Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/05467/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgation**
On 16 January 2019	**On 11 February 2019**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Shabnaj Khanom
(ANONYMITY ORDER NOT MADE) Appellant

And

The Secretary of State for the Home Department Respondent

Representation:
For the Appellant: Ms S Akinbolu, of Counsel, instructed by CK solicitors.
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Bangladesh born on 10 June 1993, appeals against a decision of Judge of the First-tier Tribunal I. M. Scott who, in a determination promulgated on 6 July 2018 following a hearing on 25 April 2018, dismissed her appeal against a decision of the respondent of 14 March 2017 to revoke a residence card issued to her on 23 February 2015, valid for five years, as confirmation of a right to reside in the United Kingdom as the spouse of Mr Manzur Morshed Khan, a Polish national (date of birth: 23 December 1982) exercising Treaty rights in the United Kingdom then.

2. The respondent's "*reasons for revocation*" letter dated 14 March 2017 (the "RFRL") states that the appellant's residence card was revoked under regulation 24(3) of the Immigration (European Economic Area) Regulations 2016 (the "2016 Regulations").

3. The issue before the judge was whether the appellant had a retained right of residence pursuant to regulation 10 of the 2016 regulations.

4. The judge dismissed the appeal because he found that the appellant did not satisfy regulation 10(6)(a). He considered this issue by reference to the circumstances, as he found them to be, as at the date of the hearing. He found (para 28) that the appellant was working from January 2016 until the end of March 2017 but she was not working from that point (end March 2017) until April 2018 when she obtained another job.

5. There are two issues before me. The first issue (Issue 1) is whether the judge was correct to determine whether the appellant had a retained right of residence as at the date of the hearing or whether (as Ms Akinbolu submitted) he should have determined whether the appellant had a retained right of residence as at the date of the decision. If the latter was the correct approach, then (Ms Akinbolu submitted) the decision was unlawful and the judge should have allowed the appellant's appeal, given his finding that the appellant was working as at the date of the decision and his findings that the appellant satisfied the remaining criteria for a retained right of residence (see para 14 below).

6. If the judge was correct to have determined whether the appellant had a retained right of residence as at the date of the hearing, then (subject to Issue 2) the appellant did not satisfy regulation 10(6)(a) because (as he found) she was not employed from the end of March 2017 until April 2018.

7. The second issue (Issue 2) arises only if the judge was correct to determine whether the appellant satisfied regulation 10(6)(a) by reference to the circumstances as at the date of the hearing. In this regard, the grounds contend that the judge's finding that the appellant had terminated her employment at the end of March 2017 of her own will was unreasonable. The appellant's case is that the reason why she stopped working was because the respondent had revoked her residence card. Accordingly, it is contended that the gap in her employment subsequent to the date of the decision of 14 March 2017 (i.e. from end March 2017 until April 2018) as found by the judge was because she was involuntarily unemployed. In the alternative, it is argued that she was a jobseeker during the period when she was not employed.

Background

8. The appellant and Mr Khan were married in Bangladesh on 9 September 2014. The appellant joined Mr Khan in the United Kingdom on 8 November 2014 with entry clearance as his family member. On 23 February 2015, she was issued with a residence card valid for 5 years. Mr Khan commenced divorce proceedings on 21 July 2016. The decree absolute was issued on 3 March 2017.

9. Following the decision of the respondent of 14 March 2017 to revoke the appellant's residence card, the appellant (it seems) wrote to the respondent requesting confirmation that she had a right to work.

10. On 20 March 2018, the appellant made an application for a residence card. The cover letter (page 25 of the appellant's bundle) from CK solicitors, the appellant's representatives, requested confirmation as to whether the appellant had a right to work. The respondent acknowledged the application by letter dated 4 April 2018 (page 21 of the appellant's bundle). The respondent's letter stated, inter alia, that the appellant did not satisfy regulation 10(6) and that she had a right to work until the appeal process was completed.

11. The appeal before the judge was an appeal against the decision of 14 March 2017. The appellant's application of 20 March 2018 was not the subject of the appeal before the judge. This fact was relied upon by Ms Akinbolu at the hearing before me in support of her submission that any issue as to whether the appellant continued to satisfy the requirements of regulation 10(6)(a) from the date of the decision was a matter that would be the subject of any challenge to the decision made (if adverse) to the appellant's application of 20 March 2018.

The relevant provisions

12. Regulations 4, 6, 10 and 24 and para 1 of Schedule 2 of the 2016 Regulations, insofar as relevant, provide as follows:

> **"4. "Worker", "self-employed person", "self-sufficient person" and "student"**
> (1) In these Regulations —
> (a) "worker" means a worker within the meaning of Article 45 of the treaty on the Functioning of the European Union;
> …
> **6. "Qualified person"**
> (1) In these Regulations, "qualified person" means a person who is an EEA national and in the United Kingdom as—
> (a) a jobseeker;
> (b) a worker;
> (c) a self-employed person;
> (d) a self-sufficient person; or
> (e) a student.
> (2) Subject to regulations 7A(4) and 7B(4), a person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—
> (a) he is temporarily unable to work as the result of an illness or accident;
> (b) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom for at least one year, provided that he –
> (i) has registered as a jobseeker with the relevant employment office; and
> (ii) satisfies conditions A and B;
> (ba) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided that he –
> (i) has registered as a jobseeker with the relevant employment office; and
> (ii) satisfied conditions A and B.
> (c) he is involuntarily unemployed and has embarked on vocational training; or
> (d) he has voluntarily ceased working and embarked on vocational training that is related to his previous employment.
> (2A) A person to whom paragraph (2)(ba) applies may only retain worker status for a maximum of six months.
> (3) A person who is no longer in self-employment shall not cease to be treated as a self-employed person for the purpose of paragraph (1)(c) if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident.
> (4) For the purpose of paragraph (1)(a), "jobseeker" means a person who satisfies conditions A, B and, where relevant, C.
> (5) Condition A is that the person –

(a) entered the United Kingdom in order to seek employment; or
(b) is present in the United Kingdom seeking employment, immediately after enjoying a right to reside pursuant to paragraph (1)(b) to (e) (disregarding any period during which worker status was retained pursuant to paragraph (2)(b) or (ba).

(6) Condition B is that the person can provide evidence that he is seeking employment and has a genuine chance of being engaged.

(7) A person may not retain the status of a worker pursuant to paragraph (2)(b), or jobseeker pursuant to paragraph (1)(a), for longer than the relevant period unless she can provide compelling evidence that he is continuing to seek employment and has a genuine chance of being engaged.

(8) In paragraph (7), "the relevant period" means –
(a) in the case of a person retaining worker status pursuant to paragraph (2)(b), a continuous period of six months;
(b) in the case of a jobseeker, 91 days, minus the cumulative total of any days during which the person concerned previously enjoyed a right to reside as a jobseeker, not including any days prior to a continuous absence from the United Kingdom of at least 12 months.

(9) Condition C applies where the person concerned has previously, enjoyed a right to reside under this regulation as a result of satisfying conditions A and B –
(a) in the case of a person to whom paragraph (2)(b) or (ba) applied, for at least six months; or
(b) in the case of a jobseeker, for at least 91 days in total,
unless the person concerned has, since enjoying the above right to reside, been continuously absent from the United Kingdom for at least 12 months.

(10) Condition C is that the person has had a period of absence from the United Kingdom.

(11) Where condition C applies –
(a) paragraph (7) does not apply; and
(b) condition B has effect as if "compelling" were inserted before "evidence".

10. "Family member who has retained the right of residence"

(1) In these Regulations, "family member who has retained the right of residence" means, subject to paragraph (8), a person who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) …

(3) …

(4) …

(5) A person satisfies the conditions in this paragraph if—
(a) he ceased to be a family member of a qualified person or of an EEA national with a permanent right of residence on the termination of the marriage or civil partnership of the qualified person;
(b) he was residing in the United Kingdom in accordance with these Regulations at the date of the termination;
(c) he satisfies the condition in paragraph (6); and
(d) either—
(i) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had resided in the United Kingdom for at least one year during its duration;
(ii) the former spouse or civil partner of the qualified person has custody of a child of the qualified person or the EEA national with a permanent right of residence;
(iii) the former spouse or civil partner of the qualified person or the EEA national with a permanent right of residence has the right of access to a child of the qualified person or the EEA national with a permanent right of residence, where the child is under the age of 18 and where a court has ordered that such access must take place in the United Kingdom; or
(iv) the continued right of residence in the United Kingdom of the person is warranted by particularly difficult circumstances, such as he or another

family member having been a victim of domestic violence while the marriage or civil partnership as subsisting.

(6) The condition in this paragraph is that the person—
  (a) is not an EEA national but would, if he were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 6; or
  (b) is the family member of a person who falls within paragraph (a).

(7) …

(8) …

24.—Refusal to issue or renew and revocation of residence documentation

(1) The Secretary of State may refuse to issue, revoke or refuse to renew a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card if the refusal or revocation is justified on grounds of public policy, public security or public health, or on grounds of misuse of rights in accordance with regulation 26(3).

(2) A decision under regulation 23(6) or 32(4) to remove a person from the United Kingdom, or a decision under regulation 31 to revoke a person's admission to the United Kingdom invalidates a registration certificate, residence card, document certifying permanent residence or permanent residence card held by that person or an application made by that person for such a certificate, card or document.

(3) The Secretary of State may revoke or refuse to renew a registration certificate or a residence card if the holder of the certificate or card has ceased to have, or never had, a right to reside under these Regulations.

(4) The Secretary of State may revoke or refuse to renew a document certifying permanent residence or a permanent residence card if the holder of the certificate or card has ceased to have, or never had, a right of permanent residence under regulation 15.

(5) …

(6) …

(7) Any action taken under this regulation on grounds of public policy, public security or public health must be in accordance with regulation 27.

Schedule 2

1. The following provisions of, or made under, the 2002 Act have effect in relation to an appeal under these Regulations to the First-tier Tribunal as if it were an appeal against a decision of the Secretary of State under section 82(1) of the 2002 Act (right of appeal to the Tribunal)—

section 84 (grounds of appeal), as though the sole permitted grounds of appeal were that the decision breaches the appellant's rights under the EU Treaties in respect of entry to or residence in the United Kingdom ("an EU ground of appeal");

…

13. In the decision of the President and Upper Tribunal Judge Rimington in Gauswami (retained right of residence: jobseekers) India [2018] UKUT 00275 (IAC), the Upper Tribunal held that the reference to "*worker*" in regulation 10(6)(a) includes a jobseeker.

The judge's decision

14. The judge's positive findings, which were not challenged by the respondent, may be summarised as follows:

(i) (para 24) that the appellant satisfied the requirements of regulation 10(5)(a);

(ii) (para 25) that the appellant had provided evidence to demonstrate that her ex-husband was still exercising Treaty rights at the date of commencement of the divorce proceedings and that the respondent had accepted that, in the circumstances of the instant case, checks could be carried out by the Home Office as to whether her ex-husband was exercising Treaty rights at the relevant date; and

(iii) (para 26) that the appellant satisfied the terms of regulation 10(5)(d)(iv) because she was a victim of domestic violence during the marriage.

15. The judge's assessment of the requirements of regulation 10(6)(a) is set out at paras 27-32 which read:

> "27. The appellant must also show that she satisfies Regulation 10 (6) (a) by proving, in this case, that she would, if she were an EEA national, be exercising Treaty rights as a worker. I find that she has failed to do so.
>
> 28. From the evidence, I accept that the appellant started work for McDonald's in January 2016, before her divorce; that in June 2016 she started work in a hotel as well; that in August 2016 she gave up her job with McDonald's but kept the hotel job, until the end of March 2017 when she gave that up as well. From then until April 2018, when she obtained another job, the appellant was not working.
>
> 29. On behalf of the appellant, it was submitted that the respondent was responsible for her ceasing to work during that period, because of the unlawful decision to revoke her Residence Card and to curtail her permission to work.
>
> 30. I reject that submission because, in fact, the respondent did not curtail the appellant's permission to work. Contrary to the appellant's assertion, the revocation decision was silent on that matter and, as the Home Office letter dated 4th April 2018 makes clear, the appellant was entitled to continue working until the completion of the appeal process. If the appellant gave up work purely because of the revocation decision, she did so under a misapprehension.
>
> 31. The appellant also claimed that her hotel employment was terminated by her employer because her ex-husband told the employer that they had separated. I do not accept that assertion because: -
>
> - The appellant and her ex-husband separated in April 2015 and the appellant did not start work of any kind until January 2016 (McDonald's) because her ex-husband would not allow her to work while they were together.
>
> - There is nothing at all to suggest that the appellant's ex-husband was aware of her employment. Indeed, the divorce petition expressly states that he did not know her occupation.
>
> - The reference letter from the hotel manager makes no mention of any information being received and does not say that it was the employer who terminated the appellant's employment. In fact, the letter clearly refers to the appellant's decision to leave.
>
> 32. I conclude that, for whatever reason, the appellant decided to stop work at the end of March 2017 and did not take up employment again until a year later, in April 2018. The result is that she does not satisfy Regulation 10 (6) and this appeal must fail."

The grounds

16. Issue 1 was raised at the hearing and therefore developed in submissions at the hearing.

17. In relation to Issue 2, the grounds contend that, upon receiving the respondent's decision to revoke her residence card, it was highly unlikely that any employer, without evidence to the contrary, would continue to employ a worker whom they knew had had a right to reside revoked; that the appellant persisted with representations to the respondent repeatedly requesting evidence she could present to employers that she was entitled to seek employment in her circumstances which, it is said, was eventually provided by the respondent in April 2018 whereupon she obtained employment immediately afterwards. In any event, the appellant had provided evidence that she had continued to attempt to engage with the work force in the United Kingdom by seeking evidence from the respondent that she was entitled to work while her appeal was pending and whilst her circumstances were considered and, upon being provided with such evidence by the respondent, by returning to work immediately.

Submissions

Issue 1

18. After the lunch adjournment, Ms Akinbolu and Mr Clarke informed me that they had been unable to locate any direct authorities on issue 1, although the following decisions may, in their view, be of assistance:

    i) Diatta v Land Berlin, a decision of the Court of Justice of the European Communities (case number 267/83, 13 February 1985); and

    ii) Boodhoo and another (EEA regs: relevant evidence) [2013] UKUT 00346 (IAC).

19. In Ms Akinbolu's submission, the judge had to decide whether the appellant had a retained right of residence as at the date of the decision, ignoring circumstances that arose subsequent to the date of the decision. This is because:

    i) The decision appealed against was a decision to revoke a residence card, not a decision to refuse an application for a residence card. In her submission, in an appeal against a decision to revoke a residence card, the judge must decide whether the respondent had made the correct decision as at the date of the decision.

    ii) The effect of the respondent's decision of 14 March 2017 to revoke the appellant's residence card was that she lost her job. Accordingly, the question was whether the respondent's decision of 14 March 2017 was a lawful decision.

    iii) The question whether the appellant's retained right of residence was continuous from and after 14 March 2017 would be the subject of any appeal against any adverse decision on the appellant's subsequent application of 20 March 2018. Any issue as to whether the appellant should be regarded as a worker due to any alleged involuntary working would arise in that subsequent appeal and not in the instant appeal.

20. Mr Clarke submitted that the issue before the judge was whether the appellant had a retained right of residence as at the date of the hearing before him. This is because EEA appeals concern the individual's status.

21. Mr Clarke referred me to para 1 of Schedule 2 of the 2016 Regulations from which it was clear, in his submission, that the issue on appeal is whether the decision

breaches the appellant's rights under the EU Treaties in respect of entry to or residence in the United Kingdom. In Boodhoo, the then President of the Tribunal considered whether post-decision evidence was precluded by s.85A of the 2002 Act as it then existed. Relying upon para 18 of Boodhoo, Mr Clarke submitted that an appeal is concerned with the status of an individual under the EU Treaties. Accordingly, in his submission, a judge on appeal has to decide the individual's status. Mr Clarke submitted that the appellant either had a retained right of residence as at the date of the hearing before the judge or she did not.

22. Ms Akinbolu distinguished the decision in Boodhoo on the basis that Boodhoo concerned an application for a residence card, whereas the instant appeal is an appeal against a decision to revoke the appellant's residence card. The respondent had made a positive decision to revoke her residence card. Accordingly, the respondent's decision cannot be justified by reference to circumstances that arise after the decision was made.

Issue 2

23. Ms Akinbolu submitted that the appellant continued to satisfy regulation 10(6)(a) after 14 March 2017 because:

    (a) she was involuntarily unemployed which, in Ms Akinbolu's submission, suffices for her to be regarded as a worker; or

    (b) she was a jobseeker.

24. In relation to (a), Ms Akinbolu referred me to the appellant's evidence that her employer was notified of her lack of legal status preventing her from working. At para 17 of her witness statement dated 13 April 2018 (page 5 of the appellant's bundle), the appellant had said that her husband informed her workplace about her divorce and that she therefore had to leave her job in Radisson Blu. This was when she became unemployed. At para 14 of her witness statement dated 8 June 2017 (page 54 of the appellant's bundle), the appellant said that she worked at Radisson Blu until her ex-husband filed for divorce.

25. Accordingly, Ms Akinbolu submitted that the appellant's position is that she was caused to leave work because of the decision to revoke her residence card and that it was not until the respondent's letter dated 4 April 2018 acknowledged the appellant's application of 20 March 2018 for a residence card and stated that she had a right to work until the appeal process was completed that she was able to return to work.

26. Ms Akinbolu submitted that it was unfair for the judge to rely upon the respondent's letter of 4 April 2018 stating that she had a right to work until the appeal process was completed in order to reach the finding that the appellant had left her employment with Radisson Blu voluntarily given that respondent's letter of 4 April 2018 post-dated the revocation decision of 14 March 2017.

27. In the alternative, Ms Akinbolu submitted that the appellant was a jobseeker during the period of her unemployment. She repeatedly petitioned the respondent and requested permission to work. Upon receipt of the respondent's letter dated 4 April 2018, she began work. Ms Akinbolu submitted that the judge failed to deal with this evidence.

28. Ms Akinbolu accepted that the appellant had not been registered with the relevant employment office as a jobseeker as required by regulation 6(2)(ba)(i). However, given that her right of residence had been revoked, one should apply a broad interpretation to the requirement of registration, she submitted, in reliance upon the reasoning of the Upper Tribunal in Gauswami at para 31 onwards.

29. In response, Mr Clarke referred me to paras 28-31 of the judge's decision. The judge found that the appellant had left her employment voluntarily. Mr Clarke submitted that the decision of Upper Tribunal Judge Grubb who granted permission did not identify any arguable error of law in the decision of the judge nor did the grounds.

30. In relation to the issue whether the appellant was a jobseeker, Mr Clarke accepted that Conditions A and B of regulation 6 were satisfied as required by regulation 6(2)(ba)(ii). However, he drew my attention to the fact that regulation 6(2)(ba)(i) required the appellant to have been registered as a jobseeker with the relevant employment office and that there was no evidence of such registration before the judge. The fact that her residence card was revoked did not prevent her from registering herself as a jobseeker with the relevant employment office. If the appellant failed to register herself because she misapprehended the position, this does not alter the position that she was required to have registered herself at the relevant employment office.

Assessment

Issue 1

31. Issue 1 is whether the question whether, in an appeal against a decision to revoke an appellant's residence card where the appellant contends that he/she has a retained right of residence, the judge must determine whether the appellant has a retained right of residence by considering the circumstances as at the date of the decision or the circumstances as at the date of the hearing.

32. There is no dispute between the parties that, in the case of an appeal against a decision to refuse a residence card, the question whether the appellant has a retained right of residence must be determined by reference to the circumstances as at the date of the hearing. Ms Akinbolu accepted that an appeal against a refusal of a residence card involves determination of the individual's status. However, she submitted that the position was different in an appeal against a decision to revoke a residence card. In her submission, this is because, if the respondent was not entitled to revoke the residence card as at the date of the decision, the decision was unlawful. She submitted that a decision that was unlawful when it was taken could not be justified by events subsequent to the date of the decision, for example, if (as in the instant appeal) the appellant ceased to work for a period between the date of the decision and the date of the hearing.

33. Ms Akinbolu and Mr Clarke informed me that there were no direct authorities on Issue 1 although the decisions in Diatta and Boodhoo may be of assistance. I was not referred to any other European materials that may be relevant to the issue. In my view, the judgment in Diatta was not of any significant assistance on Issue 1.

34. There are several difficulties with Ms Akinbolu’s submission. Firstly, it runs counter to the authorities which do exist. For example, in Boodhoo, the then President of the Upper Tribunal (Blake J) said, at para 18, that the purpose of residence documentation is simply evidential confirmation of their status and not a source of

their rights. There is simply no principled basis upon which to draw a distinction between a decision to refuse a residence card and a decision to revoke a residence card so that an appeal against a decision to refuse a residence card requires a judge to decide the appellant's status but an appeal against a decision to revoke the appellant's residence card does not.

35. Ms Akinbolu submitted that the distinction was that a decision to revoke a residence card must be lawful when made and cannot be justified by reference to events that occurred. This submission ignores the fact that an appeal is not a challenge to the legality of a decision. On appeal, the judge does not have jurisdiction to decide whether a decision is in accordance with the law. The legality of a decision can only be challenged on judicial review.

36. Ms Akinbolu's submission that an unlawful decision cannot be justified by subsequent events is misconceived for another reason. There is no question of justification of the decision by subsequent events if the correct legal position is that the appeal is concerned with the individual's status under the EU Treaties.

37. Finally, and importantly, regulation 36 provides for the right of appeal against an EEA decision, whether the decision appealed against is a decision to refuse a residence card or a decision to revoke a residence card. Para 1 of Schedule 2, which applies to all appeals against EEA decisions specifically provides that the sole ground of appeal is that *"… the decision breaches the appellant's rights under the EU Treaties in respect of entry to or residence in the United Kingdom…"* Para 1 of Schedule 2 makes no distinction between decisions to refuse a residence card and decisions to revoke a residence card. It is simply impossible to read into para 1 of Schedule 2 the distinction that Ms Akinbolu seeks to make between the two types of decisions. In my judgment, it is plain from the wording of para 1 of Schedule 2, taken together with regulation 36, that in any appeal against an EEA decision, the judge must determine the appellant's status under the EU Treaties.

38. I have therefore concluded that, in any appeal under regulation 36 of the 2016 regulations in which the appellant relies upon a retained right of residence, the judge must determine whether the appellant has a retained right of residence as at the date of the hearing irrespective of whether the appeal is against a decision to refuse a residence card or against a decision to revoke a residence card.

39. Accordingly, I have concluded that the judge did not err in law by considering whether the appellant satisfied the requirements of regulation 10(6)(a) as at the date of the hearing.

Issue 2

40. This issue requires me to consider the following:

    (a) whether the judge erred in law in finding that the appellant left her hotel employment of her own free will at the end of March 2017;

    (b) if he did not, then whether the appellant satisfied regulation 10(6)(a) by reason of her being a jobseeker in the period from the end of March 2017 until April 2018.

41. In relation to (a), several reasons were advanced as to why the appellant was involuntarily unemployed, summarised at para 7 and 24-26 above.

42. There is simply no substance in any of these submissions. The judge correctly stated that the decision to revoke the appellant's residence card did not state that her right to remain was curtailed or that she no longer had the right to work. Whilst much has been made of the fact that the appellant repeatedly asked the respondent to confirm that she had a right to work, it appears that she was legally represented at the time. Whether that was so or not, it is reasonable to expect that, if she had sought proper legal opinion, she would have been advised, or should have been advised, that she had the right to work until the completion of the appeal process.

43. The judge rejected the appellant's evidence that her hotel employment was terminated by her employer because her ex-husband informed her employer that they had separated, for the reasons he gave at para 31 of his decision. This included the fact that the employer's letter clearly referred to the *appellant's* decision to leave her employment.

44. There is therefore no substance in Ms Akinbolu's submission that the effect of the decision to revoke the appellant's residence card was that she lost her job or that it caused her to leave work.

45. I have therefore concluded that the judge's finding, that the appellant had left her hotel employment at the end of March 2017 of her own free will, is unassailable. He was fully entitled to reach his finding that the appellant left her employment at the end of March 2017 of her own free will. This may well be because she misapprehended the position as to her entitlement to work when she received the decision revoking her residence card. Be that as it may, it does not alter the fact that the judge did not err in law in reaching his finding that the appellant left her hotel employment of her own free will at the end of March 2017.

46. Turning to (b), the Upper Tribunal decided in Gauswami that the term "*worker*" in regulation 10(6)(a) must be construed as including a jobseeker. However, this does not assist the appellant. Under regulation 6(ba)(i), it is necessary for a person to be registered as a jobseeker with the relevant employment office in order to be regarded as a jobseeker. The appellant was not registered. Ms Akinbolu accepted that the appellant was not registered.

47. Ms Akinbolu submitted, in reliance upon the reasoning of the Upper Tribunal at para 31 onwards of Gauswami, that one should apply a broad interpretation to the requirement of registration given that the appellant's right of residence had been revoked. However, at paras 31-35 of Gauswami, the Upper Tribunal considered the meaning of the term *"worker*" in regulation 10(6) and the fact that regulation 10(6) was intended to give domestic legislative effect to article 14.2 of Directive 2004/58/EC (the "Directive"). The Upper Tribunal decided that regulation 10(6) does not give proper or at least sufficiently clear effect to that Article insofar as concerns what is meant by being a "*worker*". It is for this reason that the Upper Tribunal concluded that the reference to "*worker*" in regulation 1096)(a) includes a jobseeker. I was not referred to any provision of the Directive which suggests that the imposition of a registration requirement for an individual to be regarded as a jobseeker for the purposes of the 2016 Regulations fails to transpose the Directive correctly. In the absence of this, I reject Ms Akinbolu's submission that the registration requirement in regulation 6(2)(ba)(i) should be interpreted so widely that it is effectively disapplied.

48. I have therefore concluded that the judge did not err in law in failing to consider whether the appellant was a jobseeker. If he had considered the issue, he would

have been bound to conclude, on any legitimate view, that she was not a jobseeker for the purposes of regulation 10(6)(a) and within the meaning of regulation 6, given that she had not registered herself as a jobseeker with the relevant employment office.

49. The appeal is therefore dismissed.

Decision

The decision of Judge of the First-tier Tribunal Scott did not involve the making of any error of law.

Accordingly, the decision of the First-tier Tribunal to dismiss the appellant's appeal against the respondent decision stands.

Signed
Upper Tribunal Judge Gill

Date: 9 February 2019