



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

Appeal Numbers: IA/11415/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11 August 2014**

**Promulgated on
On 21st Aug 2014**

Before

UPPER TRIBUNAL JUDGE LATTER

Between

Januario Antonio Falcao Da Silva

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: In Person

For the Respondent: Mr G Jack, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal dismissing an appeal by the appellant against the respondent's decision made on 06 February 2014 to refuse to issue a residence card as confirmation of a right of residence as the partner of an EEA national exercising Treaty rights in the UK.
2. The applicant is a citizen of Angola born on 13 March 1980. On 02 December 2013 he applied for a residence card but his application was

refused on the basis that he had failed to provide sufficient evidence to demonstrate that his partner was currently a qualified person as a job seeker as required by reg 6(2) of the Immigration (EEA) Regulations 2006.

3. The appeal before the First-tier Tribunal was dealt with on the documentary evidence. The judge found that there were documents to show that the appellant's partner was employed between 06 September 2012 and 29 September 2013 and subsequently she had not been working due to her pregnancy. She noted there were two P45's dated 06 November 2013 and 22 January 2014 which indicated that her job seekers allowance had ceased on those dates and said that there was no evidence therefore at the date of application, date of decision or currently that she was registered as a jobseeker or that she had a genuine chance of being engaged. For these reasons the appeal was dismissed.
4. In his grounds of appeal the appellant said that he had provided evidence necessary to show that his partner had worked for a year and subsequently when not employed she had enrolled at the Job Centre and had studied. He wished to obtain a residence card so that he could work and live with his family. He had two sons, one aged six and the second one month and twenty days. Permission to appeal was granted on the basis that it was arguable that reg 6(2)(b)(iii) had been treated by the judge as a further requirement rather than as an alternative to the provisions of reg 6(2)(b)(i) and (ii).
5. At the hearing before me Mr Jack conceded that the First-tier Tribunal had erred in law by failing to take into account the jurisprudence in the decision of the CJEU in Saint Prix [2013] EUECJ-507/12, to the effect that women who could be deemed temporarily unable to work because of the physical constraints of the late stages of pregnancy must retain the status of worker, a status retained until it was reasonable for her to return to or seek work after the birth of her child. That period could not be shorter than the period provided for under national legislation during which pregnant women were exempted from being available for work or having actively to seek work which in the UK was a period of up to 12 months. In the light of these factors not being taken into account, he conceded that on the facts of the present case, the appeal should have been allowed.

Decision

6. For these reasons I am satisfied that the First-tier Tribunal erred in law and its decision is set aside. I re-make the decision by allowing the appeal against the decision to refuse a residence card.

Signed

Date 11 August 2014

Upper Tribunal Judge Latta