

From: European Policy Team

Subject: NHS access and the Comprehensive Sickness Insurance (CSI) requirement (Ahmad [2014] EWCA Civ 988)

Date: 06 August 2014

Issue number: 07/2014

Purpose of notice

1. This notice is to inform caseworkers of the Court of Appeal's judgment in the case of *Ahmad [2014] EWCA Civ 988*, which assessed whether entitlement to National Health Service (NHS) treatment amounts to comprehensive sickness insurance for the purposes of Directive 2004/38/EC.

Background

2. Article 7 (1) of Directive 2004/38/EC ('the Directive') requires that an EEA national exercising free movement rights as a student or self-sufficient person must hold comprehensive sickness insurance (CSI) in the host Member State. This has been transposed into regulation 4 of the Immigration (EEA) Regulations 2006 ('the Regulations').
3. There is no definition of CSI within the Directive, however, it is the UK's position that access to the NHS does **not** constitute CSI for the purposes of the Regulations. In order to demonstrate that they have appropriate CSI persons claiming a right of residence in the UK as a student or self-sufficient person should provide one of the following:
 - a valid European Health Insurance Card (EHIC) issued by a Member State other than the UK;
 - a valid S1, S2 or S3 form; or
 - a comprehensive private medical insurance policy which covers the holder for treatment in the UK in the majority of circumstances.

Findings of the Court

4. In the case of *Ahmad*, the Court found that an EEA national who is exercising Treaty rights as a student or self-sufficient person in the UK cannot rely on an entitlement to treatment on the NHS in order to meet the requirement to hold CSI. This is in line with the Home Office

position on CSI as set out above and within Chapter 4 Annex A of the European Casework Instructions.

5. The reasoning for this was based on the Court's assessment of the intended purpose of the requirement in Article 7 of Directive 2004/38/EC for students and self-sufficient persons to hold CSI, namely to protect the host Member State from any burden in this regard. A failure to hold CSI would put Member States at risk of having to pay for healthcare for EEA nationals who are not economically active and who have not yet acquired a right of permanent residence.
6. The Court found that even though EEA nationals and their family members may be *eligible* for NHS treatment as a result of NHS rules, this is not relevant when considering whether an EEA national was a qualified person under the Directive. The conditions in Article 7(1) relate to residing in the host Member State and obtaining permanent residence, and any conditions set by the Department of Health regarding eligibility for treatment on the NHS are not relevant to this consideration.
7. The Court also confirmed that an EEA national who has previously resided in the UK as a worker cannot rely upon that period of work to claim eligibility for NHS treatment should they subsequently exercise Treaty rights as a student or self-sufficient person.
8. Any policy enquiries on this notice should be addressed to [REDACTED] or [REDACTED]

[REDACTED]
Head of European Policy Team
06 August 2014