



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

Appeal Number: IA/33550/2013

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE  
On 2<sup>nd</sup> September 2014**

**Determination  
Promulgated  
On 11<sup>th</sup> September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

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

Appellant

**and**

**MR KOFI SARFO\_  
Claimant**

(No anonymity order made)

**Representation:**

For the Appellant: Mr N Bramble ( Home office presenting officer)  
For the Respondent: Mr A Swain (Counsel instructed by Dot com solicitors)

**DETERMINATION AND REASONS**

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination promulgated by the First

Tier Tribunal ( Judge Thanki) on 23<sup>rd</sup> June 2014 in which he allowed the appeal under the Immigration (EEA) Regulations 2006 ( “EEA regulations” ).

### **Background**

2. The claimant is a citizen of Ghana whose date of birth is 8.8.1967.
3. The Secretary of State refused his application made under Regulation 8 of the “EEA Regulations” on the grounds that he failed to show that he was in a durable relationship.
4. The Tribunal found that the claimant was an extended family member under Regulation 8 [32] and further that he qualified under Regulation 17(4) “EEA Regulations” for the grant of a residence card [33].

### **Grounds of appeal**

5. The Secretary of State argued that the Tribunal erred by exercising discretion under Regulation 17(4), a) where there was no jurisdiction and b) the Tribunal failed to apply **YB( EEA reg17(4), proper approach ) Ivory Coast [2008] UKAIT 00062.**
6. A written response was produced under Rule 24 on behalf of the claimant.

### **Submissions**

7. I heard submissions from Mr Bramble and Mr Swain, the details of which are set out in the Record of proceedings . At the end of the hearing I announced my decision. I found a material error of law in the determination. I now give my reasons.

### **Discussion and conclusion**

8. The decision under Regulation 8 discloses no error of law and shall stand. I am satisfied that the Tribunal did not have jurisdiction to exercise discretion under Regulation 17(4) of the “EEA Regulations” (**FD(EEA discretion - basis of appeal) Algeria 2007 EWCA Civ 981**). The discretion falls to the Secretary of State to exercise and arises as a separate consideration after adopting a three stage approach. The first stage is to decide if Regulation 8 applies. The fact that it does or does not apply cannot be treated as determinative of the question of whether or not to issue a residence card. There must then be an extensive examination of the circumstances of the applicant which is a distinct stage exercised by the Secretary of State. The approach is clearly set out in **YB** ( cited above) which the Tribunal failed to apply.

### **Decision**

9. **There is a material error of law disclosed in the determination.  
The decision under Regulation 8 shall stand.  
The decision made under Regulation 17(4) is set aside.  
The matter is remitted to the Secretary of State for a  
consideration under Regulation 17(4).**

Signed Date 9.9.2014

GA Black  
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER MADE.  
NO FEE AWARD MADE.

Signed Date 9.9.2014

GA Black  
Deputy Judge of the Upper Tribunal