



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

Appeal Number: EA/03152/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 9 February 2018**

**Decision & Reasons
Promulgated
On 1 March 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR FABRICIO SIQUEIRA NUNES
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Brazil, has permission to challenge the decision of Judge Oxlade of the First-tier Tribunal (FtT) sent on 9 May 2017 following a hearing on 3 May 2017 dismissing his appeal against the decision of the respondent dated 3 March 2017 refusing to issue a residence card as the spouse of an EEA national exercising treaty rights.
2. The appellant did not appear nor did anyone on his behalf. In the absence of any explanation for his failure to attend, I decided to proceed with the

hearing in the absence of one of the parties. I heard brief submissions from Mr Clarke.

3. It is unnecessary for me to set out the grounds in any detail because Mr Clarke accepts that the appellant is entitled to succeed in his grounds. In deciding to dismiss the appellant's appeal, the judge counted against him the fact that there was a lack of documentary evidence. At paragraph 13 the judge stated:

"The Appellant relies on his summary of the work his wife has done, together with offers of employment from Adludi and a probationary contract of employment with Dentsu Aegis. However, he failed to file copies of payslips, bank statements, a P60 or P45 to show that the EEA National had actually taken up the job for the probationary period with Dentsu, nor that was still in the job shortly before the hearing, or alternatively that she had moved onto other employment."

4. In point of fact on 28 March 2017 the appellant had sent payslips pertaining to the sponsor's employment at Dentsu Aegis Network since 1 February 2017, but these had not reached the judge's file. One reason why these documents were not linked to the judge's file may have been that he did not quote the appeal number, but even so, sufficient other reference numbers were given that should have led to their linkage. In such circumstances, although no fault of the judge, there has been procedural unfairness necessitating that I set aside the judge's decision.
5. In regard to the decision I should re-make, Mr Clarke stated that the respondent accepts that the sponsor was exercising treaty rights.
6. It is unfortunate that the appellant has failed to attend the hearing before me today because I must decide whether he is entitled to a residence card on the basis of the sponsor's current employment position. However:
 - (1) it is clear that the appellant was a family member of an EEA national exercising treaty rights at the time of the hearing before the FtT judge and so would in the ordinary course of events have been entitled to a residence card at least from the date of that hearing; and
 - (2) the sponsor's employment history particulars - which are not now disputed - demonstrate that she is a person who has built up strong connections with the labour market.
7. In light of (1) and (2) I consider it reasonable to assume that the sponsor remains a person who presently qualifies as a worker in light of her continuing connection with the labour market. Accordingly the decision I re-make is to allow the appellant's appeal.
8. If for some reason evidence comes to light that (unbeknown to me) the sponsor ceased working soon after the hearing before the FtT judge, then (in order to put the appellant in the position he would have been but for the error on the part of the FtT judge) the respondent would need to proceed on the basis that a residence card should have been issued at least at the date of hearing before the FtT judge but would then need to

give consideration to revoking it. Against any such revocation decision there would be a fresh right of appeal.

To summarise:


The FtT judge's decision is set aside for material error of law.

The decision I re-make is to allow the appellant's appeal.

No anonymity direction is made.

Signed

Date: 25 February 2018

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a loop at the end of the last name.

Dr H H Storey
Judge of the Upper Tribunal