



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

Appeal number: IA/18871/2014

THE IMMIGRATION ACTS

**Heard at Field House
On August 24, 2015**

**Decision and Reasons
Promulgated
On August 28, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS MONIKA JALOTA
(NO ANONYMITY DIRECTION)**

Respondent

Representation:

Appellant

Ms Brocklesby-Weller (Home Office Presenting Officer)

Respondent

Mr Cutting (Legal Representative)

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant is a national of India and on March 4, 2013 she made an application for a residence card as the spouse of an EEA national exercising treaty rights in the United Kingdom. The respondent refused that application on November 28, 2013 under Regulation 10(5) and 10(6)

of the Immigration (European Economic Area) Regulations 2006 as she was not satisfied the appellant had retained rights.

3. The appellant appealed this refusal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the 2006 Regulations.
4. The matter came before Judge of the First-tier Tribunal Dineen on November 28, 2014 and in a decision promulgated on March 27, 2015 the Tribunal allowed her appeal.
5. The respondent applied for permission to appeal on April 1, 2015 submitting the Tribunal had erred. Permission to appeal was granted by Judge of the First-tier Tribunal Lambert on June 1, 2015.
6. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

PRELIMINARY ISSUE

7. Both representatives agreed that the Tribunal had incorrectly approached the issue in hand because as stated in the respondent's grounds of appeal the EEA national had neither ceased to be a qualified person nor ceased to reside in the United Kingdom. His absence from the United Kingdom had been temporary and the Tribunal had therefore erred in allowing the appeal under Regulation 10 of the 2006 Regulations.
8. By agreement I found there was an error of law and I set aside that decision.
9. Mr Cutting, on behalf of the appellant, submitted that the Tribunal should have considered the appellant's appeal either under Regulation 14(2) of the 2006 Regulations if it had found the EEA national was temporarily unable to work or alternatively should have allowed the appeal under Regulation 15(1)(6) of the 2006 Regulations on the basis that the EEA national was permanently unable to work.
10. Ms Brocklesby-Weller agreed that this was the only outstanding issue for the Tribunal to consider as she accepted the appellant would be entitled to either a residence card or permanent residence depending on whether the medical evidence reached the necessary level required to enable an immediate grant of permanent residence under Regulation 15.

CONSIDERATION OF THE EVIDENCE AND FINDINGS

11. The appellant's husband is an EEA national who arrived in the United Kingdom in or around July 2010. The respondent did not take issue that he had been working between July 2010 and January 2013 when he ceased work due to illness. Whilst it was not accepted the EEA national had worked continuously it was accepted that he had accumulated two years employment in the United Kingdom.
12. Medical evidence has been produced and that medical evidence includes two letters from the hospital. Both letters confirm the EEA national suffered brain damage following an epileptic fit.

13. On October 27, 2014 Slough Borough Council provided an assessment report and concluded that the EEA national was entitled to services from the local authority.
14. A recent letter dated August 19, 2015 from the doctor confirms that the EEA national continues to suffer from epilepsy and behavioural problems due to a brain injury and that medication was taken to control those problems. The doctor concluded he was unable to work although no long term prognosis was given.
15. Evidence that he was in receipt of Personal Independence Payment until May 21, 2019 (at the earliest) was provided. This report confirmed the EEA national needed supervision to manage his toilet needs, dressing and undressing, he needed an aid or appliance other than glasses or contact lenses to read or understand the basic or complex written information, he was unable to stand and move more than 200 metres either aided or unaided and he was unable to follow a familiar journey without assistance of a third party.
16. Mr Cutting invited me to find that the medical evidence and other evidence demonstrated that the EEA national was permanently unable to work and in those circumstances I was invited to allow the appeal under Regulation 15 of the 2006 regulations and grant the application for permanent residence.
17. Ms Brocklesby-Weller did not make any specific submissions on the medical issue but merely invited me to consider the evidence and to decide for myself whether the relevant threshold was met bearing in mind there was no consultant report saying he would be unable to work.
18. Having considered the medical evidence, I am left in no doubt that the EEA national will ever return to work. The report provided by the Department for Work and Pensions makes it clear that the EEA national cannot do anything for himself. The medical evidence confirms brain damage and whilst the epilepsy is not a reason for him being unable to work it is the cause of his brain damage. The medical evidence produced makes it clear that his incapacity is not temporary.
19. I am satisfied having considered all of the available evidence that the appellant is entitled to permanent residence under Regulation 15(1)(d) as the family member of a worker who was ceased activity.

DECISION

20. There was a material error. I set aside the decision to allow the appeal under Regulation 10 the original decision and allow the appeal under Regulation 15 of the 2006 Regulations.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

No fee award payable.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis