



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

Appeal Number:

IA/30004/2013

**THE IMMIGRATION ACTS**

**Heard at: Manchester**

**On 30<sup>th</sup> June 2014**

**Determination**

**Promulgated**

**On 3<sup>rd</sup> July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Mohammad Zaman Noori  
(no anonymity order made)**

Respondent

For the Appellant: Ms Johnstone, Senior Home Office Presenting Officer  
For the Respondent: Mr Ali, Counsel instructed by Adoni Beulah Sols

**DETERMINATION AND REASONS**

1. The Respondent is a national of Afghanistan date of birth 18<sup>th</sup> September 1965. On the 16<sup>th</sup> December 2013 the First-tier Tribunal (Judge Crawford) allowed his appeal against the Secretary of State's decision to refuse to issue him with a permanent residence card. The Secretary of State now has permission to appeal against that decision.
2. The Respondent had made an application for a residence card on the basis that he qualified for permanent residence as the spouse of an EEA national who had been exercising treaty rights in the UK for a continuous period of 5

years. The Respondent's wife is a Dutch national who has lived in the UK since 2006.

3. The application was refused by way of letter dated the 1<sup>st</sup> July 2013. The Secretary of State found that the application form had not been filled in properly, nor all the necessary evidence supplied, so was unable to accept that the EEA sponsor had in fact been exercising treaty rights throughout her time in the UK. The refusal letter also noted that the application should have included evidence to show that the family had been residing in the UK throughout the applicable period, such as council tax or utility bills.
4. On appeal the First-tier Tribunal noted that at the outset of the hearing the Respondent had produced a folder that was "approximately one foot thick, containing hundreds - if not thousands - of documents, which he submitted showed his wife had been exercising treaty rights in the UK since 10 April 2006". The First-tier Tribunal Judge very sensibly asked the parties to sort out these papers between them. The representatives returned to court and handed in a document explaining what the EEA sponsor had been doing since 2006; this chronology was based on the original documentary evidence in the one foot thick folder and was agreed by both sides. The agreed facts included that the Respondent's wife had worked full time from April 2006 to June 2007, was on maternity leave from August 2007 to May 2008, was a student from September 2008 to date, but had also been working part-time from December 2012 to date. On the basis of this agreed chronology, and the "overwhelming" evidence that there had been continuous lawful residence in accordance with the Regulations, Judge Crawford found the burden of proof discharged and allowed the appeal.
5. The Secretary of State now has leave to appeal that decision on the basis that the First-tier Tribunal failed to make any findings on whether the EEA sponsor had, during her periods of maternity leave or study, comprehensive medical insurance.

### **Error of Law**

6. Before me Mr Ali produced a Rule 24 response which raised a preliminary issue as to whether the appeal was in-time. The appeal was not lodged until the 2<sup>nd</sup> January 2014 when the deadline was in fact that 27<sup>th</sup> December 2014. Mr Ali would appear to be correct. There is no indication that the Secretary of State asked for an extension of time or that one was given. For the sake of completeness I proceed on the basis that there was a good reason to extend time and do so.
7. The First-tier Tribunal can reasonably expect the refusal letter to raise all matters that are in issue, unless the letter states otherwise. It may be the Home Office Presenting Officer on the day of the hearing will seek to amend the grounds of refusal to include another matter; sometimes the Tribunal may raise an issue of its own motion. In either case the opposing party will

be given an opportunity to deal with the new point being raised. In this case the refusal letter makes no reference to the application failing to establish that the EEA sponsor had the relevant medical insurance when she was a student or on maternity leave. I have read Judge Crawford's Record of Proceedings. It is quite apparent from this that the matters now raised in the grounds of appeal to this Tribunal were not raised before him. Indeed the Record of Proceedings plainly indicate, as does the determination, that the factual matters which led to the appeal being allowed on the spot were agreed by Counsel for the Secretary of State on the day. There is therefore absolutely no merit in these grounds, which seek to go behind the reasoned findings of Judge Crawford and raise a completely new issue that has never been part of this case. If the Secretary of State now seeks to raise this matter it is open to her to review the facts before granting a Permanent Residence Card; there is however no error of law in Judge Crawford's decision.

### **Decisions**

8. The decision of the First-tier Tribunal contains no error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce  
30<sup>th</sup> June 2014