



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

Appeal Number: IA/33930/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 February 2015**

**Determination Promulgated  
On 6 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM**

**Between**

**MR PHILLIPE GLORIA DUTRA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Khan, Farani Javid Taylor Solicitors LLP

For the Respondent: Mr F Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Brazil and his date of birth is 29 March 1987.
2. On 6 June 2014 the appellant made an application for a residence card pursuant to the Immigration (European Economic Area) Regulations 2006 as the family member of an EEA national. The appellant's case is that he is married to an Italian citizen, Michelle Dos Reis. The application was refused by the Secretary of State in a decision of 8 August 2014. The decision maker did not accept that the EEA national

sponsor was exercising treaty rights. The decision maker noted that the appellant had submitted a marriage certificate establishing that the appellant and the sponsor were married and it indicated that the appellant's previous marriage was dissolved; however, the appellant had not produced a divorce certificate. For this reason the application was refused.

3. The appellant appealed and his appeal was determined, on the papers, at the request of the appellant, by Judge of the First-tier Tribunal Pacey and dismissed in a decision of 19 November 2014. The appellant made an application for permission to appeal which was granted by Judge of the First-tier Tribunal Kelly in a decision of 20 January 2014.
4. The Judge had before her the appellant's witness statement in which he asserted that he presented his divorce certificate to the registry office prior to his marriage to the sponsor. He attached this to his statement and it was before the First-tier Tribunal Judge. The Judge made the following findings:

"10. I have a document in what I take to be Portuguese (given the appellant's nationality) which includes the word 'divorco'. However, the document is untranslated and I cannot therefore accept it in evidence. Paragraph 11. I understand the logic of the appellant's argument that the register office would require to see proof of his divorce but I cannot assume that this was done. In any event the register office would require a translated document. I have none. I cannot therefore be satisfied that the appellant is validly married to his EEA sponsor".

5. The Judge went on to accept the appellant's evidence in relation to the sponsor's employment. She found that the sponsor was exercising treaty rights; however, she did not accept that the appellant had established that his marriage was dissolved.

### **The Grounds of Appeal and Oral Submissions**

6. The grounds of appeal assert that the registry office would not have married the appellant and the sponsor without having accepted the divorce certificate as evidence that his previous marriage had been dissolved. In oral submissions Mr Khan relied on his skeleton argument. The thrust of the grounds seeking permission is that the Judge applied a too high standard of proof and permission to appeal was granted on this basis. Mr Walker made oral submissions indicating that the Rule 24 response was drafted without the author having had sight of the papers. He conceded that the Judge had applied a too high standard of proof given that the appellant and the sponsor had lawfully married in the UK and it had been accepted by the registrar that the appellant was divorced on production of his Portuguese certificate.

### **Error of Law**

7. In my view the Judge materially erred because she applied a too high standard of proof in failing to treat a marriage certificate (issued in the UK as an official public record) as sufficient evidence of the legal dissolution of the appellant's previous

marriage and by requiring a translated document relating to the dissolution of the appellant's previous marriage. It was the only issue raised by the respondent and there was no challenge to the credibility of the appellant or the sponsor generally. It was not suggested at any time by the respondent that the marriage certificate was not genuine. I set aside the decision to dismiss the appeal under the 2006 Regulations. I remake the decision and allow the appeal under the 2006 Regulations.

8. No anonymity direction is made.

Signed Joanna McWilliam

Date 5.3.15

Deputy Upper Tribunal Judge McWilliam

**TO THE RESPONDENT**  
**FEE AWARD**

I note that the appellant has paid a fee of £80 and I make a fee award to the appellant in that amount.

Signed Joanna McWilliam

Date 5.3.15

Deputy Upper Tribunal Judge McWilliam