

From: European Operational Policy Team
Subject: Residence under the Mental Health Act
Date: 20th February 2013
Issue number: 03/2013

Purpose of notice

1. This notice provides guidance to UKBA caseworkers on periods of residence spent sectioned under the Mental Health Act when considering whether an EEA national has acquired permanent residence under the Immigration (European Economic Area) Regulations 2006 ("the Regulations"). This follows the judgment in the case of *JO (qualified person – hospital order- effect) Slovakia [2012] UKUT 00237(IAC)*.

Legal Background

2. In the case of *JO*, the Upper Tribunal determined that periods of residence spent in a secure mental health unit by a person subject to a hospital order can count towards the acquisition of permanent residence. A copy of the full judgment in *JO* can be found at the following link:
http://www.bailii.org/uk/cases/UKUT/IAC/2012/00237_ukut_iac_2012_jo_slovakia.html

Consideration

3. Under regulation 6(2) and 6(3) an EEA national worker/self-employed person can continue to be treated as a qualified person if they are temporarily unable to work/be self-employed, as the result of an illness or accident. Where such periods of incapacity can be evidenced, this will count towards the acquisition of permanent residence.
4. There is no definition of 'illness' within the Regulations, and the court in *JO* found that the word should not be given a narrow or restricted meaning and therefore could include mental health disorders.
5. In practice, this means that EEA nationals who were working/self-employed in the UK, and who then become sectioned under the Mental Health Act, can continue to be considered a qualified person and so will fall within scope of regulation 6.

6. Caseworkers must note that the EEA national must establish that they were a worker/self-employed person prior to their incapacity in order to count the period of illness towards the acquisition of permanent residence.
7. The position relating to periods spent in prison due to a criminal conviction is not affected by this judgment. Periods spent in prison do not count as residence for the purposes of acquiring permanent residence. For full guidance on how to assess periods of imprisonment, caseworkers should refer to the following link: <link to staff intranet removed>.

Enquiries

8. If you have any enquiries regarding this notice please contact <REDACTED – section 40(2)> or <REDACTED – section 40(2)>, or the European Operational Policy Mailbox EuropeanOperational@UKBA.gsi.gov.uk

**<REDACTED – section 40(2)>
Head of European Operational Policy
20th February 2013**