



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

Appeal Number: IA/01051/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 15 July 2015**

**Decision & Reasons Promulgated
On 16 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**FARHAN FARHAN
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Thornhill a Solicitor

For the Respondent: Mrs Pettersen a Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The applicant at this hearing is the Secretary of State for the Home Department. For ease of reference and continuity I will refer to her as the respondent.
2. The respondent notified the appellant of her decision to refuse to issue him with an EEA Residence Card and to revoke his existing Residence card on 16 December 2014. His appeal against that decision was

allowed by First Tier Tribunal Judge GM Cox (“the Judge”) following a hearing on 19 March 2015. This is an appeal against that decision.

3. First-Tier Tribunal Judge RA Cox granted permission to appeal (9 June 2015) on the ground that it is arguable that the Judge erred in misdirecting himself as to Regulation 10 (6) (c) and (b)(i) of the Immigration (EEA) Regulations 2006 (“the regulations”) as the appellant had ceased employment on 30 September 2014 and there was no evidence to show that he had registered as a jobseeker with the relevant employment office.

The regulations

4. The relevant regulations are as set out below:

10. — Family member who has retained the right of residence

- (1) In these Regulations, “*family member who has retained the right of residence*” means, subject to paragraph (8), a person who satisfies the conditions in paragraph ... (5).

- (5) A person satisfies the conditions in this paragraph if—

...

- (c) he satisfies the condition in paragraph (6); ...

- (6) The condition in this paragraph is that the person—

- (a) is not an EEA national but would, if he were an EEA national, be a worker, a self-employed person or a self-sufficient person under [regulation 6](#); or

- (b) is the family member of a person who falls within paragraph (a).

6. — Qualified person

- (1) In these Regulations, “*qualified person*” means a person who is an EEA national and in the United Kingdom as—

- (a) a jobseeker;

- (b) a worker;...

- (2) Subject to [regulations 7A\(4\)](#) and [7B\(4\)](#), a person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—

- (a) he is temporarily unable to work as the result of an illness or accident;

- (b) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom for at least one year, provided that he—

- (i) has registered as a jobseeker with the relevant employment office; and

- (ii) satisfies conditions A and B;...

- (4) For the purpose of paragraph (1)(a), a “*jobseeker*” is a

person who satisfies conditions A and B.

(5) Condition A is that the person—

(a) entered the United Kingdom in order to seek employment; or

(b) is present in the United Kingdom seeking employment, immediately after enjoying a right to reside pursuant to paragraph (1)(b) to (e) (disregarding any period during which worker status was retained pursuant to paragraph (2)(b) or (ba)).

(6) Condition B is that the person can provide evidence that he is seeking employment and has a genuine chance of being engaged.

Discussion

5. The relevant facts to be gleaned from the decision of the Judge are that the appellant claimed to have entered the United Kingdom on 28 November 2008. On 14 July 2009 his application for a Certificate of Approval (Marriage) was approved. He was subsequently issued with an EEA Residence Card. On 15 September 2009 he married an EEA National. On 13 October 2012 he commenced divorce proceedings. A decree absolute was granted on 22 February 2013. He was self employed from 2010 until May 2013. He worked from 13 June 2014 until 30 September 2014 for SAR Catering Limited. He has since been looking for work.
6. The Judge said "... in my view the key date is the date of the Respondent's decision. Although the Appellant had stopped working for SAR catering by then, his contract had only been terminated a few months earlier and he was looking for a job. Applying regulation 6 (2) of the regulations, the Appellant ought to be treated as a worker for the purposes of regulation 10 of the regulations."
7. Regulation 10 (6) (a) includes "a worker, a self-employed person or a self-sufficient person under regulation 6". It does not include the alternative classification for a "qualified person" of being a "jobseeker" (regulation 6 (1) (a)). It appeared to me that the issue for the Judge was not therefore was he "looking for a job" but was he "registered as a jobseeker with the relevant employment office". Mr Thornhill conceded this and that there was no evidence before the Judge to suggest that at the date of the respondent's decision the appellant was "registered as a jobseeker with the relevant employment office" (regulation 6 (2) (b) (i)). He could not therefore establish he was a worker within regulation 6 (2) and there was a material error of law.
8. In my judgement there was therefore a material error of law in the decision and I set aside the decision.

9. It was agreed by the representatives that the findings regarding regulation 10 (5) were preserved as they were not the subject of challenge.
10. Mr Thornhill stated that the appellant had documents at home that could deal with the remaining issue namely the question of whether he was “registered as a jobseeker with the relevant employment office”. Mrs Pettersen submitted that it was for me to decide if the appellant satisfies the regulations as at today’s date, and said that if she had sight of those documents the respondent may concede without the need for a hearing. Both representatives submitted that an adjournment was unavoidable. The only issue was whether the matter should be remitted it not being in the interest of justice for there to be a lengthy delay. I determined that as fresh evidence as to be submitted and delay was not in the interest of justice it was preferable for the matter to be remitted to myself.
11. I therefore determined that it was in the interest of justice to
 - (1) Remit the matter to the First-tier Tribunal to remake the decision.
 - (2) Direct that the appellant produce such documentary evidence as he wishes to rely to deal with the issue remaining, and to file and serve such evidence by 29 July 2015.
 - (3) Relist the matter before myself sitting at Bradford on the 1st available date on or after 13 August 2015 with a time estimate of 2 hours and no interpreter being required.

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.

I remit the matter to the First-tier Tribunal on the terms identified in paragraph 11 above.

Signed:
Deputy Upper Tribunal Judge Saffer
15 July 2015