



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/00311/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 21 December 2017**

**Decision & Reasons
Promulgated
On 22 December 2017**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**PAULO HENRIQUE DA MOTTA PIVATO
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1.** The appellant challenges the determination of First-tier Tribunal Judge Fox promulgated on 7 March 2017 dismissing his appeal against the respondent's decision of 5 October 2016 to refuse his application for a resident card under the EEA Regulations.
- 2.** The appellant is a national of Brazil, born on this day in 1968. He has previously been admitted under the EEA Regulations. He is married to an Italian national. when he made his application in April 2016, he omitted to provide his marriage certificate. This was later sent to the Tribunal. The appellant explained that because it had been in

Portuguese he had only sent the English translation to the Home Office. Judge Fox had the original certificate and translation before him but considered that as the certificate had not been before the respondent when the application was made, the respondent had properly refused it.

3. Permission was granted by Judge M J Gillespie on 15 September 2017 on the basis that the judge had arguably erred in failing to consider whether the appellant met the provisions of the Regulations at the date of the hearing.
4. The respondent, in her Rule 24 response, did not oppose the application for permission and invited the Tribunal to consider the marriage certificate at a hearing. The matter then came before me.

The Hearing

5. The appellant attended the hearing. He said that his wife was unwell and unable to accompany him. He gave his new address in [] He explained why he had failed to send his certificate with his application and added that when he was made aware that it was required even though it was in Portuguese, he had sent it to the Tribunal.
6. Mr Tarlow made brief submissions. He observed that the absence of the marriage certificate had been the only reason for the refusal of the application. He examined the original documents and pointed out that no issues of their veracity had been raised and that there was nothing to suggest they were not genuine documents. He invited me to allow the appeal.
7. The appellant was content with that and had nothing further to add.
8. At the conclusion of the hearing I indicated that I would be allowing the appeal. The original certificate and translation were returned to the appellant.

Conclusions

9. The respondent has conceded that Judge Fox made an error of law when he failed to have regard to the documents submitted by the appellant and failed to make findings on whether the provisions of the EEA Regulations had been met at the date of the hearing. The decision is flawed for those reasons and is set aside.

10. I have had regard to the original; marriage certificate and the English translation undertaken by a certified interpreter. No issues were taken as to its authenticity. No other reasons, other than its absence, had been relied on when the application was refused.

11. The appellant has adduced original and unchallenged documentary evidence of his marriage to an EEA national. He has confirmed that the marriage is subsisting and that was not disputed by Mr Tarlow. I am satisfied that the appellant's failure to submit the application to the respondent with his applicant was a genuine misunderstanding of what was required. Suffice to say, he has remedied that situation and I am satisfied that he is the spouse of an EEA national.

12. Decision

13. The First-tier Tribunal made errors of law such that the decision is set aside. I re-make the decision and allow the appeal under the EEA Regulations.

14. Anonymity

15. No request for an anonymity order was made and I see no reason to make one.

Signed

A handwritten signature in black ink, appearing to read 'R. Keir-E' followed by a small dot.

Upper Tribunal Judge

Date: 21 December 2017