Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: EA/12798/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 November 2017	**On 28 November 2017**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MR MASOOD AMIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan, Counsel, instructed by Aston Bond Law Ltd
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan and his date of birth is 19 December 1985. He applied for permanent residence under the 2006 EEA Regulations as the non-EEA family member of his spouse, Mujghan Sekandan, a Danish national, on the basis that she has been exercising treaty rights in the UK for a continuous period of five years.

2. The Respondent refused the application on 29 September 2016. The matter was dismissed under the 2006 EEA Regulation by Judge of the First-tier Tribunal Kempton in a decision that was promulgated on 16 February

2017, following a hearing at North Shields on 7 February 2017. The matter was determined on the papers at the request of the Appellant. The judge had before her an Appellant's bundle. Permission was granted to the Appellant.

3. The judge made salient findings as follows:

> "11. The appellant referred in his statement to the decision of Texeira which states that there is no requirement of a parent to have comprehensive insurance cover in the UK to benefit from the right of residence in the UK. In any event, he states that there is correspondence enclosed which shows insurance cover from 2009 from the European Health Insurance organisation. The sponsor refers to this as Udbetaling Denmark in her statement and that this is a health insurance company which provides health insurance under cover of Danish health Legislation. She says she had cover from 18 May 2009 to 18 May 2014 and this insurance also covered her dependents.
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> 12. The document at page 6 from Udbetaling Denmark refers to people living in Denmark being covered by Danish health Legislation. However, this does not appear to be private health insurance. In addition, the appellant and sponsor are not living in Denmark; they have been living in the UK for several years since 17 November 2010.
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> 13. According to the Home Office Guidance on the Immigration (EEA) Regulations 2016, now in force, as opposed to the Regulations referred to in the decision, the guidance ensures that the UK complies with its duties under the Free Movement of Persons Directive 2004/38/EC. From page 30 onwards there is guidance in relation to comprehensive sickness cover, who requires it and what documents are required. According to page 31, Regulation 4 states that nationals living in the UK as self-sufficient people or students must have comprehensive insurance cover. It must be for all family members including primary carers and children. This cover could be met by having a valid EHIC card issued by an EEA member state. The letter from the Danish Authorities does not state that it is an EHIC card, however, it would seem logical that if the sponsor is covered by the Danish Authorities for health care, then she should also be covered in the UK. However, the sponsor should be able to produce specifically an S2 form. In addition, it must be assumed that for the previous five years this type of insurance from the Danish Authorities was accepted for the purpose of the previous residence permits for the appellant and sponsor.
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> 14. However, the regulations were changed on 6 April 2015 and with effect from 22 June 2015, for applications made after that date, (as in this application, the date of application being 3 April 2016),

evidence must be provided of comprehensive insurance cover for the EEA national and their family member. Accordingly, the letter from the Danish authorities only relates to the sponsor and does not mention the appellant or the children or their marriage. In addition, it only covers the period up to 15 May 2014. Accordingly, there appears to be no insurance cover from that date and certainly not at the dates of application, decision or hearing.

15. In all the circumstances, this lack of evidence of insurance is a fatal flaw in the application. It may be that the sponsor can obtain a further letter from the authorities in Denmark in order to confirm the issue of insurance so that the appellant can make a fresh application.

16. The birth certificates for the children S born on 25 January 2012 and A born 8 July 2013, indicate that the children are very young and accordingly, any education they may currently be enjoying, will be at a very early stage and will unlikely to be disrupted if they have to leave the UK. They are certainly not at a crucial stage of their education. Indeed, according to the letter at page four of the appellant's bundle, they both attend for fifteen hours a week, [ ] (page 5.) The appellant suggests that Baumbast and Ibrahim provide him with a golden ticket despite the lack of insurance. However, this is an EEA application and the appellant has not claimed under Article 8 of ECHR. The respondent has not been required to consider that matter, particularly s the documents produced with the application did not appear to contain much information about private or family life. The respondent has not been given adequate notice of that matter. The correct course of action, if the appellant cannot produce adequate comprehensive sickness cover, is for a different application to be made taking into account the matter of private and family life in the UK. I can only guess at the ties that the family have in the UK, but have no concrete evidence upon which to make a decision on that matter of family and private life. This is particularly the case as this is a paper appeal without the benefit of the witnesses attending and giving oral evidence, when they could have provided more information about the strengths of their ties in the UK.

18. I do note that the sponsor has been a student and has been working, then she was unable to continue due to pregnancy. She was a jobseeker, but has now found employment. The appellant maintains that she has always worked. The gap in the sponsor's study period/work experience is as a result of pregnancy, which was a matter outwith her control, and which could arguably be covered by Regulation 6(2)(a). However, that is a matter for a further application taking into account the right to family/private life in the UK. Alternatively, the appellant and the sponsor could

simply obtain private health insurance cover and then remake the application. They should seek legal advice on the matter.

19. Returning to the issue of Texeira, that decision was on the basis of the children of the EEA citizen being 'in education'. In this case, I am not satisfied that the young children of the appellant and sponsor are in 'education' at the level contemplated in Texeira. They attend pre-school for fifteen hours a week, accordingly approximately three hours per day. It is clearly not formal education and sounds more as if it is a nursery placement. However, that is a matter which the appellant can address in any new application, which he might make."

4. The grounds assert that the judge's findings in relation to the insurance document is ambiguous. It is argued that the judge erred in relation to her findings about the sponsor's pregnancy and her inability to work with reference to Regulation 6(2)(a) of the Regulations. It is also asserted that the judge erred in relation to Article 8.

5. At the hearing before me Mr Khan, on behalf of the Appellant, conceded that, in the event, that there is ambiguity in relation to the judge's findings about health insurance it is immaterial because the document (at page 6 of the Appellant's bundle) does not meet the requirements. He conceded that it does not establish that members of the family had comprehensive insurance whilst the Sponsor was studying. I agree.

6. I raised with Mr Khan whether the evidence before the judge established, in his view, that the Sponsor had been working for a continuous period of five years which would not necessitate the Appellant to have comprehensive insurance cover. Mr Khan conceded that the evidence before the judge did not establish this. He stated that the Appellant's appeal was advanced on the basis that the Sponsor was a qualified person from 2009 (whilst she was a student when it was conceded that she did not have the requisite insurance cover) and the evidence did not establish that she has been a worker for the purposes of the 2006 Regulations for a five-year period, which would entitle the Appellant to permanent residence. He did not pursue the ground of appeal in respect of the Sponsor's pregnancy. He did not argue that the Appellant's Sponsor retained continuity of residence with reference to Weldemichael and another (St Prix [2014] EUECJ C-507/12; effect) [2015] UKUT 00540 (IAC) or that she was a jobseeker throughout any relevant period. The application was made under the 2006 Regulations and it was not incumbent on the judge to consider the appeal under Article 8. This ground was also not pursued by Mr Khan. He conceded that the judge had not, in his view, made a material error of law.

7. There was no l error of law in the decision of the First-tier Tribunal. The decision to dismiss the appeal is maintained.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed Joanna McWilliam Date 27 November 2017

Upper Tribunal Judge McWilliam