



IAC-FH-NL-V1

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

Appeal Number: IA/21954/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 October 2015**

**Decision & Reasons Promulgated
On 29 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TARIQ JAVED
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: Mr M Hopkins, Counsel instructed by Smart Law Solicitors LLP

DECISION AND REASONS

1. The Secretary of State was granted permission to appeal against the decision of First-tier Tribunal Judge Majid promulgated on 2 June 2015 allowing the claimant's appeal against her decision to refuse a residence card. The claimant applied for a residence card on 12 March 2014 on the basis that he was the unmarried partner of an EEA national and was an extended family member. The Secretary of State refused the claimant's application for a residence card as an extended family member on the basis that it was not accepted that he was in a durable relationship with an

EEA national. The First-tier Tribunal Judge accepted that the claimant was in a durable relationship with an EEA national and the Secretary of State does not challenge that finding.

2. Permission was granted by First-tier Tribunal Judge Parkes on 14 August 2015 on the basis that it was arguably in error of law that the Judge allowed the appeal outright. Having found that the appellant was in a relationship akin to marriage the Judge should have remitted the case to the Secretary of State for the Secretary of State to consider the exercise of discretion with regard to the issue of a residence card.
3. Regulation 17(4) of the Immigration (EEA) Regulations 2006 provides that the Secretary of State may issue a residence card to an extended family member not falling within Regulation 7(3) who is not an EEA national on application if –
 - (a) The relevant EEA national in relation to the extended family member is a qualified person or an EEA national with a permanent right of residence under Regulation 15; and
 - (b) in all the circumstances it appears to the Secretary of State appropriate to issue the residence card.
4. The First-tier Tribunal found that the claimant was in a durable relationship and that he met the requirements of 8(5) of the Regulations. Having regard to the decision of the First-tier Tribunal that the claimant is indeed in a durable relationship which is undisputed there was no error in finding that he met the requirements of Regulation 8(5). It is clear both from Regulation 17(4) and from the cases of **MR & Others (EEA extended family members) Bangladesh [2010] UKUT 449** and **Ihemedu (OFMS - meaning) Nigeria [2011] UKUT 00340** that Regulation 17(4) makes the issue of a residence card to an extended family member a matter of discretion. Where the Secretary of State has not yet exercised that discretion the proper course is to set the decision aside and remake it, allowing the appeal to the extent that the claimant's application for a residence card as an extended family member remains outstanding before the Secretary of State for a lawful decision.

Notice of Decision

5. I therefore set aside the decision of the First-tier Tribunal and re-make the decision. This appeal is allowed to the extent that the question of whether a residence card should be issued to the claimant is outstanding before the Secretary of State for a lawful decision thereon.
6. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge L J Murray

