



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/15336/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 6th July 2021**

**Decision & Reason Promulgated
On 23rd July 2021**

Before

**UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE BEN KEITH**

Between

**VARDIVINO DA SILVA
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Interpreter:

Ms J Negreiros in the Portuguese language

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Brazil born on 21st March 1970. He arrived in the UK on 5th November 2011. He was granted an EEA residence card on 23rd June 2016 which was valid until 8th January 2022. On 9th

February 2019 the appellant applied for leave to remain in the UK based on his parental relationship with his daughter Miss Vitoria Julia Ribeiro Vieira Da Silva who was born in Brazil on 1st June 2009. This application was refused by the respondent on 29th August 2019. His appeal against the decision was heard on the papers and dismissed on human rights grounds by First-tier Tribunal Judge Hatton in a determination promulgated on the 15th November 2019.

2. Permission to appeal was granted by Upper Tribunal Judge Kamara on 6th July 2020, who also extended time to admit the application to appeal in light of the Covid-19 pandemic, on the basis that it was arguable that the First-tier judge had erred in law in finding that the appellant was not the father of his child Miss Vitoria Julia Ribeiro Vieira Da Silva when this was not put in issue by the respondent in the refusal decision. Further, she found that the appeal ought to have been listed together with that of his former partner and child, and this arguably caused there to be a lacuna in the evidence available to the First-tier Tribunal. Judge Kamara ordered that the appeal be linked with HU/15339/2019.
3. Upper Tribunal Judge Blum found in his order and directions dated 16th October 2020 that it has not been possible to link this appeal to that of HU/15339/2019 because the Upper Tribunal does not have jurisdiction over this appeal as it was refused permission by Upper Tribunal Judge Francis in a decision dated 21st September 2020 and promulgated on 12th October 2020. Directions were made by Judge Blum for the matter to be listed for a remote hearing.
4. A telephone case management review hearing took place on 21st January 2021 via BT Meet Me, and it was decided to list the matter for a Face to Face hearing.
5. The matter came before us to determine whether the First-tier Tribunal had erred in law and if so whether any error was material, and if there was a material error to remake the appeal.

Conclusions - Error of Law

6. Ms Everett accepted that the First-tier Tribunal had erred in law in making a decision that was procedurally unfair and also accepted that as a result it was correct that the decision and the findings of the First-tier Tribunal were set aside. We did not therefore have to call upon the appellant to make any submissions on this issue. We find that the finding at paragraph 40 of the decision of the First-tier Tribunal, that there is no evidence that the appellant is the father of his claimed daughter or that he has a subsisting parental relationship with her, is procedurally unfair in light of the position taken by the respondent in the reasons for refusal letter which raises no issue on this point, and given that the appeal was determined on the papers with no opportunity for the appellant to put forward any evidence on these points.

Evidence & Submissions - Remaking

7. After we had resolved the issue of whether the First-tier Tribunal had erred in law Ms Everett raised the issue of whether the appellant had received a decision from the respondent dated 5th March 2021 revoking his EEA residence card which the respondent's records indicate had been sent to him at Hoylake Road in March 2021. She said that the allegation underlying the revocation of the residence card was that the appellant's ex-wife had obtained Italian identity documents which were improperly issued by an Italian official. She said a similar letter had also been sent revoking his daughter's residence card at the same time to the address at St John's Avenue. The appellant was somewhat confused initially but eventually it transpired that he had moved from the Hoylake Road address and back to the address at St John's Avenue in February 2021, and so had not received the decision sent to him as it had not been sent to the address where he was residing, and further he was unaware of any such decision letter in relation to his daughter either. As a result we found that there was no outstanding appeal in the First-tier Tribunal in relation to the revocation of the appellant's EEA residence card. Ms Everett agreed use her best endeavours to get the decision revoking his residence card re-sent to the appellant at his correct address.
8. The appellant confirmed that he wished to proceed to remake the appeal immediately in the Upper Tribunal, and Ms Everett was also content to do this. The appellant provided us with two further payslips from 2019 and two P60s, one issued on 5th April 2020 and one on 5th April 2021, showing he works for London United Busways Ltd. We admitted this further evidence with the consent of the respondent. The appellant informed the Upper Tribunal that his daughter had left the UK in February 2021 with her mother as she was depressed and unwell, and that her mother (his ex-wife) had returned to Brazil to get remarried. He said that he agreed that it was best for his daughter to accompany her mother to Brazil as otherwise she would have been alone in his flat all day whilst he was at work.
9. Ms Everett submitted that the appellant's human rights appeal should be dismissed because the appellant has no basis to stay based on his daughter as she had left the UK and there is no known legal basis on which she could return. The appellant no longer has a valid EEA residence card as this has been revoked, and there is no basis known to the respondent on which the appellant was entitled to remain under the Immigration Rules. His appeal outside the Immigration Rules on Article 8 ECHR could not succeed as his removal from the UK was clearly proportionate.

10. The appellant accepted that he did not know of any legal basis on which his daughter would be entitled to re-enter the UK, and also said that currently there were practical issues with her doing so due to quarantines and the Covid-19 pandemic. He understood that the Italian government had cancelled his ex-wife's Italian residence card, although he did not know why this had happened, but he had seen a letter to her from the Italian authorities when he went back to live at St Johns Avenue. He made no submission that he was entitled to remain due to any EEA right to remain. He had made the human rights application to the respondent for himself and his daughter as a result of the apparent withdrawal of his ex-wife's Italian nationality, as had his ex-wife.
11. The appellant submitted that he wished to remain in the UK because he had lived here for ten years since November 2011 and had worked as a courier and more recently as a bus driver. He wanted to stay because he hoped to develop in his career so that he could train bus drivers. He had been given training and other learning opportunities by his employer and felt that these possibilities would not be open to him in Brazil.
12. At the end of the remaking hearing we told the appellant that we would dismiss his appeal, and briefly outlined the reasons for this, but did not give an oral judgment.

Conclusions - Remaking

13. We find that the appellant no longer has an EEA residence card or any evidence of an EEA right to remain in the UK. He accepts that the Italian authorities have withdrawn his ex-wife's entitlement to her Italian identity card.
14. We find that the appellant cannot argue that he has any right to remain in the UK relating to his minor daughter as she has now returned to Brazil, her country of nationality, with her mother and the appellant could not identify any legal basis on which she can now return to the UK and none was apparent to us either.
15. The appellant therefore puts forward a private life Article 8 ECHR case to remain in the UK. He does not argue or adduce evidence that he would have very significant obstacles to integration if returned to Brazil and therefore his appeal cannot succeed by reference to paragraph 276ADE(1)(vi) of the Immigration Rules.
16. If the appeal is looked at my widely under Article 8 ECHR only little weight can be given his private life connections to the UK, applying s117B(4) and (5) of the Nationality, Immigration and Asylum Act 2002, because all of his ties to the UK have been formed whilst he has been precariously (as he has not held indefinite leave to remain) or perhaps unlawfully present. As such we can only give little weight to the appellant's ties to the UK made through his ten years of work or his

training and aspirations to advance in a career with London United Busways Ltd. Further, although the appellant said that he would not expect to be able to advance his career in a similar way in Brazil it would seem likely that bus drivers have some sort of training in that country and ultimately the put forward no reasoning as to why he would not be able to get some work in his country of nationality so as to be able to support himself. As a result we find that there is nothing of any significant weight that can be balanced against the public interest in maintaining immigration control and refusing those who are not able to show an ability to meet the requirements of the Immigration Rules, and thus that ultimately when all the evidence is considered that the removal of the appellant is a proportionate interference with his right to respect for private life.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. We set aside the decision of the First-tier Tribunal.
3. We re-make the decision in the appeal by dismissing it on human rights grounds.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 7th July 2021