



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

Appeal Number: IA/14460/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27 July 2016**

**Decision Promulgated
On 28 July 2016**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LILIAN VARGAS K DE PAULA

Respondent

Representation:

For the Appellant: Mr E. Tufan, Senior Home Office Presenting Officer
For the Respondent: Ms J. Hassan, Counsel instructed by Turpin & Miller Solicitors

DECISION AND REASONS

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal to the Upper Tribunal.

2. The appellant appealed, alongside her husband and young child, against the respondent's decision to refuse to issue a residence card recognising a right of residence as dependent family members of an EEA national.
3. First-tier Tribunal Judge J. Robertson ("the judge") allowed the appeals in a decision promulgated on 21 December 2015. The judge heard evidence from the appellant's mother-in-law and her partner as well as the appellant and her husband. Although the judge recognised that the requirements to show dependency were not entirely made out on the documentary evidence produced in support of the appeal she was satisfied that the witnesses were largely credible and that she could rely on their evidence. The judge concluded that the appellant's husband and child satisfied the requirements of regulation 7(1)(b) of The Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations 2006") as dependent direct descendants. She was also satisfied that the appellant had been dependent on the EEA national sponsor while she was living in Brazil and continued to be dependent upon her in the UK as well as being a member of her household.
4. The respondent appealed against the decision on the ground that the judge failed to give adequate reasons for her findings in view of the lack of documentary evidence to support the appellants' claims of dependency.
5. In granting permission to appeal to the Upper Tribunal First-tier Tribunal Judge Nicholson considered that it was arguable that the judge may not have given adequate reasons for finding that the appellant was dependent on the EEA national sponsor to meet her essential needs while living in Brazil. He refused permission in relation to the application to appeal in the cases of her husband and child.

Decision and reasons

6. After having considered the grounds of appeal and oral arguments I satisfied that the First-tier Tribunal decision did not involve the making of an error on a point of law.
7. At the hearing Mr Tufan confirmed that the appellant's husband and child would now be issued with residence cards and that the only issue was whether the Secretary of State should exercise discretion.
8. I am satisfied that the decision does not disclose any material errors of law. The judge heard evidence from a number of witnesses and will have formed a good picture of the family circumstances from that evidence. The evidence was that the appellant's husband came to the UK in 2013 leaving his wife in Brazil with their young child. During that period she was not working and was reliant on remittances from the EEA national sponsor in the UK. The judge's finding at paragraph 17 of the decision makes clear that she took the correct legal approach to the assessment relating to extended family members under regulation 8. I conclude that it was open

to the judge who heard the evidence to find that the requirements were satisfied.

9. There is nothing in the decision to suggest that the judge sought to fetter the discretion of the respondent to issue a residence card to an extended family member under regulation 17. The appeal was allowed without any direction for a residence card to be issued.
10. I conclude that the decision does not involve the making of an error on a point of law. Whether the respondent will exercise discretion to issue a residence card to the appellant alongside her husband and young child is a matter for her to decide.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

Signed  Date 27 July 2016

Upper Tribunal Judge Canavan