



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

Appeal Number: IA/01727/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 May 2016**

**Decision & Reasons Promulgated  
On 25 July 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

v

**Ms THANCHANOK BOONSRI  
(NO ANONYMITY ORDER MADE)**

Respondent

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DECISION & REASONS

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Representation:

For the Appellant: No representative

For the Respondent: Ms A. Brocklesby-Weller, Home Office Presenting  
Officer

1. The Secretary of State for the Home Department sought and on 15 March 2016, obtained permission to appeal against a decision of First tier Tribunal Judge Moller promulgated on 9 October 2015, allowing the appeal by Ms Boonsri against a decision refusing to issue her with a permanent residence card.
2. For the purposes of this appeal I propose to refer to Ms Boonsri as the Claimant as the Secretary of State is currently the Appellant.
3. The brief facts are that the Claimant is a national of Thailand born on 8 May 1978. She met and married her husband, JK, a national of Ireland in Thailand in 2008 and continued to live in Thailand until November 2009 when the Claimant's husband had to return to the United Kingdom in order to care for his 7 year old son from a previous marriage, due to his mother's illness. The Claimant supported her husband during this period and they also relied on financial support from relatives and some savings. In 2012, the Claimant's husband registered as a jobseeker until January 2015, when the couple's new business, which they had set up in November 2014, had begun to succeed.
4. The application for a permanent residence card was made on 7 October 2014 and in a decision dated 31 December 2014, the SSHD refused the application. The basis of the refusal was due to the omission of evidence as to whether the EEA Sponsor was employed, self-employed, job seeker, self-sufficient or a student for a continuous period of 5 years.
5. At the hearing before the First tier Tribunal Judge there was no appearance by or on behalf of the Claimant but a substantial bundle of evidence had been submitted and the Judge decided to proceed to decide the appeal on consideration of the papers.
6. In a decision promulgated on 9 October 2015, she allowed the appeal on the basis that she found that the Claimant had produced a credible history of events, with explanations for any gaps in evidence [36] and that her Sponsor was employed, self-employed, a job seeker, self-sufficient (or a student) for a continuous period of 5 years before making her application for a residence card as confirmation of her right to reside in the UK [37].
7. The SSHD made an application for permission to appeal to the Upper Tribunal on 15 October 2015. The grounds in support of the application asserted that: (i) the Sponsor spent a long period of time in voluntary unemployment and whilst the Judge treated this as a period of self-sufficiency, it is unclear if proper consideration had been given to the requirements for comprehensive sickness insurance and the level of income required in Regulation 4 and (ii) because it is unclear if his status as "self-sufficient" was properly established, it follows that he may not be a jobseeker either for the purposes of the regulations viz 6(4) and 6(5) and consequently

the Judge had not adequately reasoned her findings that the Sponsor exercised Treaty rights for a continuous five year period.

8. Permission to appeal was granted by Judge of the First tier Tribunal Osborne on 15 March 2016 on the basis that: *“it is nonetheless arguable that in finding that the Sponsor was self-sufficient for a period that the judge did not have regard to any comprehensive sickness insurance cover in force at the material time. The judge fails to mention any such insurance cover in the decision and reasons.”*

#### *Hearing*

9. At the hearing before me, Ms Brocklesby-Weller submitted that the grounds raise a simple point, that it was not open to the Judge to conclude that permanent residence had been acquired. The Claimant’s husband had to cease employment to look after his son as his ex-wife turned ill. The Judge considered the evidence and made findings of fact at [33]. The relevant period is 2009-2014. The SSHD took objection to the finding at 33(k) because the Sponsor lived off savings and was supported by relatives. The non EEA national was working part time and the EEA national was not working in 2012 but set up his business in November 2014. The Sponsor was neither employed, self-employed, self-sufficient or a student. There is no evidence that he had sickness insurance. There is no finding of fact at [33] that he was actively seeking employment, presumably because he was looking after his son. The challenge that the 5 year period was not continuous is in accordance with the Regulations.

10. In response, JK, who attended with his wife stated that he had provided 3 years’ worth of bank statements both with the application and the appeal. He stated that he had not relied on his wife’s earnings but that he had £19,000 of savings when his previous wife was taken ill and he relied on that for the 3 year period. He was not entitled to benefits as had more than £16,000 in savings. He said that these funds were in a Thai bank and that he had the bank statement but it was in Thai and not translated. He was responsible for paying their rent and the larger bills. JK further stated that for 3 years (November 2009 until 2012) he did not seek any help from the State. His son’s mother spent 18 months in a heart hospital in London. He stated that he did not have medical insurance coverage but that neither he nor his wife had sought medical attention although they had spent approximately £40,000 privately on IVF.

11. In response, Ms Brocklesby-Weller submitted that on the documentation she had been able to identify, which was just the flexi account, there was no evidence as to medical insurance. Even if there is a gap from 2010-2011 where self-sufficiency is not made out the issue is whether JK was a job seeker from 2011 onwards for the purposes of the Regulations.

*Decision and Reasons*

12. I reserved my decision, which I now give with my reasons.

13. The relevant provisions are set out in Article 7 of CD 2004/28/EC, which provides:

**“Right of residence for more than three months**

**1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:**

**(a) are workers or self-employed persons in the host Member State; or**

**(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or**

**(c) ...**

**(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).**

**2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).**

**3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:**

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

**(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office;**

**(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;**

**(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.”**

14. Article 7 has been transposed into the Immigration (EEA) Regulations 2006 at 4(c)(ii) which expressly states that a self-sufficient person is a person who has comprehensive sickness insurance cover in the UK.

15 In Ahmad v Secretary of State for the Home Department [2014] EWCA Civ 988 the Court of Appeal per Lady Justice Arden considered the question of whether the requirement for comprehensive sickness insurance cover can be met by reliance by the EEA national on the NHS. It was noted at [17] that the CJEU has held that the term 'resided legally' for the purposes of permanent residence: "*should be construed as meaning a period of residence which complies with the conditions laid down in the directive, in particular those set out in Article 7(1)*". (*Ziolkowski* Joined Cases C-424/10 and C-425/10 [2013] 3 CMLR 37 at [46]). In concluding that the requirement that CSIC was in place was mandatory, reliance was placed on the judgment of Lord Justice Sullivan in *Kamau (Kenya)* [2010] EWCA Civ 1302 at [26]: "*The requirement that there be comprehensive sickness insurance cover is not a mere formality... it is an integral part of the concept of self-sufficiency under the Regulations. The Regulations give effect to the United Kingdom's obligations under EU law to facilitate the free movement, not merely of workers and those who are self-employed, but also those who are self-sufficient together in each case with their family members. ...A person who has to rely on the United Kingdom's National Health Service is no more self-sufficient than a person whose resources are inadequate so that he may become a burden on the United Kingdom's social assistance system.*"

16. Therefore, it is clear in light of the above, that First tier Tribunal Judge Moller erred materially in law in allowing the Claimant's appeal, given that at no stage since their arrival in the United Kingdom in November 2009 did either the Claimant or her husband have comprehensive sickness cover (CSIC). The period of self-sufficiency/job seeking was from November 2009, when the Claimant's husband took over the care of his 7 year son, until November 2014 when he and the Claimant set up their business. At that stage, the Claimant's husband became a self-employed person and was no longer required to have CSIC.

17. Whilst between 2012 and January 2015 the Claimant's husband registered for Jobseekers Allowance, in truth he was not seeking employment for all or at this time because he was caring for his 7 year old son. He is thus precluded from being treated as a qualifying person pursuant to regulation 6 of the Immigration (European Economic Area) (Amendment) Regulations 2014, in force from 1 July 2014, because he was not employed in the United Kingdom for a period of at least 1 year or at all, prior to registration as a job seeker.

18. It follows that, whilst the Claimant is entitled to continue to reside with her husband in the United Kingdom, as the spouse of an EEA national exercising treaty rights as a self-employed person, she will not become entitled to permanent residence until November 2019.

*Decision*

19. The decision by the First tier Tribunal Judge allowing the Claimant's appeal contained a material error of law, for the reasons set out above. I substitute a decision allowing the appeal by the Secretary of State for the Home Department, with the effect that the Claimant's appeal is dismissed.

Deputy Upper Tribunal Judge Chapman

22 July 2016