



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04932/2018

THE IMMIGRATION ACTS

Heard at Field House
On 27 September 2019

Decision & Reasons Promulgated
On 1 October 2019

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

NATALJA PEREIRA DE CAMARGO SILVA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Abbas, instructed by Imperium Group Immigration Specialists

For the Respondent: Ms R Bassi, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Brazil born on 19 July 1996 who arrived in the UK on 10 April 2017 to join her mother and step-father. Her step-father is a Portuguese national exercising treaty rights in the UK.
2. The appellant made an application on 24 April 2018 for an EEA residence card, under the Immigration (European Economic Area) Regulations 2016, to confirm that she was a family member of an EEA national. At the time of her application she was 21 years of age. Her application was refused on 2 July 2018 on the basis that she had failed to provide

adequate evidence demonstrating that she was dependent upon her EEA national sponsor or that she resided in the same household as her EEA national sponsor.

3. The appellant appealed against that decision. Her appeal was heard on 16 May 2019 before First-tier Tribunal Judge Hanes. The judge considered that, in light of the judgments in Reyes v Migrationsverket [2014] EUECJ C-423/12 and Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383, she was bound to find that dependency must have existed before the appellant came to the UK, in Brazil, and that since it did not, the appellant could not meet the requirements of the EEA Regulations. The judge accepted that the appellant had been living with her mother and step-father since her arrival in the UK and that she was financially dependent upon them but, in the absence of evidence that she did not have her own resources in Brazil, found that she could not show dependency for the purposes of the EEA Regulations.

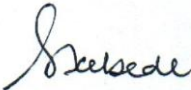
4. Permission to appeal to the Upper Tribunal was sought, and granted, on the grounds that the judge had arguably erred in her understanding and application of the principles in Reyes.

5. At the hearing before me Ms Bassi conceded that the judge had erred in law in her understanding of Reyes as there was no requirement for prior dependency in Brazil. Ms Bassi accepted that, on the findings made by the judge in regard to living in the same household and dependency on the EEA national sponsor, the appeal ought to be allowed.

6. Accordingly I set aside Judge Hanes' decision and re-make the decision by allowing the appellant's appeal. The appellant has demonstrated that she is dependent upon her EEA national sponsor and is therefore able to meet the requirements of Regulation 7(1)(b)(ii) and is entitled to a residence card as the family member of her EEA national sponsor. The respondent's decision was not in accordance with the EEA Regulations.

DECISION

7. The making of the decision of the First-tier Tribunal involved an error on a point of law. I set aside the decision and allow the appellant's appeal under the EEA Regulations 2016.

Signed: 
Upper Tribunal Judge Kebede

Dated: 27 September 2019