Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/09927/2016

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 23 October 2017	
Determination prepared 23 and 30 October 2017	**01 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

MR ELHANI AMROUS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Algeria born on 7 May 1980. He appeals against a decision of Judge of the First-tier Tribunal Austin, who in a determination promulgated on 27 January 2017 dismissed his appeal against a decision of the Secretary of State to refuse to grant him a permanent right of residence in Britain as the spouse of an EEA national exercising Treaty rights.

2. The appellant is married to a Polish woman, Mrs Krystyna Radoslawa Nikodym-Amrous. He first entered Britain in 2011 with an EEA FP visa to join his wife and first child who was born on 27 February 2009. On 9 August 2011 he was issued with a residence card valid for five years. On 2 February 2016 he sought permanent residence.

3. The appellant stated that although they were both granted residence permits as an EEA worker and her spouse his wife had not worked since that permit was granted in 2011 because of the psychological difficulties that she had had due to a series of miscarriages. However, he informed me that they had had two further children born on 9 December 2013 and 5 April 2015. However, his wife had not returned to work because of depression and because she was looking after the children. He had been the sole breadwinner. I was informed by Mr Tufan that the appellant has now been granted another residence permit for another period of five years.

4. The issue before me was whether or not the judge was correct to refuse his appeal against the refusal to grant him permanent residence. The judge in the determination noted the appellant's arguments and the documentary evidence but considered that the documentary evidence was insufficient to show that the sponsor had been exercising Treaty rights during the relevant period. Indeed, she commented that there were only two pieces of paper which indicated that the sponsor had given invoices for work as a self-employment cleaner. The judge stated that these were "short signed statements from two people" who had interviewed the sponsor for a cleaning job in January and February 2012 in one case and April and May 2012 in another. The judge stated that there appeared to be an email indicating that the appellant's spouse had also sought work as a cleaner or an au pair in 2012 and 2013. The judge found that the evidence before her was not sufficient to indicate that the appellant's spouse was exercising Treaty rights. Given the statement of the appellant before me that his wife had not worked since 2011 I consider that that conclusion was fully open to the judge.

5. The grounds of appeal referred to the fact that the appellant had previously been granted a residence card for five years and that he had difficulties in obtaining work now that he had been refused the residence permit. They stated that there should be no limit to time off work for family and dependants and indeed his son's condition was such that his wife had had to stay at home to look after him.

6. Although the application was refused in the First-tier it was repeated in the Upper-tier and Judge of the Upper Tribunal Plimmer stated that she would grant permission on the basis that:-

> "Given the medical evidence available and the appellant's spouse's pregnancies in 2013 and 2014/15, it is arguable that the First-tier Tribunal failed to take into account the reasons why the appellant's spouse was

unable to work from 2012 onwards and whether or not Regulation 6(2)(a) of the Immigration (EEA) Regulations 2006 applies."

7. However, as I have said, I consider that the judge was fully justified in finding that the appellant's spouse was not exercising treaty rights. Mr Tufan in his submissions to me referred to the determination of the Upper Tribunal in **Shabani (EEA - jobseekers; nursery education) [2013] UKUT 315 (IAC)**, in which reference was made to the Supreme Court's decision in **Saint Prix v Secretary of State for Work and Pensions [2012] UKSC 49**, which indicated that a woman who had left the labour market in order to look after children did not retain her status as a worker in EU law – that followed the decision in **Secretary of State for Work and Pensions v Dias [2009] EWCA Civ 807**.

8. Following the decision of Upper Tribunal Judge Plimmer I have considered the provisions of Regulation 6 of the Immigration (EEA) Regulations. I have annexed these hereto but the reality is that as the appellant's partner has not worked since being granted the original permit and has correctly been found not to have sought work she does not qualify as either a worker or a job seeker. The fact that Regulation 6(4) of the Immigration (EEA) Regulations 2006 indicates that a second-time jobseeker can potentially fall within Regulation 6(4) does not, I consider, assist this appellant in the particular circumstances of this case.

9. I consider that on the facts of this case the Secretary of State was correct to refuse the permanent residence card and indeed that the decision of the Judge of the First-tier Tribunal was correct. The reality is that the sponsor was not working. While I fully respect the decision of the appellant that it was his responsibility to work to look after his family the reality is that his right to work flows from the fact that his wife was exercising Treaty rights.

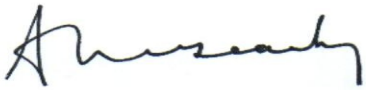
9. I am aware that the appellant is now able to seek work again, having received another five year permit.

10. It is to be hoped that at the end of the ten year period his wife will also be exercising Treaty rights here. However, in the circumstances of this case I find that there is no material error of law in the decision of the Judge of the First-tier Tribunal and the decision to dismiss this appeal shall stand.

Notice of Decision

The appeal is dismissed under the Immigration (EEA) Regulations.

No anonymity direction is made.

Signed  Date 30 October 2017

Deputy Upper Tribunal Judge McGeachy

Annex

Regulation 6 of the Immigration (EEA) Regulations 2006

6.—**(1)** In these Regulations—

"jobseeker" means an EEA national who satisfies conditions A, B and, where relevant, C;

"qualified person" means a person who is an EEA national and in the United Kingdom as—

(a) a jobseeker;

(b) a worker;

(c) a self-employed person;

(d) a self-sufficient person; or

(e) a student;

"relevant period" means—

(a) in the case of a person retaining worker status under paragraph (2) (b), a continuous period of six months;

(b) in the case of a jobseeker, 91 days, minus the cumulative total of any days during which the person concerned previously enjoyed a right to reside as a jobseeker, not including any days prior to a continuous absence from the United Kingdom of at least 12 months.

(2) A person who is no longer working must continue to be treated as a worker provided that the person—

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

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

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

(ii) satisfies conditions A and B;

(c) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided the person—

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

(ii) satisfies conditions A and B;

(d) is involuntarily unemployed and has embarked on vocational training; or

(e) has voluntarily ceased working and has embarked on vocational training that is related to the person's previous employment.

(3) A person to whom paragraph (2)(c) applies may only retain worker status for a maximum of six months.

(4) A person who is no longer in self-employment continues to be treated as a self-employed person if that person is temporarily unable to engage in activities as a self-employed person as the result of an illness or accident.

(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 under sub-paragraphs (b) to (e) of the definition of qualified person in paragraph (1) (disregarding any period during which worker status was retained pursuant to paragraph (2)(b) or (c)).

(6) Condition B is that the person provides evidence of seeking employment and having a genuine chance of being engaged.

(7) A person may not retain the status of—

(a) a worker under paragraph (2)(b); or

(b) a jobseeker;

for longer than the relevant period without providing compelling evidence of continuing to seek employment and having a genuine chance of being engaged.

(8) Condition C applies where the person concerned has, previously, enjoyed a right to reside under this regulation as a result of satisfying conditions A and B—

(a) in the case of a person to whom paragraph (2)(b) or (c) applied, for at least six months; or

(b) in the case of a jobseeker, for at least 91 days in total,

unless the person concerned has, since enjoying the above right to reside, been continuously absent from the United Kingdom for at least 12 months.

(9) Condition C is that the person has had a period of absence from the United Kingdom.

(10) Where condition C applies—

(a) paragraph (7) does not apply; and

(b) condition B has effect as if "compelling" were inserted before "evidence".