Upper Tribunal
Immigration and Asylum Chamber **Appeal Number: IA/24618/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Promulgated on:**
On 7 February 2014	**On 10 February 2014**

Before

Upper Tribunal Judge Kekić

Between

Abdelghani Ayoub
(anonymity order not made)

Appellant

and

Secretary of State for the Home Department

Respondent

Determination and Reasons

Representation
For the Appellant: The appellant in person
For the Respondent: Ms A Everett, Home Office Presenting Officer

Background

1. This appeal comes before me following the grant of permission to the respondent by First-tier Tribunal Judge Grimmett in respect of the determination of First-tier Tribunal Judge Woolf who allowed the appeal by way of a determination dated 13 December 2013. Although the Secretary of

State is the party challenging the determination, I have, for the sake of convenience, continued to refer to her as the respondent and to the applicant as the appellant.

2. The appellant is a citizen of Algeria born on 5 April 1985. He appeals the respondent's decision to refuse to issue him with a residence card under Regulation 15 of the Immigration (EEA) Regulations 2006. His spouse is a dual Irish/British national. She has always lived in the UK and it was conceded that she had never exercised her right to freedom of movement, holding Irish nationality merely due to her parentage.

3. The application was refused because the respondent was not satisfied that the sponsor had exercised her treaty rights.

4. The judge heard oral evidence and concluded that the sponsor fell to be treated as a worker or self employed person who had ceased activity under Regulation 15(1)(c) and that the appellant qualified for a residence card in accordance with Regulation 15 (1)(d).

5. Permission was granted on the basis that the judge had arguably failed to have full regard to the definition of a worker who had ceased activity as per Regulation 5 (2)(a) and, additionally, that she had not considered the amendment to the Regulations which excluded EEA nationals who are also British citizens. The latter point was one taken by the judge granting permission.

Appeal hearing

6. At the hearing I heard submissions from the parties. The sponsor was present and spoke on behalf of her husband, the appellant.

7. Ms Everett relied on the grounds and submitted that the sponsor did not satisfy the requirements of Regulation 5(2)(a)(i) or (ii). She noted the changes to the Regulations but submitted that the appellant appeared to fall within the transitional provisions of Schedule 3.

8. The sponsor gave evidence that she had been self employed as a nanny and then had been made redundant. Prior to that she had been a nursery nurse. She had then brought up her daughter and was now on jobseeker's allowance. She said that the appellant had lost his job because the Secretary of State had not confirmed his entitlement to work.

9. At the conclusion of the hearing I reserved my determination which I now give.

Findings and Conclusions

10. I have taken into account the submissions made and the determination of the First-tier Tribunal.

11. I have considered the transitional provisions in Schedule 3 and it is plain that the appellant falls within 2(3)(a) and (b); that is to say on 16 July 2012 and 16 October 2012 he held a valid residence card issued under the Regulations. The amended Regulations do not therefore impact upon his application which is probably why the issue was never raised by the respondent either as part of the reasons for refusal or at the hearing.

12. I now consider whether the sponsor is a qualified person. The First-tier Tribunal Judge found that she was not a qualified person in accordance with Regulation 6 but that she could bring herself within the definition of Regulation 15(1)(c) as a worker or self employed person who has ceased activity. Such a person is defined in Regulation 5 and the judge set out the terms of 5(1) and (2b and c) in her determination at paragraph 23. The respondent's case is that the judge did not consider 5(2)(a)(i) and (ii).

13. For the sake of clarity I set out the relevant sections of the Regulation below (my emphasis):

> "Worker or self-employed person who has ceased activity"
> 5.—(1) In these Regulations, "worker or self-employed person who has ceased activity" means an EEA national who satisfies the conditions in paragraph (2), (3), (4) or (5).
> (2) A person satisfies the conditions in this paragraph if he—
>
> (a) terminates his activity as a worker or self-employed person **and**—
> (i) has reached the age at which he is entitled to a state pension on the date on which he terminates his activity; **or**
> (ii) in the case of a worker, ceases working to take early retirement;
>
> (b) pursued his activity as a worker or self-employed person in the United Kingdom for at least twelve months prior to the termination; **and**
> (c) resided in the United Kingdom continuously for more than three years prior to the termination.

14. It is plain from the above that a worker or self employed person is required to either satisfy 5(2)(a)(i) *or* 5(2)(a)(ii) *or* 5(2)(b) *and* (c). The judge found that the sponsor satisfied 5(2)(b) and (c). There is no challenge to her finding that the sponsor had worked as a self employed nanny, that she had been working for at least 12 months prior to the termination of that employment and that she had been residing in the UK for at least three years prior to the termination. Given her positive findings there was no need at all for her to consider 5(2)(a)(i) or (ii) and there is no merit at all in the respondent's suggestion that she should have done so. Neither of those subsections apply to the appellant's

partner and it is enough that the next sub section does. This is an application that should never have been made by the respondent and should never have been granted by the judge. All it has achieved is unnecessary difficulty for the appellant and his partner and their child with the appellant losing his job and the family having to rely on the state for financial assistance.

15. First-tier Tribunal Judge Woolf was absolutely right in her approach and her findings. There has been no misdirection and the determination contains no error of law.

Decision

16. There is no error of law and the decision of the First-tier Tribunal to allow the appeal against the Secretary of State's refusal to issue a permanent residence card is upheld.

Signed:

Dr R Kekić
Judge of the Upper Tribunal

7 February 2014