



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

Appeal Number: EA/04531/2017

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**On 10 September 2018**

**Decision & Reasons  
Promulgated**

**On 26 September 2018**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

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

Appellant

**and**

**MR MUHAMMAD SHAHID NASEEM**

Respondent

**Representation:**

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent: Miss H Masih, instructed by Maya & Co Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Young-Harry promulgated on 11 January 2018 in which she allowed Mr Naseem's appeal against the decision of the Secretary of State made on 24 April 2017 to refuse to issue him with a document confirming his right of permanent residence as the family member of an EEA national. The judge was satisfied by the material before her, which includes health insurance documents and various other documents, that Mr Naseem's wife had been exercising her treaty rights as a self-sufficient person for a continuous five year period from 2011 to 2016 while being in possession of comprehensive sickness insurance and

on the basis that she was self-sufficient despite claiming certain benefits, having directed herself in line with **Brey C-140/12**.

2. The Secretary of State sought permission to appeal on the grounds that:

“The [appellant] respectfully submits that the judge of the FTT failed to give adequate reasons for finding that the EEA national had been exercising treaty rights for a continuous period of five years.

The judge of the FTT failed to identify what evidence was available to satisfy him that the EEA national was either an employed person or a self-sufficient person during the relevant period, particularly in light of the finding that the family were largely supported by the appellant’s income.”

3. First-tier Tribunal Judge Lever granted permission on 8 March 2018.
4. When the matter came before me Mr Mills accepted that there were in fact no grounds of challenge properly open to him given that, while the extent to which a self-sufficient person could rely upon benefits was a question of law, the assessment of that was in light of the decision in **Brey**, a question of fact and given also that it was possible to rely upon child benefit and tax credits, as the judge had noted, it could not be said that the question of fact was improperly reached.
5. Accordingly, in the circumstances, I did not need to hear from Miss Masih.
6. I am satisfied that both parties were fully aware from the documents produced that to the First-tier Tribunal as to the income of the respondent, and that there had been in place a comprehensive sickness insurance policy. There was sufficient material on which the judge could properly conclude that, on that facts as shown, the respondent’s wife was, reliance on benefits notwithstanding, properly a self-sufficient person. This finding, following from a proper direction as to the law, was clearly one open to her; it could not be said that this finding of fact was irrational or unsustainable.
7. As the judge was clearly entitled to find that the sponsor had been continuously resident in accordance with the Regulations as a self-sufficient person it follows that it was a sustainable conclusion that the respondent as her husband was entitled to a permanent residence card. The decision therefore did not involve the making of an error of law and I uphold it, making it clear that the decision was one in which the judge concluded that the respondent is entitled to a permanent residence card.

### **Notice of Decision**

- (1) The decision of the First-Tier Tribunal did not involve the making of an error of law and I uphold it.

- (2) The respondent is reminded that any application for costs made pursuant to rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008 must be made within a month of the issue of this decision. Any such application must be served on the Secretary of State who has 14 days thereafter to respond.

Signed

Date 18 September 2018

A handwritten signature in black ink, appearing to read 'Jeremy Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul