Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/05535/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22nd June 2017	**On 25th July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

MR KAMRAN IJAZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Canada born on 22nd December 1990. He appealed the Respondent's decision of 4th May 2016 refusing him a residence card under the Immigration (EEA) Regulations 2006 as he is married to a German national, Iqra Ahmed. His appeal was heard by Judge of the First-tier Tribunal Moran on 21st November 2016 and was dismissed under the Immigration (EEA) Regulations 2006 in a decision promulgated on 30th November 2016.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Hodgkinson on 10th May 2017. The permission states that the judge did not consider all of the documentary evidence before him, in particular the fact that the Sponsor, having lived in the United Kingdom for nine years, had acquired a permanent right of residence in respect of which "appropriate evidence supporting this fact" was submitted. The permission states that the judge

considered the appeal solely with reference to the indication that the Sponsor was currently a student. The judge found that she is a student but that she does not meet the requirements of Regulation 4(d)(ii) and (iii) of the Regulations. This has not been challenged. The judge noted that in the Appellant's relevant application form he stated that the Sponsor had a permanent right of residence in the UK. Despite this the judge did not proceed to consider this and made no further reference to it in his decision. The permission states that there appear to have been documents before the judge which he should have considered in the context of the question of permanent residence but which he did not consider. The permission states that these were clearly relevant to the question of whether the Sponsor had acquired a permanent right of residence and whether, if this is the case, she was required at the date of the decision, to be exercising treaty rights at all.

3. There is a Rule 24 response but it is not helpful as it states that the appeal was determined on the papers and the Respondent has not had sight of the further evidence relied on by the Appellant and so is not in a position to concede whether the judge's failure to consider the documents amounted to a material error.

The Hearing

4. There was no appearance by the Appellant or by a representative on his behalf. The Presenting Officer made submissions.

5. The Presenting Officer submitted that the permission states that the judge should have made a finding on the Sponsor's permanent residence. The permission also states that the judge did not consider all the evidence before him or the fact that the Sponsor has resided in the United Kingdom for nine years and has permanent residence.

6. I was asked to consider the Appellant's application form which is in the original Respondent's bundle. At category 4.2 the Appellant has ticked the box which states "I am the family member of an EEA national who has a permanent right of residence in the UK." I was then referred to Section 10(1) of the application form. The Appellant has ticked the box which states "The Sponsor has a document certifying permanent residence." He goes on to state that he is enclosing the relevant document with the application and gives a reference number but the reference number appears to be a national insurance number. This is not proof of permanent residence. He submitted that nowhere in the evidence is there a permanent residence card so it was not possible for the judge to decide whether it is factually correct that the Sponsor has permanent residence in the United Kingdom. He submitted that it is correct that the judge failed to deal with this but at paragraph 13 of his decision he states that that although he accepts that the Sponsor is a student she does not meet the terms of the definition of student in Regulation 4(d). He submitted that there has been no challenge to this finding. Paragraph 4(d)(ii) states that a student must have comprehensive sickness insurance covering the United Kingdom and Regulation 4(d)(iii) states that the Sponsor must assure the Secretary of State by means of a declaration or by such equivalent means as she personally

chooses that she has sufficient resources not to become a burden on the social assistance system of the United Kingdom during her period of residence. He submitted that for the Appellant to succeed it has to be shown that the Sponsor has permanent residence and there is no evidence of the Sponsor having comprehensive sickness insurance cover and there is no evidence of her resources. She also has not submitted evidence of her resources for a five year period of her choosing since coming to the United Kingdom.

7. He submitted that even if the judge erred by failing to deal with the Sponsor's permanent residence the error is not material.

8. The Presenting Officer submitted that a lot of evidence was submitted showing tax credits for the Sponsor's parents. He submitted that this goes against the Sponsor being self-sufficient.

9. He submitted that in the refusal letter the Respondent has not assessed the Sponsor having permanent residence, but the refusal letter does state that there is insufficient evidence to show that the Sponsor is exercising treaty rights in the United Kingdom under Regulation 6 of the Immigration (EEA) Regulations 2006.

10. The Presenting Officer submitted that there is insufficient evidence to show that the Sponsor has permanent residence and there is insufficient evidence to show that she is exercising treaty rights. I was asked to find that there is no material error of law in the First-tier Judge's decision.

11. Although the judge at paragraph 8 of his decision states that the Appellant ticked the box that he was the family member of an EEA national who has a permanent right of residence, rather than being a qualified person, the judge does not take this point any further.

12. Based on the evidence before the judge he was correct to find that the Sponsor is a full-time student at the University of West London but he was also correct to find that she does not meet the definition of student under Regulation 4(d). No permanent residence card has been submitted. There is no evidence of comprehensive sickness insurance cover and there is no evidence of sufficient resources over a five year period.

13. I find therefore that even if the judge had gone further with the permanent residence of the sponsor, the Appellant could not have succeeded in his application for a residence card as a family member of an EEA national who has a permanent right of residence in the United Kingdom as there was insufficient evidence to show this. The judge should have taken this further but it would have made no difference due to a lack of sufficient evidence and therefore this is not a material error of law.

14. The judge also finds that there is insufficient evidence before him to show that the Sponsor in this case is exercising treaty rights in the United Kingdom. He has explained this properly in his decision.

15. There are therefore errors of law on the part of the judge but they are not material errors of law. Having a national insurance number does not mean that the owner of that number has permanent residence in the United Kingdom.

Notice of Decision

16. I find that there is no material error of law in the First-tier Tribunal Judge's decision promulgated on 30th November 2016 and the judge's decision dismissing the appeal must stand.

17. Anonymity has not been directed.

Signed Date 24 July 2017

Deputy Upper Tribunal Judge I A M Murray