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RETAINED WORKER STATUS: WHEN DOES AN EEA STUDENT REMAIN A WORKER FOR THE PURPOSES OF THE EEA REGULATIONS?

I was recently instructed by Sterling & Law LLP in an EEA appeal against the refusal of permanent residence. The Appellant was a non-EEA national in a civil partnership with her wife, an EEA national. The Appellant sought to establish that she was entitled to permanent residence having lived in the UK in accordance with the EEA Regulations for five years.

The Appellant's wife did not have a straightforward work history. She had been employed, first in casual jobs, and then as a Health Care Assistant. She had then taken a break from employment in order to pursue a medical degree, and having successfully completed this had returned to work within the medical field while completing the next stage of her medical training.

A "qualified person" for the purposes of the EEA Regulations 2006 (which were the Regulations in force at the time) is defined by Regulation 6(1) an EEA national who is living in another Member State and who is:

- employed
- self-employed
- a student who also holds Comprehensive Sickness Insurance (CSI), or
- a self-sufficient person who also olds CSI

The Appellant's wife was only able to produce evidence of CSI for part of the relevant period, and so there was a "gap" in the proof that she had been a qualified person for the whole of the time. This could have defeated the claim to permanent residence.

However, there are some circumstances in which a person will not lose their worker status. These are set out at Regulation 6(2):

6. (2) 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, provided that he has registered as a jobseeker with the relevant employment office and—(i) he was employed for one year or more before becoming unemployed;

(ii) he has been unemployed for no more than six months; or

(iii) he can provide evidence that he is seeking employment in the United Kingdom and has a genuine chance of being engaged;

(c) he is involuntarily unemployed and has embarked on vocational

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training; or

(d) he has voluntarily ceased working and embarked on vocational training that is related to his previous employment.

The Appellant's wife had voluntarily ceased working in order to undertake a medical degree. Did this count as "vocational training?" This term is most frequently seen in terms of skill qualifications rather than professional ones.

However, in the case of Sylvie Lair v Universitat Hannover. (Eec Treaty) [1988] EUECJ R-39/86 the European Court of Justice held that:

"A national of another Member State who undertakes university studies in the host State leading to a professional qualification, after having engaged in occupational activity in that State, must be regarded as having retained his status as a worker and is entitled as such to the benefit of Article 7 (2) of Regulation No 1612/68, provided that there is a link between the previous occupational activity and the studies in question."

On that basis, the medical degree undertaken by the Appellant's wife was indeed vocational training, and as it was connected to her previous work as a Health Care Assistant, fell within the provisions of Regulation 6(2)(d). Thanks to the careful preparation of the Appellant and her representatives Sterling & Law, who had meticulously evidenced her work and study history, she could show that she should not have been considered a student during her degree, but rather as a person who had retained her worker status. As a result, she did not need to prove she had held CSI while she was studying.

She had therefore established five years continuous residence as a qualified person and her wife was entitled to succeed under Regulation 15(b) as a person who had lived in accordance with the Regulations for five years.

The appeal was allowed.

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Julian has fifteen years experience in immigration law. After ten years working in private practice initially as a paralegal and then qualifying as a solicitor in 2007 (specialising in immigration law) she was called to the Bar in 2012.

After being called to the Bar she has continued to build a practice in immigration and also extradition and regulatory work. She is registered to undertake Direct Access work and she is also a qualified mediator.