Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: EA/03841/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 March 2018	**On 11 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

MR JATINDER SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Appeared in person
For the Respondent: Mrs S Kiss, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of India who was born on 5 October 1980. On 12 August 2015 the appellant applied for retained right of permanent residence card as a non-EEA national who was married to an EEA national who had been exercising treaty rights in the UK for five years under the Immigration (EEA) Regulations 2006.

2. The respondent refused the appellant's application on 21 March 2016 on the basis that the appellant had not provided sufficient evidence to show that his EEA spouse ('the sponsor') had been exercising treaty rights for a continuous period of five years.

© CROWN COPYRIGHT 2018

The appeal to the First-tier Tribunal

3. The appellant appealed against the respondent's decision to the First-tier Tribunal. In a decision promulgated on 21 August 2017 the First-tier Tribunal Judge Samimi dismissed the appellant's appeal.

4. The appellant applied for permission to appeal against the decision and on 29 January 2018 First-tier Tribunal Judge Baker granted the appellant permission to appeal.

5. The grounds of appeal are in essence that the sponsor satisfies the conditions of the EEA Regulations as, although she did not work continuously during the relevant five year period, she was ill and had two pregnancies and therefore was unable to work. These periods do not affect her continuity of residence. Reliance is placed on the case of **Weldemichael and another (St Prix C-507/12; effect) [2015] UKUT 540 IAC.**

The hearing before the Upper Tribunal

6. Prior to the commencement of the hearing the appellant's representative, Mr Choda, who had attended for the hearing became unwell and was unable to represent the appellant. I was informed that there was no application to adjourn the hearing. The appellant and the sponsor both had court appointed interpreters. I noted that the court file no longer had Mr Choda recorded as representative. At the commencement of the hearing I checked with the appellant that he wished to proceed and explained that he could request an adjournment. The appellant indicated that he did not want to adjourn and wanted to proceed without his representative.

7. The appellant made lengthy submissions through the interpreter. He confirmed that the sponsor did not work for 3 years between 2010-2014. He told me that his wife had had numerous problems including anaemia which was very debilitating and meant that she required extra care during her pregnancies. His wife was advised by the agency that she worked through to take her p45 and there would be no issues with returning to work after giving birth. There were numerous problems with the pregnancy and after the birth she was very weak and took longer to recover. In March 2102 they went to India and discovered she was pregnant. On return to the UK she was told she still had anaemia and had the same problems as in the first pregnancy. His wife also suffered from haemorrhoids which was severe and caused problems with her walking. There were health problems continuously during the whole period. They did not ask for sick notes at the time. His wife still has health problems now and has been given sick notes for various periods. She worked for some months in 2014, some months in 2015 and for a couple of months in 2016.

8. Mrs Kiss submitted that the appellant has to demonstrate that the sponsor satisfied the requirements of the Regulations in the period 23/8/2010 –

23/8/2015. It was accepted that she was a worker at the beginning of the period. The evidence that was available was that the sponsor stopped working in April 2010. The Regulations allow for periods when a person is not working. The maximum limit for a person who is not working because of pregnancy is 12 months. This appellant had significantly more time off – she was not working between August 2010 (the time when the 5 year period commenced) and April 2014. During this period she had 2 pregnancies which can account for a maximum of 24 months. She drew attention to the fact that on the birth certificate of the sponsor's second child the sponsor's occupation was recorded as full time mother. If the sponsor had been able to provide evidence of serious ill health that prevented her from working during the remaining periods then the exemption would also apply. However on the evidence that was produced there was no evidence that she was unfit to work. In 2016 the sponsor had asked her GP to provide evidence that she was unable to work. The GP was unable to confirm this stating only that she was unfit from 20 April 2016 onwards and not before that date. The judge considered the evidence carefully and found that because there was no medical evidence the sponsor did not satisfy the Regulations.

9. She referred to the medical evidence and submitted that the evidence did not suggest a serious illness throughout the relevant periods that incapacitated the sponsor to the extent she could not work. She had 3 years off out of the five year period.

Discussion

10. In order to satisfy the requirements of Regulation 15(1)(b) of the EEA Regulations the appellant has to demonstrate that he is a family member of an EEA National who has resided in the UK in accordance with the Regulations for a continuous period of 5 years. For the purposes of this appeal the sponsor was said to be exercising treaty rights as an employed worker. It was accepted by the appellant's representative, as recorded by the First-tier Tribunal in paragraph 9, that the appellant had not qualified for permanent residence. The grounds of appeal do not challenge that concession. However, the appellant was granted permission to appeal and the judge has considered the medical evidence so I will ignore that concession for the purpose of considering whether there was a material error of law in the First-tier Tribunal's decision.

11. Although the judge has not made a specific finding in respect of the 2 pregnancies this case turns on whether or not the appellant can demonstrate that the sponsor was unable to work as a result of serious ill health. The judge considered the medical evidence:

> "8 I have had regard to the medical evidence from Gravesend Medical Centre dated 2.6.2016. This confirm that the Sponsor was issued with MED3 from 20.4.2016 onwards and never before that. The letter confirms that the Sponsor had been seen in Maidstone hospital for a recurrent eye problem form October 2013 – March 2014 and that she had an outpatient appointment at Haematology on 30.3.2016. The two hospital stays been for an iron infusion and on for Colonoscopy. There is no evidence that the

> Sponsor has been suffering from ill health so as to incapacitate her from any form of genuine and effective employment. I do not find that the EEA Sponsor has been exercising treaty rights as a qualified person in accordance with the EEA Regulations for 5 continuous years. Accordingly I do not find that the Appellant has qualified for permanent residence in accordance with the EEA Regulations. This has been accepted by counsel on the appellant's behalf."

12. Unfortunately for the appellant there was no evidence submitted to the First-tier Tribunal (to support the assertion that the sponsor was unfit to work) that demonstrated that her illnesses were of such severity that she was unable to work during the relevant period. No sick notes were obtained. The medical evidence is insufficient as it does not indicate that the sponsor was unfit to work over the lengthy period. Without such evidence, after allowing for the two pregnancies, there remains a considerable period of time during which the sponsor was not exercising treaty rights. The judge considered all the medical evidence. The conclusions reached were ones that were open to the judge. There was no material error of law in the First-tier Tribunal's decision.

Decision

There was no material error of law in the First-tier Tribunal's decision. The appellant's appeal is dismissed. The decision of the respondent stands.

Signed P M Ramshaw Date 9 April 2018

Deputy Upper Tribunal Judge Ramshaw