



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

Appeal Number: EA/00439/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14<sup>th</sup> February 2018**

**Decision &**

**Promulgated**

**On 09<sup>th</sup> March 2018**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MISS ARIANA RICARDINA DE SA NOGUEIRA NUNES  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Z Ahmad, Home Office Presenting Officer

For the Respondent: Miss Ariana Ricardina De Sa Nogueira Nunes in person

**DECISION AND REASONS**  
**EXTEMPORE JUDGMENT**

1. The Secretary of State is the Appellant before me and Miss Nunes the Respondent. For ease of reference I am going to refer to the parties as they were known at the First-tier Tribunal.
2. The Secretary of State appeals with permission granted in the First-tier Tribunal against a decision of Judge Kaler, who in a determination promulgated on 7<sup>th</sup> April 2017 allowed the Appellant's appeal against the

12<sup>th</sup> December 2016 decision to refuse the Appellant's application for a permanent residence card under the Immigration (EEA) Regulations 2006.

3. The judge found that the Appellant qualifies for a permanent residence card on the basis that she was residing in accordance with the regulations because she was exercising treaty rights as a student in the UK for five years between 2009 and 2014. The application is on the ground that the judge erred in law due to failure to consider whether the Appellant met Regulation 4 of the EEA Regulations, which defines a student as a person who has comprehensive sickness insurance in the UK and sufficient resources of her own so as not to be a burden on the social assistance system of the UK during the period of residence. In the event the Appellant had failed to bring forward any evidence as to the position in respect of comprehensive sickness insurance or to show sufficient resources. There was no evidential basis for the judge's conclusions.
4. Before me the Appellant recognised the difficulty that she faced in challenging these grounds but indicated that she had additional evidence that she wanted to bring forward to deal with the point that had not been covered in the fact-finding exercise by the judge at the First-tier Tribunal. The judge was not assisted in reaching his conclusions by the fact that the matter proceeded on the papers and the documentation before him was somewhat restricted. The Appellant had made an application for a renewal of a permanent residence card and therefore had only completed the parts of the application form relevant to that application and there was nothing in the evidence going to the rest of Regulation 4.
5. I was not in a position to remake the decision given the gaps in the evidence and in light of the fact finding exercise required the appellant and Ms Ahmed were in agreement that the matter should be remitted to the FT-T.

**Notice of Decision**

6. I find the judge has fallen into legal error when considering the issue of residence in accordance with the regulations because only part of the regulations has been considered. I set the decision aside.
7. I remit the matter to the First-tier Tribunal.



Signed  
Deputy Upper Tribunal Judge Davidge

Date 08 March 2018