



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

Appeal Number: IA/31518/2014

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 16 June 2015**

**Decision &  
Promulgated  
On 2 July 2015**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB  
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**LUANE LIDIANG LANDES ALBIGAUS**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

Respondent

**Representation:**

For the Appellant: Mr G Lee instructed by M Reale Solicitors

For the Respondent: Mr I Richards, Home Office Presenting Officer

**REMITTAL AND REASONS**

**Introduction**

1. The appellant is a citizen of Brazil who was born on 6 January 1992. On 12 May 2014, she applied for a residence card as confirmation of her right of residence as an extended family member of an EEA national exercising Treaty rights in the United Kingdom under the Immigration (EEA) Regulations 2006 (SI 2006/1003 as amended). On 21 July 2014, the Secretary of State refused her application under reg 17 of the 2006 Regs.

The Secretary of State was not satisfied that under reg 8 the appellant was an “extended family member” of her brother-in-law, an Italian national, who lived in the UK.

### **The Appeal**

2. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 8 December 2014, Judge Camp dismissed the appellant’s appeal. In order to qualify as an “extended family member” under reg 8 of the EEA Regulations 2006, the appellant had to establish that she was (1) dependent or was a member of the household of her brother-in-law in Brazil before she came to the UK and (2) was either dependent upon him now or lived as a member of his household in the UK. Whilst the judge accepted that the appellant was “currently a member of the sponsor’s household”, he did not accept that the evidence from the appellant and other witnesses that the appellant had been dependent upon her brother-in-law while she lived in Brazil or had been a member of his household.
3. The appellant sought permission to appeal to the Upper Tribunal. On 11 February 2015, the First-tier Tribunal (Judge Lambert) granted the appellant permission to appeal on the following ground:

“The judge made adverse credibility findings relating to the issue of dependence on the sponsor outside and since arrival in the UK. The grounds effectively argue lack of logic in the judge’s reasoning and undue reliance on failure by the sponsor to mention the appellant’s presence in the family home at another appeal hearing at which the judge himself notes this issue may not have been relevant. They are both arguable and material to the outcome.”
4. On 25 February 2015, the Secretary of State filed a Rule 24 response arguing that the judge’s adverse credibility finding and therefore his conclusion that the appellant had not established she was dependent upon the sponsor in Brazil were sustainable in law.
5. Thus, the appeal came before us.

### **The Submissions**

6. Mr Lee challenged the judge’s adverse finding on two bases.
7. First, he submitted that the judge had been wrong to make an adverse credibility finding in relation to the appellant’s mother simply on the basis that at an earlier appeal, in respect of an application for a residence card under the EEA Regulations 2006 by her and her husband, that she had failed to mention that the appellant lived in the sponsor’s house (as was now claimed) at that time. Mr Lee submitted that that finding was impermissible as it was not clear upon what basis the appellant’s mother had given evidence at the previous hearing, in particular in response to what questions.

8. Secondly, Mr Lee submitted that, in any event, even if the adverse credibility finding was sustainable in relation to the appellant's mother, the judge had wrongly treated the witnesses as a homogeneous group. The adverse finding in relation to the appellant's mother could not, he submitted, taint the evidence of the other witnesses. In particular, he relied upon the judge's phraseology in para 31 of his determination where he had referred to the "overall lack of credibility of the witnesses". Mr Lee submitted that the judge gave no reasons for doubting the credibility of the other witnesses. His reasons related wholly to the appellant's mother.
9. Mr Richards submitted that the judge had been entitled to take into account the evidence of the appellant's mother in the previous determination when she had not mentioned all the occupants of the sponsor's house by omitting the appellant. The appellant's mother's evidence was supported by the other witnesses and the judge was entitled to find that there was an element of collusion to falsify evidence. He submitted that it was properly open to the judge on the evidence to find all the witnesses to lack credibility.

## **Discussion**

10. Dealing first with Mr Lee's first submission in relation to the credibility of the appellant's mother the judge dealt with this at para 29 of his determination as follows:

"The fact that the appellant's presence in the sponsor's home was not mentioned at the previous hearing may not, as Mr Lee submitted on the appellant's behalf, be of direct relevance to her factual situation, but it is clearly of relevance to the credibility of her mother and other family members who gave evidence at the hearing. It is not, in my view, sufficient for the appellant's mother to say that she simply answered the questions she had been asked. What she was asked, as appears from the previous determination (paragraph 20), seems to have been to describe her current living arrangements. She did so in some detail, stating which family members slept in which rooms. The house is small, with only two bedrooms. The occupants, according to Mrs de Landes Pereira, were the sponsor and his wife, their children, and herself and her husband. The appellant, whose evidence is that she had been living there for over three months at the time, was not mentioned."

11. We do not accept Mr Lee's submission that the judge was not entitled to take into account the inconsistency between the evidence of the appellant's mother given at the earlier hearing and what was now claimed that the appellant had already been living at the sponsor's house for three months.
12. The evidence of the appellant's mother was recorded in the determination of Judge Waygood promulgated on 22 January 2014 at para 20 as follows:

"E (that is the appellant's mother) said she had lived with her daughter for one and a half to two years. The last transfer her daughter had

made to her was about two years ago. She confirmed they (that is the appellant's mother and her husband) lived with their daughter and there are two bedrooms at the property. She said that she and her husband slept in one room, her daughter and son-in-law in the other bedroom with one child, the 2-year-old and the other child sleeps in the living room. There is a mattress put in the living room on the floor. She said that they are looking for a larger house."

13. No mention is made of the appellant despite the comprehensive catalogue of occupants of the sponsor's house. It was no answer for the appellant's mother to say that she only answered the question that she was asked in order to explain the absence of any reference to the appellant.
14. We see nothing impermissible in the judge's reasoning in paragraph 29 based upon an obvious inconsistency in the evidence of the appellant's mother, upon which, he was entitled to base his adverse credibility finding.
15. That said, we do accept Mr Lee's second submission. The focus of the judge's reasons is directed towards the credibility of the appellant's mother. However at para 31 he considered the evidence of the appellant, the sponsor and the appellant's sister concerning the crucial issue of whether the appellant had been sent money by the sponsor or her sister as follows:

"An attempt was made by the appellant, the sponsor and his wife to explain why it was the sponsor who sent money to his mother for the benefit of the appellant and the appellant's sister who sent money to the appellant. The sponsor's wife has her own bank account. Although I do not reject out of hand the explanation given, it would be a natural inference that the sponsor was supporting his mother whereas the appellant's sister was supporting the appellant. It is not axiomatic that a married couple treat their individual finances as indistinguishable. In the light of the overall lack of credibility of the witnesses, I do not consider that the explanation given is persuasive."
16. As Mr Lee submitted, the judge doubted the explanation - which he did not "reject out of hand" - because the "overall lack of credibility of the witnesses". However, his reasons within the preceding paras 29 to 30 are concerned exclusively with the evidence of the appellant's mother and therefore it is difficult to see what is intended by the statement of the "overall lack of credibility of the witnesses". Subsequent to para 31, the judge again expressed an adverse view of the appellant's mother as a witness stating, at para 35, "That strenuous attempts were being made to obfuscate the facts".
17. As regards the other witnesses, the only comment of substance directed towards their evidence is at para 36 where he states:

"I am satisfied that matters emerged at the hearing during cross-examination which the witnesses would have preferred to remain unknown and had deliberately not mentioned previously."

18. The judge offers no further explanation of the “matters [which] emerged at the hearing”. It may be that the judge had in mind that the other witnesses, in particular the sponsor, had also not mentioned the appellant was living at his house but, he had explained, that he did not believe it was relevant to his mother-in-law’s appeal (see para 17). It was also the explanation of the appellant who said that no one had asked about her at the previous hearing (see para 12). Whilst there may well have been aspects of the witnesses’ evidence which, if properly explored in the judge’s reasoning, could have been relevant to his credibility finding in relation to those witnesses, it is far from clear to us upon what basis the judge determined that the other witnesses were not credible. It was not sufficient to doubt their credibility simply on the basis of the adverse credibility finding in relation to the appellant’s mother. The judge did not engage with the other witnesses’ explanations of why they had not mentioned the appellant in their evidence. In short, the judge failed to give any or any adequate reasons for his conclusion of “the overall lack of credibility of the witnesses”.
19. For these reasons, we are satisfied that the judge materially erred in law in reaching his adverse finding and in dismissing the appellant’s appeal. In our view, none of his findings can stand. The credibility of all of the witnesses needs to be considered properly – individually and cumulatively.

### **Decision and Disposal**

20. For these reasons, the decision of the First-tier Tribunal to dismiss the appellant’s appeal under the EEA Regulations 2006 involved the making of an error of law. That decision cannot stand and we set it aside.
21. We were invited to remit the appeal to the First-tier Tribunal on the basis that fresh findings were required on all the issues under reg 8 as to whether the appellant is an “extended family member” of the sponsor. Applying para 7.2 of the Senior President’s Practice Statement, having regard to the nature and extent of the findings of fact required, in our judgment this is a proper case to remit to the First-tier Tribunal.
22. For these reasons, we remit the appeal to the First-tier Tribunal for a rehearing *de novo* before a judge other than Judge Camp.

Signed

A Grubb  
Judge of the Upper Tribunal