



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

Appeal Number: EA/03466/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8 November 2018**

**Decision & Reasons
Promulgated
On 14 November 2018**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MS OLUBUNMI EBUDOLA BAKARE
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Ferguson, Counsel, instructed by SLA Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 21 March 2018 of First-Tier Tribunal Judge Page which refused Ms Bakare's appeal against the refusal of a residence card showing her status as someone married to an EEA national exercising Treaty rights.
2. Ms Bakare is a citizen of Nigeria and was born on 22 May 1970. She bases her claim that she is entitled to a residence card on her marriage to Mr Nuno Vilela Ribeiro, a Portuguese national.

3. This error of law decision and the re-making of the appeal can be set out relatively briefly as there was agreement between the parties as to the disposal of the appeal and that agreement was entirely in line with my own view of the case.
4. The First-Tier Tribunal found that the appellant and Mr Ribeiro were in a genuine and subsisting marriage and that Mr Ribeiro was exercising Treaty rights. The appeal was refused only for the reason set out at [11]:

“I am unable to conclude that the appellant has submitted a valid Portuguese passport for the Sponsor as required for the issue of residence card under regulation 15.”
5. There was consensus that the reasoning that led to this conclusion was based on a material error of fact. The evidence provided showed that passport number L8***** had been lost when submitted with an earlier application even though it had been sent to the respondent by recorded delivery by legal advisers and those advisers sought an explanation for the passport not being in the respondent’s file. When it could not be located, Mr Ribeiro reported the loss of that passport. He obtained another passport with the number MO9****. He never reported that passport as lost and merely replaced it on expiry with passport number L7*****. The respondent’s refusal letter was wrong to suggest otherwise and the First-Tier Tribunal incorrect in so finding, seeming to confuse the evidence provided in the witness statements and the appellant’s bundle on the history of the three passports. Ms Everett confirmed that the entry on the respondent’s GCID concerning the loss of passport number MO9**** was inexplicable and that the evidence clearly pointed to the facts being as set out above.
6. I therefore found that the decision of the First-Tier Tribunal that no valid Portuguese passport was provided for Mr Ribeiro was in error as it relied on a material error of fact. I re-made the appeal as allowed when the evidence clearly showed that a valid passport was provided and that the EEA Regulations were therefore met in full.

Decision

7. The decision of the First-Tier Tribunal discloses an error on a point of law and is set aside.
8. The appeal is allowed under the EEA Regulations.

Signed: 
Upper Tribunal Judge Pitt

Date: 8 November 2018