



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

Appeal Numbers: IA/44804/2014
IA/44814/2014
IA/44823/2014
IA/44830/2014
IA/44835/2014
IA/44839/2014
IA/44843/2014

THE IMMIGRATION ACTS

**Heard at: Field House
On: 7th September 2015**

**Determination Promulgated
On: 23rd September 2015**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

**Robson Fernandes Rosa
Amanda de Carvalho Rosa
Rafaela Fernandes Rosa
Ryan Fernandes Rosa
Vanessa da Costa Rosa
Isabele da Costa E Silva
Leticia da Costa Rosa**

Respondents

For the Appellant: Ms Savage, Senior Home Office Presenting Officer
For the Respondents: No appearance

DETERMINATION AND REASONS

1. The Respondents are all nationals of Brazil. On the 12th February 2015 the First-tier Tribunal (Judge Kirvan) allowed their linked

appeals against the Secretary of State's decision to refuse to issue them with a residence card confirming their right of residence as the family members/extended family members of an EEA national exercising treaty rights in the UK. The Secretary of State now has permission to appeal against the decision¹.

2. The Sponsor of all the applications was Mr Robson Ribiero-Rosa, a national of Italy. His relationship to the Respondents in each case was said to be as follows:

Robson Fernandes Rosa	Father
Amanda de Carvalho Rosa	Father-in-law
Rafaela Fernandes Rosa	Father
Ryan Fernandes Rosa	Father
Vanessa da Costa Rosa	Father
Isabele da Costa E Silva	Grandfather
Leticia da Costa Rosa	Grandfather

3. The detailed refusal letter is dated the 27th October 2014. This explains that the evidence submitted to establish the claimed relationships was not acceptable to the Secretary of State because it was not original, not accompanied by a certified translation, or both. It then reads "therefore, it has been decided to refuse to issue the confirmation that you seek ...". The letter raises no other issue under the Regulations.
4. When the matter came before the First-tier Tribunal it was listed as a paper appeal. The Tribunal had regard to the bundle of documents submitted by the Respondents and having done so made findings of fact that the relationships were as claimed. The determination then reads:

"28. I note from the refusal letters that the only issues raised against the applicants were that the documents provided did not establish the relationships claimed.

29. I infer therefore that the Respondent was satisfied that the EEA Sponsor was exercising treaty rights as a worker in the United Kingdom. I note that there is evidence before me of payslips and of pay being paid into his bank account and I am satisfied on that basis that the EEA Sponsor, Mr Robson Riberio Rosa, is exercising treaty rights".

The appeals were therefore allowed.

¹ Permission granted on the 17th April 2015 by First-tier Tribunal Judge Mark Davies

Error of Law

5. The grounds of appeal are that the First-tier Tribunal erred in the following respects:
 - i) It was not open to the Tribunal to infer that all other elements of the EEA regulations were met. The refusal letter makes no concessions.
 - ii) As to the 'evidence' relied upon at paragraph 29 to show that Mr Robson Riberio Rosa was exercising treaty rights it is submitted that the determination contains no reference to original documents or any other corroborative evidence to show that he was working as claimed.
 - iii) As to the children of Mr Robson Ribiero-Rosa who are now adults (the first and fifth Respondents) it is submitted that the Tribunal was required to determine whether they were dependent upon him.
 - iv) As to his daughter-in-law (the second Respondent) findings should have been made as to dependency and the matter remitted to the Secretary of State for her consideration pursuant to Regulations 8(2) and 17(4).
6. I received no Rule 24 response from the Respondents, nor was there any appearance at the hearing before me, despite notice of it having been sent to the representative on record on the 11th August 2015.
7. I am not satisfied that the First-tier Tribunal erred in failing to make findings as to dependency in respect of the adult Respondents. The refusal letter does not make any express concessions but the Tribunal was entitled to infer that the matter in issue was confined to whether the relationships were as claimed. That is because the refusal letter indicates that this was the sole reason for refusal. Having set out the shortcomings of the copied and untranslated birth certificates the letter reads "*therefore*, it has been decided to refuse to issue the confirmation that you seek..." (my emphasis). The Tribunal cannot now be criticised for not realising that there was another matter that the Secretary of State was not satisfied about.
8. As to the second Respondent the determination does contain an error. Amanda de Carvalho Rosa is not a direct descendent. She is his daughter-in-law and as such her application fell to be considered under Regulation 8. Whether she is issued with a residence card is a matter for the Secretary of State, who must

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exercise her discretion under Regulation 17(4). Her appeal can only be allowed to that extent.

Decisions

9. The determination of the First-tier Tribunal contains no error of law in respect of the first, third, fourth, fifth, sixth and seventh Respondents.
10. In respect of the Second Respondent the determination contains an error of law. The appeal should not have been allowed outright; I re-make it by allowing the appeal to the extent that it is remitted to the Secretary of State in order that she exercise her discretion under Regulation 17(4).

Upper Tribunal Judge Bruce
7th September 2015