



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001591
EA/04608/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 24th June 2022**

**Decision & Reasons Promulgated
On the 07 September 2022**

Before

**UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE WILDING**

Between

**MS VITORIA CAROLINA GRIMAUX EBNER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Ward, Solicitor of James and Co Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Brazil born on the 17 February 1988. On the 10 December 2021 the First Tier Tribunal dismissed her appeal against the respondent's decision to refuse her a residence card.

The appeal

2. The appellant appealed to the FTT against the respondent's decision to refuse her a residence card as the extended family member of an EEA national. She claims that she was dependent on her sister when she was living in Brazil, and since moving to the UK has remained both dependent on her and a member of her household.
3. The appeal before the FTT was dismissed by Judge MB Hussain. His reason for doing so was that he did not accept that the appellant had not shown that she was dependent on her sister when she was living in Brazil. In particular he found:

25. Firstly, the appellant in paragraph 8 of her witness statement states that when she came here in 2019, nothing more than a visit was intended. However, the testimonial from her father at page 13 of the appellant's bundle states that "... my daughter Raissa Violeta Ebner, seeing that our situation has not improved, after several considerations, took the decision to take Vitoria Carolina Grimaux Ebner to England in December 2019 and keep her there."

26. In the same page of the same deposition, the appellant's father states that until the end of 2013, because of their financial difficulties, the sponsor "enabled periodic financial help to reach us through known and trusted third parties here in Brazil, which was deposited in my account or given in cash to fund and maintain essential expenses such as food and personal maintenance." The appellant in oral evidence described the medium through which funds were received as her sponsor's friends. However, the sponsor in her written statement gives a different version of how she transmitted the funds for the appellant's support.

27. In paragraph 5, she states that the funds were sent through third parties. "I would normally do this by arranging for them to pay for work that I had done as a contractor, rather than the money being remitted to me in the United Kingdom." She has not kept the records of transactions. Although the appellant's sponsor's wife somewhat vaguely asserted that the sister made fund transfers for the appellant, I do not accept that any such funds were sent. I have come to this view for the following reasons.

28. At page 4 of her statements, the appellant's sponsor claims to have a degree in Social Sciences and works as a Project Manager. From July 2017 until January 2019, she worked as a self-employed contractor mostly for the World Bank and several international universities. It is not self-evident from this testimony that she was working for anyone in Brazil. In any event, it seems to me if the appellant's sister was indeed working for such organisations, it is hardly likely that there will not be a paper trail of the transactions. Indeed, there is no

indication that the appellant has made any effort to obtain evidence of the transfers made in Brazil.

29. If the appellant's father's testimony is to be believed then at least some of the transfers were made to his bank account. If that is so, why is there no evidence of this? I also find it highly unlikely that international universities and the World Bank would be handing out cash sums to the appellant's father.

30. For all the reasons given above, I find that the appellant has not been able to persuade me that she was a dependent on her sponsor, whilst living in Brazil.

4. The appellant was dissatisfied and appealed. Permission was granted by Judge Adio on all grounds.

The hearing

5. Mr Ward adopted his grounds of appeal and expanded on them in submissions. In sum he advanced 6 grounds:
 - (i) There was no interpreter on the day, and whilst the appellant seemed to manage sufficiently with the questions, it was apparent in the determination that her inability to answer questions was more acute. Mr Ward argued that this was something not immediately apparent given the appeal was heard over video, and as such Mr Ward did not appreciate language issues arising during the hearing. In sum his ground was that it was unfair for the appellant not to be provided with an interpreter.
 - (ii) A failure to consider relevant evidence, in particular there was no consideration of the appellant's sister's partner, nor any consideration of the appellant's former school director, a report from the World Bank as to conditions in the appellant's home area (Bahia State), and evidence as to dependency prior to her arrival in the UK.
 - (iii) Similarly to ground 2, there was a failing to make findings of fact in relation to Ms Bailey, who gave evidence central to the question of dependency.
 - (iv) The Judge found that there were inconsistencies, however there were no such inconsistencies. In particular, words were attributed to the appellant which were not found in the evidence.
 - (v) A failure to assess the credibility of the evidence in the round.
6. In response Mr Melvin relied on his skeleton argument. Judge Hussain was very experienced and had properly considered all of the evidence and had made findings on that evidence. The findings he made, in light of the evidence before him, were open to him to make, and he was entitled to prefer some parts of the evidence over others. That however does not amount to an error of law. The appellant's grounds amounted to little more than disagreement.

7. At the end of the hearing we reserved our decision.

Discussion

8. We have little difficulty in finding that Judge Hussain did materially err in law. For reasons of efficiency and expediency we deal only with the grounds which we consider to persuade us there are errors.
9. The appellant prosecuted before the FTT a claim that she was dependent on her sister in Brazil and since arriving in the UK. The appellant is from the State of Bahia, one of the poorest States in Brazil. She provided evidence of the socio-economic conditions in that State, including the reliance on remittances from abroad. She gave evidence, along with her sister, and Ms Emma Bailey, her sister's wife. Her sister worked as a contractor for the World Bank and several international universities, and she is said to have supported the appellant financially for a lengthy period of time. She has sent money to her in Brazil through third parties, principally by asking for money earned as a contractor to be redirected to her sister in Brazil. Ms Bailey's evidence was to corroborate that in her experience she had observed this third party support and that money was being sent to the appellant on the instructions of her partner. Her evidence further spoke to being aware of no other family member supporting the appellant in Brazil. The appellant further relied on declarations from her parents confirming her sisters support, as well as a letter confirming the sisters involvement in her education funding from the Director of her school
10. It is plain from the above that the Judge had to make findings of fact on that evidence. The judge was clearly entitled to conclude that the documentary evidence before him was limited, and surprisingly so, but that did not obviate the need to make findings on the oral evidence presented. Regrettably, the Judge failed to make any findings on Ms Bailey's evidence. She was clearly an important witness for the appellant and the reference (in [27] of the judge's decision) to her evidence being somewhat vague did not suffice to deal with the overall import of her evidence. Equally, the judge failed to consider the documentary evidence from the Director of the appellant's school in his assessment. If, as asserted, the sponsor had been responsible for the appellant's schooling, that represented important evidence of the sponsor's responsibility for the appellant's essential needs whilst she was in Brazil. The Judge of course did not have to accept the evidence, but he did have to make findings on it, such that he gave reasons why he rejected it. We find no such analysis was undertaken.
11. Similarly the Judge was asked to make findings on the socio-economic conditions found in Bahia State, such that lent support to the overarching case that such remittances from abroad were essential to those living in the State. Again, this was central to the credibility of the evidence before the Judge and, if he was to reject it, he was required to give reasons why he was rejecting it.

12. Regrettably on the above points no such analysis was undertaken. The Judge therefore failed to make findings on material matters in the evidence such that his conclusions are not founded upon a holistic consideration of the evidence. In particular the findings the Judge made about the lack of documentary evidence as to the remittances from within Brazil to the appellant were answered directly by the oral testimony of the witness. It is plain that the failure to consider all of the evidence was clearly material.
13. In our judgment therefore given the above we are satisfied that the FTT erred in law in the manner set out in the appellant's second and third grounds of appeal. Those errors of law suffice to vitiate the decision as a whole and render it unnecessary to consider the remaining grounds of appeal. The decision of the FtT is set aside in its entirety.
14. We have considered whether the decision on the appeal should be remade in the Upper Tribunal, however the case needs to start *de novo* and requires findings of fact on the totality of the appeal brought. Consequently this is one of those cases where a remittal back to the First Tier Tribunal is required, to be heard by any judge other than Judge MB Hussain.

Notice of Decision

The appeal is allowed. The appeal is remitted to the First-tier Tribunal to be heard *de novo* by a different judge.

No anonymity direction is made.

T.S. Wilding

Deputy Upper Tribunal Judge Wilding

Date 6th July 2022