



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

Appeal Number: IA/49574/2014  
IA/49578/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 November 2015**

**Decision and Reasons  
Promulgated  
On 9 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**MRS VANDA LUCIA BOAS CANTUARIA VILLAS  
MR MARCOS CANTUARIA  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**And**

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

Appellant

**Representation:**

For the Respondent: Mr A Slatter, counsel instructed by Turpin & Miller  
Solicitors (Oxford)

For the Appellant: Ms A Fijiwala, Home Office Presenting Officer

**DECISION & REASONS**

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge NJ Osborne, promulgated on 22 June 2015, allowing the respondents' appeals against the refusal of their applications for EEA residence cards.

2. Permission to appeal was granted by First-tier Tribunal Judge Colyer on 9 September 2015.
3. The respondents previously applied for residence cards on 30 December 2010 on the basis that the first respondent's son is married to an EEA national. Those applications were refused owing to a lack of evidence of dependency and the appeals against those decisions were dismissed on 26 July 2011. A further application was made on the same basis and was also refused owing to a lack of evidence of dependency.
4. The FTTJ was told by the first respondent that she had given false evidence during her previous appeal. He accepted that she did so, owing to poor legal advice. He allowed the appeals on the basis that each appellant was entitled to a residence card.
5. The Secretary of State appealed on the basis that the FTTJ had made a material misdirection in law in accepting that the first respondent's previous representative was guilty of improper conduct in the absence of any supporting evidence with reference to BT (Former solicitors' alleged misconduct) Nepal [2004] UKIAT 00311 applied.
6. Permission to appeal was granted, with FTTJ Colyer noting that the "*first appellant had given false evidence at an earlier appeal hearing, contending that she did so having been advised by Fenix solicitors. The judge accepted that there had been improper conduct of the previous solicitors that (sic) noted that she did not provided (sic) any documentary evidence of a formal complaint of professional misconduct.*" Permission to appeal was granted owing to the FTTJ's failure to consider the case of BT.
7. When this matter came before me, Ms Fijiwala applied to amend the grounds in the light of the decision in Amirteymour and others (EEA appeals; human rights) [2015] UKUT 00466 (IAC). She argued that there had been an unlawful consideration of Article 8 by the FTTJ. Furthermore she wished to adduce the 2011 determination of the respondents' previous appeal.
8. Mr Slatter conceded there was merit in the additional ground. He objected to the admission of the determination, stating that this would only be relevant if a material error of law was found. He would need to consider it and take further instructions in that event. I agreed to amend the grounds to include the Amirteymour point and to admit the determination.
9. Ms Fijiwala submitted that the first respondent claimed that she lied at her previous hearing owing to advice received. However she had made no formal complaint regarding the previous solicitors. The FTTJ's approach was incorrect, in accepting the first respondent's unsupported evidence. It was irrelevant whether the evidence was challenged by the presenting officer at the hearing. This error had infected the entire decision of the FTTJ.

10. Mr Slatter argued that it was not an error for the FTTJ to fail to consider an authority that is not starred; adduced or relied upon by either party and was not drawn to the judge's attention. It was not an error for FTTJ to proceed on the basis that a serious allegation was made without the solicitors being given an opportunity to respond. BT was not authority for precluding the FTTJ from accepting that a formal complaint had been made as the first respondent said in her evidence. Evidence, which was not challenged or contradicted by the Secretary of State. The FTTJ's acceptance of the first respondent's evidence did not have any material bearing on his decision as to dependency.
11. I reserved my decision on the error of law and issued the following directions on 13 November 2015;-

“Following the error of law hearing, in relation to the decision of First-tier Tribunal Judge N J Osborne, I reserved my decision as to whether such an error was made. Having considered the matter further, I consider that an obvious issue has arisen which has not been raised by either party; that is whether the appellants are entitled to have their case considered under the Immigration (European Economic Area) Regulations 2006. Consequently, I make the following directions;

  1. Both parties are to provide written submissions as to whether the appellants can be considered to be either family members or other/extended family members in view of the judgment in Soares [2013] EWCA Civ 575 at [4(ii)]; such submissions are to include commentary as to my jurisdiction to raise an issue not relied upon by either party to the appeal.
  2. The Secretary of State's submissions are to be served on the Upper Tribunal and the respondents' representatives within 7 days of receipt of these directions.
  3. The respondents' submissions are to be received by the Upper Tribunal and the Secretary of State within 7 days of receipt of the Secretary of State's submissions.”
12. There was no response to these directions from either party following which I asked to be sent to the parties again. Upon receiving no further correspondence from the parties, I resolved to arrive at a decision on the error of law alone.
13. I find that the FTTJ made a material error of law in accepting the first respondent's claim that she deliberately misled the previous judge owing to the advice of a previous solicitor and also that she had made a complaint about that solicitor.
14. In BT, the headnote reads, “... *if an appeal is based in whole or in part on allegations about the conduct of former representatives, there must be evidence that those allegation have been put to the former representative, and the Tribunal must be shown either the response or correspondence indicating that there has been no response.*”
15. In this case, the FTTJ took no account of BT and erred in accepting the first

respondent's oral evidence, which was unsupported by any documentary evidence. BT has been in the public domain in 2004, the FTTJ ought to have had regard to it and there was no requirement for the Secretary of State to draw it to the FTTJ's attention.

16. I consider that the subject matter of the first respondent's dishonest evidence was material, in that it went to a core issue of her claim. She claims that she lied about her assets in Brazil. In the first appeal she spoke of having a property from which she derived income. She now says that she only said this owing to legal advice. The evidence relating to the property in Brazil is obviously relevant to a claim of past or present dependency. It was as relevant in the first appeal as it was in the appeal before FTTJ Osborne. This matter is also relevant in relation to the first respondent's credibility in general.
17. I accordingly set aside the decision of the FTTJ in its entirety, with no findings preserved.
18. I have decided to remit these appeals to the First-tier Tribunal, de novo, given the passage of time since the appeals were heard as the respondents may wish to adduce up to date evidence.
19. At any de novo hearing, the FTTJ should invite submissions, as a preliminary issue, on the matter raised in my directions as to whether either respondent is an extended family members given that neither is related to the EEA sponsor in question.

### **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Columbus House, with a time estimate of 2 hours.**

**A Portuguese interpreter is required.**

Signed:

Date: 6 February 2016

Deputy Upper Tribunal Judge Kamara