



IAC-AH-V1

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

Appeal Number: IA/03389/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 August 2015**

**Decision & Reasons Promulgated  
On 25 August 2015**

**Before**

**UPPER TRIBUNAL JUDGE CONWAY  
UPPER TRIBUNAL JUDGE KNOWLES QC**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**MRS ANGELA AMINA ODEI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: MR DUFFY

For the Respondent: MISS VICTOR-MAZELI

**DECISION AND REASONS**

1. The Appellant in this appeal is the Secretary of State. The Respondent is a Ghanaian national who appealed first in time against the refusal of the Appellant to issue her with a residence card as a family member of an EEA national under Regulation 7 of the Immigration (European Economic Area) Regulations 2006 [“the 2006 Regulations”].
2. The Respondent’s appeal was first heard by First-tier Tribunal Judge Elliman on 22 July 2014. The judge allowed the appeal, without reference

to binding case law on the validity of proxy marriages in the EEA Sponsor's country of nationality. In so doing she made a material error of law. On 30 October 2014 Deputy Upper Tribunal Judge Davidge set aside her decision on appeal by the Secretary of State. The matter was remitted to the First-tier Tribunal for rehearing as Tribunal Judge Elliman had also failed to make sufficient findings of fact about whether the Respondent was in a durable relationship with her EEA Sponsor.

3. First-tier Tribunal Judge Taylor heard oral evidence from the Respondent and her Sponsor at a hearing on 16 April 2015. He made findings of fact that the couple had been in a durable relationship since 2008 as they had claimed. He also found that they had lived together at the same address for about seven years and that they had two children together whom they cared for jointly. He found absolutely no evidence to doubt the sincerity and genuineness of the Respondent and her Sponsor and held that they were witnesses of truth.
4. He determined that the Respondent was entitled to the issue of a residence card under section 17(4) of the 2006 Regulations. He allowed the appeal, holding that the Respondent was an extended family member under Regulation 8(5) of the 2006 Regulations.
5. The Secretary of State applied for permission to appeal the decision of Tribunal Judge Taylor on the basis that he had materially erred in law by allowing the appeal outright. It was submitted that the Secretary of State had not exercised her discretion in this case pursuant to rule 17(4) and, having found that the Respondent was an extended/other family member pursuant to regulation 8(5), Tribunal Judge Taylor should have remitted the case to the Secretary of State instead of allowing the appeal outright.
6. On 8 June 2015 First-tier Tribunal Judge Zucker granted permission to appeal on the ground argued for by the Secretary of State and in reliance on the case of *Ihemedu (OFMs - Meaning) Nigeria [2011] UKUT 00340 (IAC)*.
7. We heard brief submissions from each of the parties. The Appellant confirmed that the Secretary of State did not seek to appeal either the findings of fact made by Tribunal Judge Taylor about the durable relationship between the Respondent and her Sponsor or his conclusion that she was an extended family member pursuant to regulation 8(5) of the 2006 Regulations. The Respondent questioned the exercise of the Secretary of State's discretion and suggested that the findings of Tribunal Judge Taylor might somehow not be taken into account and/or that the Respondent would be disadvantaged if we were to allow the appeal.
8. In accordance with the case of *Ihemedu*, regulation 17(4) of the 2006 Regulations makes the issue of a residence card to an extended family member a matter of discretion for the Secretary of State - she "may" issue a residence card if the conditions in regulation 17(4) are met. She is also required by regulation 17(5) to provide reasons for any refusal unless this

is contrary to the interests of national security. To borrow from the headnote of *Ihemedu*, where the Secretary of State has not exercised that discretion, the most Tribunal Judge Taylor was entitled to do was to allow the appeal as being not in accordance with the law and to leave the matter of whether to exercise this discretion in the Respondent's favour to the Secretary of State.

9. We are satisfied that the Secretary of State had not exercised her discretion pursuant to regulation 17(4) in this case as her decision to refuse a residence card to the Respondent had been based on facts entirely different to those found by the tribunal on 16 April 2015. In accordance with *Ihemedu*, we are satisfied that Tribunal Judge erred in law by allowing this appeal in its entirety. His decision is set aside to be remade.
10. We allow the Appellant's appeal as being not in accordance with the law though we leave both the tribunal's findings as to the relationship between the Respondent and her partner and its conclusion that the Respondent was an extended/other family member pursuant to regulation 8(5) intact. The matter is remitted to the Secretary of State for consideration under regulation 17(4).

### **Notice of Decision**

The appeal is allowed as being not in accordance with the law.

This matter is remitted to the Secretary of State for consideration under regulation 17(4) of the 2006 Regulations.

No anonymity direction is made.

Signed

Date 21 August 2015

Upper Tribunal Judge Conway  
Upper Tribunal Judge Knowles QC