



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/41041/2013

THE IMMIGRATION ACTS

Heard at: Field House  
On: 24<sup>th</sup> September 2014

Determination Promulgated  
On: 7<sup>th</sup> November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

ELIZANGELA CRISTIAN RAVENEDA DEBRASSI  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Khan, Counsel  
For the Respondent: Ms Kenny, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Brazil date of birth 24<sup>th</sup> February 1976. On the 6<sup>th</sup> May 2014 the First-tier Tribunal (Judge Blake) dismissed her appeal against the Respondent's decision to refuse to issue her with a residence card confirming her right of residence under the Immigration (European Economic Area) Regulations 2006 as a family member who has retained a right of residence.

## Background and Matters in Issue

2. The Appellant's case was that she had been married to a Portuguese national, a Mr Everton Luis Debrassi. They had married on the 9<sup>th</sup> March 2007 and had lived together in the UK since then. They were separated in 2011 and were finally divorced on the 13<sup>th</sup> June 2013. She asserts that she is a family member who has retained a right of residence with reference to Regulation 10(5) & (6) of the Immigration (European Economic Area) Regulations 2006:

(5) A person satisfies the conditions in this paragraph if –

(a) he ceased to be a family member of a qualified person on the termination of the marriage or civil partnership of the qualified person;

(b) he was residing in the United Kingdom in accordance with these Regulations at the date of the termination;

(c) he satisfies the condition in paragraph (6); and

(d) either –

(i) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had resided in the United Kingdom for at least one year during its duration;

(ii) ....

(6) The condition in this paragraph is that the person –

(a) is not an EEA national but would, if he were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 6; or

(b) is the family member of a person who falls within paragraph (a).

3. Under Regulation 15 (1)(f) a family member who has retained a right of residence who has resided in the UK in accordance with the Regulations for a continuous period of five years shall be entitled to permanent residence in the UK.

4. The Respondent accepted that this was the applicable law, but not that the Appellant could show that she met these criteria. In particular the refusal letter of 23<sup>rd</sup> September 2013 stated that she had not provided sufficient evidence to show that her ex-husband was a 'qualified person' at the termination of marriage, or that she had been working in the UK.

5. On the 9<sup>th</sup> May 2014 the matter came before the First-tier Tribunal. Judge Blake recorded that the Appellant was not in attendance. Mr Kotas, the Home Office Presenting Officer, informed him that he had spoken with Ms S Njaka, the Appellant's legal representative, who had informed him that neither she nor the Appellant would be attending and the matter should be dealt with on the

papers. In those circumstances Mr Kotas relied on the reasons for refusal letter and Judge Blake determined the appeal on the documentary evidence before him. He dismissed the appeal for lack of evidence, noting at paragraph 34 that he had not had the benefit of hearing from the Appellant.

6. The grounds of appeal were drafted by the Appellant without legal advice. She contends that she should have had an oral hearing and that she was “deceived” by Mr Kotas, in effect being tricked into not attending the hearing. The Appellant’s understanding of events is that Mr Kotas had contacted her legal representative the day before the hearing and told her that he could not prepare the case. He is alleged to have asked Ms Njaka whether she would take instructions from the Appellant about whether she would be happy to have the matter determined on the papers; if not he would apply for an adjournment on the basis that he was not in a position to prosecute the case.
7. In granting permission on the papers Judge Hemingway of the First-tier Tribunal correctly observed that these grounds do not disclose an arguable error of law in the determination. They are a criticism of the conduct of the HOPO. Even if it could be established that Mr Kotas did in some way behave improperly, the grounds contain a tacit admission that the Appellant consented to having the matter determined on the papers. The Upper Tribunal cannot intervene in a decision that does not involve the making of an error on a point of law<sup>1</sup>. Judge Hemingway was however prepared to grant permission for another reason, that being that the reasoning in the determination is “very brief” and it is arguable in those circumstances that the Appellant is not in the position to know why she has lost.
8. For the Respondent Ms Kenny contended that the documentary evidence was not sufficient for the appeal to have been allowed. In particular even if the Tribunal had looked at the material before it in more detail, there was no proof that the Appellant’s ex-husband was working.
9. The Appellant had provided a good deal of documentary evidence in this case. In respect of her own residence and employment in the UK she produced P60s for each year between 2007 and 2013, numerous payslips from various employers and bank statements showing deposits of salary. In respect of her ex-husband Mr Debrassi there was a letter from a Mr

There were also receipts for payment/ payslips from “Ravenada Logistics” made out to Mr Debrassi during 2011, and some payslips showing him to have been employed by ‘Mizuho International’. I am satisfied that none of this evidence has been addressed by the determination. It may have been limited in its scope, but it was before the Tribunal, and this evidence therefore required

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<sup>1</sup> Section 12 Tribunals, Courts and Enforcement Act 2007

assessment. I find that the determination is flawed for this reason and it is set aside.

### **The Re-made Decision**

10. The relevant date for the purpose of Regulation 10 (5) is the date of divorce, that being the legal termination of the marriage. The divorce was on the 13<sup>th</sup> June 2013.
11. I find as fact that the Appellant has been working in the UK in and so meets the requirements of Regulation 10(6)(a). She has provided P60s, payslips and copies of her bank statements showing her salary paid in.
12. In respect of Mr Debrassi I heard oral evidence from the Appellant's brother Mr Ravaneda. He confirmed that he was the proprietor of Ravaneda Logistics, the company which formerly employed Mr Debrassi, and issued the payslips - or payment receipts - produced in the evidence. He said that it was a car recovery business. They would collect cars for scrap. Whether he asked Mr Debrassi to help out varied from week to week. If they were quiet he might only work 1-2 hours. Other weeks they were very busy and he might to 8-10 hours. He did this for about 2 years, from 2011-13. It was not a contract and he only worked when he was asked. He did not have an hourly rate of pay, but Mr Ravaneda would give him half of what he made the day/afternoon that they worked together. He would pay him in cash, and make out payslips for the accounts at the end of the month. At the end of June 2013 he paid him £325. In mid 2013 Mr Ravaneda decided to close the company. It was not making enough money. He informed Companies House but it took a few weeks to wind it down after that. Mr Ravaneda went off and got a job somewhere. He does not know what happened to Mr Debrassi.
13. I have considered all of the evidence in the round. I found Mr Ravaneda to be a credible and straightforward witness. He did not seek to embellish his evidence nor exaggerate it, as one might have expected to see given that the Appellant is his sister. He confirmed, for instance, that some weeks Mr Debrassi only worked one or two hours for him. In submissions Ms Kenny agreed that there is no minimum amount of hours that a person needs to be working to be considered "qualified". I am satisfied that upon termination of his marriage Mr Debrassi was employed by Ravaneda Logistics and that during that month he had earned £325. On the balance of probabilities I am satisfied that he was a qualified person at the date of divorce.

### **Decisions**

14. The determination of the First-tier Tribunal contains an error of law and it is set aside.

15. I remake the decision in the appeal by allowing it.

Deputy Upper Tribunal Judge Bruce  
2<sup>nd</sup> November 2014