Submission of the Appellant on Effect of Reg 8(1) UC (TP) Regs

1. The Appellant is appealing against the decision of ………...
2. The claim was terminated under regulation 8 of the Universal Credit (Transition Provisions) Regulations 2014, SI 2014/1230, (see …………….)
3. Regulation 8(1) UC (TP) 2014 provides:-

*Termination of awards of certain existing benefits: other claimants*

*8.(1) This regulation applies where—*

*(a)a claim for universal credit (other than a claim which is treated, in accordance with regulation 9(8) of the Claims and Payments Regulations, as having been made) is made; and*

*(b)the Secretary of State is satisfied that the claimant meets the basic conditions specified in section 4(1)(a) to (d) of the Act (other than any of those conditions which the claimant is not required to meet by virtue of regulations under section 4(2) of the Act).*

1. Section 4(1) of the Welfare Reform Act 2012 provides:-

*4 Basic conditions*

 *(1)For the purposes of section 3, a person meets the basic conditions who—*

*(a)is at least 18 years old,*

*(b)has not reached the qualifying age for state pension credit,*

*(c)is in Great Britain,*

*(d)is not receiving education, and*

*(e)has accepted a claimant commitment.*

1. Section 4(5) of the Welfare Reform Act 2012 provides:-

*(5)For the basic condition in subsection (1)(c) regulations may—*

*(a)specify circumstances in which a person is to be treated as being or not being in Great Britain;*

*(b)specify circumstances in which temporary absence from Great Britain is disregarded;*

*(c)modify the application of this Part in relation to a person not in Great Britain who is by virtue of paragraph (b) entitled to universal credit.*

1. The Universal Credit Regulations 2013, SI 2013/376, were made under the Welfare Reform Act 2012, including section 4(5).
2. Regulations 9(1) and (2) of the Universal Credit Regulations 2013 provide:-

*Persons treated as not being in Great Britain*

*9.—(1) For the purposes of determining whether a person meets the basic condition to be in Great Britain, except where a person falls within paragraph (4), a person is to be treated as not being in Great Britain if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.*

*(2) A person must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the person has a right to reside in one of those places.*

*9(3) sets out what does not constitute a right to reside for 9(2)*

*9(4) set out what constitutes a right to reside.*

1. The Secretary of State’s decision of ……………… refusing the Appellant’s claim for Universal Credit reads:

*“………………………………………………*

*…………………………………………………...”*

1. As the Appellant was treated as not in Great Britain for the purpose of section 4(1)(c) of the Welfare Reform Act 2012, the Secretary of State was not satisfied that she met the basic condition in section 4(1)(c)
2. By Regulation 8(1)(b), regulation 8 UC (TP) 2014 does not therefore apply and there are no grounds for terminating the Appellant’s award.
3. In relation to the Commissioners’ Submission of ……………….., the Secretary of State was clearly not satisfied that the Appellant met the basic conditions for Universal Credit (see decision letter).
4. HMRC v LH, [2018] UKUT 306 (AAC) concerned a claim for Universal Credit which was made by mistake and withdrawn. In the meantime, the award of tax credits was terminated.
5. Notification to an agency administering a legacy benefit of a claim for Universal Credit is not sufficient to terminate that benefit. There must be evidence that the Secretary of State was satisfied as to the basic conditions: paragraph 9, [2018] UKUT 306 (AAC).

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