



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

Appeal Number: IA/07761/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 November 2014**

**Decision & Reasons Promulgated  
On 2 March 2015**

**Before**

**UPPER TRIBUNAL JUDGE CONWAY**

**Between**

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

Appellant

**and**

**RIMVYDAS UNDERIS  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Jarvis  
For the Respondent: In Person

**DECISION AND REASONS**

1. Mr Underis is a citizen of Lithuania born in 1970. He appealed against a decision of the Secretary of State made on 29 January 2014 to remove on the basis that Mr Underis was not exercising Treaty rights under Regulation 6 of the Immigration (European Economic Area) Regulations 2006. The decision to remove was made in accordance with Section 10 of the Immigration and Asylum Act which applies by virtue of Regulations 19(3)(a) and (c) pursuant to Regulation 21B(2) and 24(2) of the Regulations.

2. Following a hearing at Hatton Cross on 19 August 2014 Judge of the First-tier M A Khan allowed the appeal under the EEA Regulations.
3. The Secretary of State sought permission to appeal which was granted by a judge on 15 October 2014.
4. Although in proceedings before me the Secretary of State is the Appellant and Mr Underis is the Respondent, for convenience I will refer to parties as they were before the First-tier Tribunal, thus, Mr Underis is the Appellant and the Secretary of State is the Respondent.
5. The basis of the refusal by the Respondent was that the Appellant had not been exercising Treaty rights. Indeed he had been arrested for begging offences.
6. The judge noted the oral evidence of the Appellant at the hearing, namely, that he came to the UK in September 2009 and had worked in the construction industry. The last time he worked was just before Christmas 2013. He had been receiving job seeker's allowance until August 2014.
7. He had been arrested for begging in London because he had lost his documents. At present he is living in a hostel and claiming jobseeker's allowance. He gets housing benefit. He had done courses in English language and skills. He goes to the job centre regularly to find work and is attending job centre work programmes. Once he finds a full-time job he will leave the hostel and find rented accommodation.
8. He said he was getting help from a case worker at St Mungo's Broadway Outreach. He had been sleeping rough but is now fixing his health. A letter from the hostel shows the progress he has been making. It also states he has been attending IT classes at 'Connection' at St Martin and that he is due to start an ESOL course in August 2014.
9. The judge found that the Appellant had been "honest and frank" in his evidence. He accepted his account of "activities and progress" since the period when he was sleeping rough and was arrested for begging offences.
10. The judge concluded (at [27]):

"... The Appellant has provided evidence which demonstrates that he has been involved in activities which illustrate that he is exercising his treaty rights under Regulation 6 of the EEA Regulations 2006. The Appellant is regularly attending the job centre looking for employment, he has undertaken and intends to continue taking courses to assist him with future prospects of employment. The Appellant is in receipt of job seekers allowances. These facts are supported by letters from the Out Reach Team, Mr Sadique and Karina Bendryn. There are entries to show that the Appellant has been a regular attender at St Martin's Computer classes."
11. The judge further concluded (at [28]) that he was satisfied that the Appellant "has demonstrated that he is actually looking for employment

and that he has undertaken various actions to secure employment.” Accordingly, the Appellant was exercising treaty rights under Regulation 6.

12. At the error of law hearing before me Mr Jarvis sought to rely on the grounds. The judge had not applied the requirements stated in Regulation 6(7) and (8). On the Appellant’s own evidence he could not succeed.
13. The Appellant appeared with Mr Coombes a support worker who I allowed to assist him. The Appellant was due shortly to attend a health and safety test at ‘Pearson’. If he passed this would help him get a work permit for the construction industry and would put him in a better position to do full-time work in construction. He had also registered with ‘Reed’, an employment agency.
14. In considering this matter I found that the judge erred in law. It is not in dispute that the Appellant had not been in employment since January 2014 after which it appears that for some or all of the time he has been receiving jobseekers allowance.
15. However, the judge failed to have proper regard to Regulations 6(7) and (8).
16. Regulation 6(7) and (8) reads:
  - “(7) A person may not retain the status of a worker pursuant to paragraph (2)(b), or jobseeker pursuant to paragraph (1)(a), for longer than the relevant period unless he can provide compelling evidence that he is continuing to seek employment and has a genuine chance of being engaged.
  - (8) In paragraph (7) ‘the relevant period’ means –
    - (b) in the case of jobseekers, 182 days, minus the cumulative total of any days during which the person concerned previously enjoyed a right of residence as a jobseeker, not including any days prior to a continuous absence from the United Kingdom of at least 12 months.”
17. In this case it is clear that the Appellant has been a jobseeker since early 2014 and has thus retained this status for longer than the relevant period of six months (182 days). He thus had to show “compelling evidence that he is continuing to seek employment and has a genuine chance of being engaged”.
18. The judge noted that the Appellant had been attending the jobcentre and had undertaken some courses. However, whilst he may have been looking for work he also had to satisfy the requirement that he has a genuine chance of being engaged. The judge failed to have regard to that requirement.
19. In failing properly to apply the law the judge materially erred. The result is that the decision is set aside to be remade which I proceeded to do.

20. The additional evidence to which I was referred by the Appellant included a letter from 'Reed', which is an employment agency offering programmes to unemployed workers making the transition from welfare to work. It is dated 11 November 2014 and required the Appellant to attend an interview in December 2014 "to discuss the support available through our services". The letter states that failure without good reason to attend an adviser interview (the aim of which is to "enable us to continue to tailor our support and produce a realistic and achievable work focussed action plan") would result in his jobseeker's allowance being stopped or reduced. Mr Jarvis did not seek to attack the Appellant's good intentions. Nor do I. I find that his attendance at the job centre and his completing several courses and his intention to cooperate with the agency amount to "compelling evidence that he is continuing to seek employment". However, even were he to attend the agency the fact that such would hopefully "produce a realistic and achievable work focussed action plan" does not greatly assist in satisfying the further requirement, namely, that he "has a genuine chance of being engaged." I agree with Mr Jarvis that the type of evidence required in that regard would be for example specific job applications or job interviews.'
21. The letter from 'Reed' together with his history of going to the job centre and doing some courses comes nowhere near satisfying the requirements that the Appellant has provided "compelling evidence that he...has a genuine chance of being engaged".
22. There was also a letter from 'Pearson', which is a test taker site, stating that the Appellant was booked to take a 45 minute test entitled 'Operatives - Health, safety and environment test for operatives - English-UK (ENG)'. This does not assist him. It may well be that he intended to take the test. The result cannot be known. Even if successful where it might take him in his prospects of employment is speculative.
23. On the evidence before me, applying the civil standard of proof, the Appellant does not satisfy Regulation 6.

The appeal thus fails.

### **Decision**

The decision of the First-tier Tribunal showed material error of law. It is set aside and remade as follows:

The appeal is dismissed under the EEA Regulations.

No anonymity direction is made.

Signed

Date **2 March 2015**

Upper Tribunal Judge Conway