Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/35963/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 10th June 2014	**On 3rd July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

NADREN MOHAMMED DAOD KHAMES

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, who is a citizen of Sudan, sought from the Respondent the issue of a permanent residence card as confirmation of a right to reside in the United Kingdom. She did so as the spouse of Mohammed Ismail ("the Sponsor") a Dutch national. The application was refused as it was not

accepted that the Sponsor had resided in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2006 as amended for a continuous period of five years. It was noted that the Sponsor had been a student from 24th September 2007 until 10th June 2011 but had failed to provide evidence that he had comprehensive sickness insurance during that period. A letter had been provided, in a scanned form, that he had been working for a company, Templine, from February 2005, the letter being dated 14th December 2005 but that was held not to be acceptable evidence as documents were required to be originals. It was also stated that the Sponsor had been employed following university but there had been no evidence of his exercising treaty rights from June 2011 until May 2012. Applications in respect of the Appellant's two children were refused in line with her own.

2. The Appellant appealed, requesting that the appeal be dealt with on papers. It was determined on that basis by Judge of the First-tier Tribunal David Charles Clapham SSC, that determination being promulgated on 21st January 2014. Judge Clapham found that there was no evidence that the Sponsor had been in possession of comprehensive medical or sickness insurance and noted that the letter from Templine had not been an original. He went on to comment about the subsequent employment record. The appeal was dismissed.

3. The Appellant applied for permission to appeal to this Tribunal enclosing a copy of an NHS card. It was said that the letter from Templine initially sent had been an original. It was also said that the Sponsor had worked from 1st March 2011. Permission was initially refused but was then renewed through solicitors to the Upper Tribunal. In the revised application it was said that the judge had materially erred by way of a misdirection as at the relevant time comprehensive sickness cover was not required for a student, being introduced only on 20th June 2011. The Sponsor was entitled to rely on any period of continuous five years' residence and it was said that the Sponsor had accrued permanent residence in February 2010, which he had then retained.

4. Permission was granted by Upper Tribunal Judge Pitt on 9th April 2014. She commented that it was correct that the requirement for sickness insurance for students had only been introduced in June 2011. The Respondent accepted that the Sponsor had been a student from 2007 to June 2011 and there were some pay slips from another employer. The Respondent replied to that grant with a response under Upper Tribunal Procedure Rule 24.

5. The Appellant attended the hearing in person. She produced a letter, which she said her solicitors had helped her to draft, requesting an adjournment. She said that she wanted the opportunity to instruct solicitors to represent her. Asked who she would instruct she said her original solicitors, Genesis Law Associates. It was pointed out to her that the same firm had written to the Tribunal on the day prior to the hearing stating that they were no longer acting and that she would attend in

person. I was aware that notice of the hearing had been sent out both to the Appellant and to her then representatives over a month previously, on 2nd May 2014 and there had been adequate time to instruct them. I considered the application for an adjournment but in the circumstances could see no prospect of her being represented nor any benefit for the Appellant in the matter being adjourned. I considered that the matter could be justly disposed of and assisted the Appellant to put her case as best she could.

6. Mr Smart for his part accepted that comprehensive medical insurance had not in fact been required as claimed in the refusal letter for a student until June 2011. However he said that there was no evidence as to when the Sponsor had become an EEA national and there were gaps in the evidence as to when the Sponsor had been working.

7. I considered the evidence which had been before the judge. On the assumption that an original letter from Templine had been produced I noted that the letter in question, which was dated 14th December 2005, merely stated that the Sponsor had been working for that agency since 22nd March 2005. Subsequent evidence as to the Sponsor's employment, prior to his becoming a student, was sparse. There were pay slips from Arzoum Limited dated 30th April 2006, 30th June 2006, 31st July 2006, 31st May 2007 and 31st July 2007. They are far from being continuous. No P60 forms were produced and there was no evidence in letter form from that employer. The Appellant fell far short of establishing that the Sponsor had been exercising treaty rights for the whole period between February 2005 and the time that he became a student or even up to February or March 2010, which would have been a five year period from when he was said to have commenced working. The Appellant had opted for a disposal without a hearing and the judge did not have the benefit of any oral testimony. There was no evidence before the judge which would have justified him in reaching the conclusion that as at the date of application the Sponsor had established a permanent right of residence by having exercised treaty rights for five years. Any error he made was therefore not material to the outcome. Mr Smart also raised the question of when it was that the Sponsor obtained Dutch nationality. The only evidence of that nationality from the file was an identity card issued in April 2012. It is open to the Appellant to make a further application if the requisite supporting material is available.

Decision

8. The original determination did not contain a material error on a point of law and the appeal is dismissed.

Signed Dated: 01 July 2014

Deputy Upper Tribunal Judge French