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In case no. 2624-23, the **Swedish Social Insurance Agency** (Appellant) v. **AA** (Respondent), the Supreme Administrative Court delivered the following judgment on 11 March 2024.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court rejects the appeal.

BACKGROUND

1. Under certain circumstances, a parent is entitled to parental allowance for care of children who reside in Sweden. The provisions thereon are found in the Social Insurance Code. Parental allowance is in part residency-based and in part work-based. In order to be entitled to the residency-based benefit, it is required that the parent resides in Sweden and, in order to be entitled to the work-based benefit, it is required that the parent works here. A person is deemed to reside in Sweden if that person maintains his or her actual residence in Sweden, and work in Sweden means gainful employment in operations in Sweden.
2. In addition to the requirements that the parent resides and works in Sweden, a person who needs to have a residence permit or work permit must have been granted such permit before any benefits may be provided. Where there are extraordinary reasons, residency-based benefits may, however, be provided even if a residence permit has not been granted.
3. AA gave birth to a son in Sweden on 14 September 2021. At that time, she resided in Sweden and worked here and had a permanent residence permit. AA applied for work-based parental allowance for the 17 September 2021–15 March 2022 period. At the time of the application, the boy did not have a residence permit and the parents also had not applied for such permit for him.

4. The Swedish Social Insurance Agency decided that AA could not obtain parental allowance for the 17 September–21 October 2021 period for the reason that the son was not deemed to reside in Sweden. Only as from 22 October 2021, when the application for a residence permit was submitted to the Swedish Migration Agency, was the boy deemed to reside here.
5. AA appealed the decision to the Administrative Court in Stockholm which overturned it. The administrative court was of the opinion that there were extraordinary reasons for considering the boy to be resident in Sweden notwithstanding that he lacked a residence permit and returned the case to the Swedish Social Insurance Agency for a determination of whether other conditions for granting AA parental allowance were fulfilled.
6. The Swedish Social Insurance Agency appealed to the Administrative Court of Appeal in Stockholm which rejected the appeal based principally on the same reasoning as the administrative court.

CLAIMS, ETC.

7. *The Swedish Social Insurance Agency* claims that the Supreme Administrative Court shall overturn the rulings of the administrative court of appeal and the administrative court and affirm the decision of the Agency. In order for a child who requires a residence permit to be deemed to reside in Sweden, it is the opinion of the Swedish Social Insurance Agency that the parents must be deemed to reside here and have applied for a residence permit for the child.
8. AA is of the opinion that the appeal is to be rejected.

REASONS FOR THE RULING

The question in the case

9. The question in the case is whether a person who requires a residence permit to stay in Sweden is to be deemed to reside here within the meaning of the Social Insurance Code even where the relevant person lacks such a permit.

Legislation, etc.

10. Chapter 4, section 2 of the Social Insurance Code provides that there are residency-based and work-based benefits, and Chapter 5, section 9 (1) and Chapter 6, section 6 (2) provide that parental allowance is a benefit included in both categories. Pursuant to Chapter 4, section 3, first paragraph, persons who fulfil, *inter alia*, the requirements in question regarding residency or work as referred to in section 2 are insured. Furthermore, in order to be covered by social insurance, the insured must, pursuant to section 3, second paragraph, meet the other conditions applicable to the respective benefit in accordance with Chapters 5-7.
11. According to Chapter 5, section 2 and Chapter 6, section 2, first paragraph, when applying the provisions of the Social Insurance Code the main rule is firstly that a person is deemed to reside in Sweden if he or she maintains his or her actual residence here and secondly that the concept of “work in Sweden” means gainful employment in operations here.

12. Chapter 5, section 12, first paragraph states that a person who, in accordance with the Aliens Act (2005:716) requires a residence permit in Sweden, may be provided residency-benefits at the earliest commencing on the day on which such a permit begins to apply, but not earlier than three months prior to the grant of the permit. Chapter 6, section 14, first paragraph states that corresponding limitations apply to the right of work-based benefits. Where there are extraordinary reasons, residency-based benefits may be provided even if a residence permit has not been granted.
13. Chapter 11, section 8 of the Social Insurance Code provides that a parent is entitled to parental allowance only for the care of children who reside in Sweden.

The Court's assessment

14. It is apparent from the investigation in the case that AA, during the period relevant in the case, resided in Sweden and worked here and had a permanent residence permit. Accordingly, she was entitled to parental allowance to care for her son provided that he was also to be regarded as residing here in the country.
15. Chapter 5, section 2 of the Social Insurance Code states that a person is deemed to reside in Sweden if he or she has his or her actual residence here in the country. It is clear that the son met the residency requirement.
16. The lower courts, however, are of the opinion that the fact that the son did not have a residence permit meant that he, notwithstanding his residency in Sweden, could not be deemed to reside here and, in this respect, rely on the provision in Chapter 5, section 12, first paragraph of the Social Insurance Code. The question is whether there is cause for such a position.
17. The provision in Chapter 5, section 12, first paragraph of the Social Insurance Code has been transferred, in principle, unchanged from Chapter 3, section 3, first

paragraph of the Social Insurance Act (1999:799). The preparatory works relating to the article state that only a person who is entitled to stay in Sweden should reasonably be deemed to reside here (Government Bill 1998/99:119, p. 99). However, this position is not expressed in the statutory text. Another matter – which is apparent from the statutory text – is that a residence permit, as a main rule, is a condition in order for a residency-based benefit to be able to be provided.

18. It follows from the aforementioned that there is no requirement that a person has a residence permit to be deemed to reside in Sweden within the meaning of the Social Insurance Code. The Swedish Social Insurance Agency thereby had no basis for denying AA parental allowance due to the fact that her son did not reside here. Accordingly, the appeal is rejected.

Justices Helena Jäderblom, Margit Knutsson, Kristina Ståhl, Inga-Lill Askersjö and Mats Anderson have participated in the ruling.

Judge Referee: Sara Arya.