



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-002730**  
**First-tier Tribunal No:**  
**EA/11418/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 12 October 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**RIVIA BARBOSA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

**Heard at Field House on 6 October 2023**

**DECISION AND REASONS**

1. The Appellant is a citizen of Brazil whose date of birth is recorded as 6<sup>th</sup> October 1983. On 28<sup>th</sup> June 2022 the Appellant made application for a residence card which application, on 1<sup>st</sup> November 2022, was refused.
2. The reasons for the refusal, which I set out in full because they are at the core of this appeal, were that the Appellant was said not to have met the requirements of Appendix EU to the Immigration Rules in that there was insufficient evidence of her being the civil partner of a relevant EEA citizen. Whilst the Appellant had provided a "Stable Union Certificate" that document was not considered valid because it was said only to confirm that the Appellant was in a durable relationship rather than having entered into a marriage or civil partnership. The decision went on to say:

“The required evidence of family relationship for a durable partner of a relevant EEA citizen is a valid registration certificate, family permit (or a letter from the Secretary of State, issued after 30 June 2021, confirming your qualification for one) or residence card issued under the EEA Regulations (or an equivalent document or other evidence issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man), a valid EU Settlement Scheme biometric residence card, or an EU Settlement Scheme Family Permit (‘a relevant document’) as the durable partner of that EEA citizen and, where the applicant does not have a documented right of permanent residence, evidence which satisfies the Secretary of State that the durable partnership continues to subsist.

Home Office records do not show that you have been issued with a registration certificate, family permit (or a letter from the Secretary of State, issued after 30 June 2021, confirming their qualification for one) or residence card under the EEA Regulations as the durable partner of the relevant EEA citizen and you have not provided an equivalent document or other evidence issued on this basis by any of the Islands. Our records also do not show that you have been granted an EU Settlement Scheme biometric residence card, or an EU Settlement Scheme Family Permit, as the durable partner of the relevant EEA citizen.

In order to meet the definition of a durable partner as set out in Annex 1 of Appendix EU to the Immigration Rules, you need to demonstrate that you are a joining family member of your sponsor as claimed and that you hold a valid relevant document. Unless you hold such a document you cannot be granted leave under the EU Settlement Scheme as the durable partner of a relevant EEA citizen”.

3. The Appellant appealed. Her appeal was heard by Judge Malik who in a decision, without a hearing, dated 1<sup>st</sup> May 2023 dismissed the appeal.
4. Not content with that decision the Appellant made application for permission to appeal to the Upper Tribunal. The grounds relied upon were as follows:

“In her appeal the appellant explained and challenged the reasons of her refusal. Judge Malik, on his determination dated 5 May 2023 dismissed the case due to the lack of evidence about how the document was produced via proxy and its translation. However, such points were not the reason of the refusal letter dated 1 November 2022. Those points were accepted by the respondent. Therefore there is an error of law as the Judge dismissed the appeal for a reason different of the refusal, or that was not an issue for the Secretary of State in her refusal dated 1 November 2022”.
5. The document which was relied upon by the Appellant was the *Escritura Publica Declaratoria de Uniao Estavel - na forma abaixo declarada*. That document is dated 30<sup>th</sup> December 2020 and appears to have been stamped and it also appears that the original document was in the possession of the Appellant.
6. The Civil Partnership Act 2004 provides a definition of overseas relationship which needs to be read together with the Schedules to the Act. It is of note that the document produced by the Appellant issued in Brazil is to be treated as a civil partnership.
7. Whilst this appeal was to have been determined on the papers in the Upper Tribunal, it so happens that Ms Lecointe of the Respondent was present at the

hearing and accepted that the document which was produced and relied upon by the Appellant met the requirement of the Civil Partnership Act 2004 and as there was no basis for saying that the document ought not to have been produced by the Brazilian authorities, one can properly infer that the requirements of Brazilian law had been met and in those circumstances the document ought to have been accepted by the Respondent when the application was first made.

8. It is understandable that the caseworker perhaps did not understand the import of the document given the title of the document being "Union Stable" which appears to say rather more about a durable relationship than a civil partnership, but when the document is read together with the provisions of the Act it is clear that the appeal should have been allowed and that is a concession quite properly made by Ms Lecointe.

### **Decision**

9. In those circumstances the decision of the First-tier Tribunal contained an error of law. The decision is set aside and re-made such that the appeal in the First-tier Tribunal is allowed with a full fee award of £80.



Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**11 October 2023**