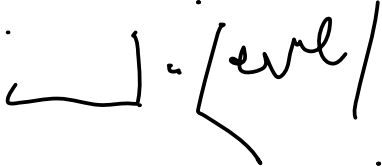
Date



Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

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

Signed 
Deputy Upper Tribunal Judge Level

Date 3/9/19.