



IAC-FH-NL-V1

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

Appeal Number: IA/26712/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 September 2015**

**Decision & Reasons Promulgated
On 21 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR. MAHABIR SINGH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr. C. Avery, Home Office Presenting Officer
For the Respondent: Mr. A. Chohan of Counsel

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Lodge promulgated on 9 March 2015 which allowed Mr. Singh's appeal against the Secretary of State's refusal to issue him with an EU residence card as the unmarried partner of Ms Angelikia Pudlo, a citizen of Poland, in accordance with Regulations 8(5) and 17(4) of the Immigration (EEA) Regulations 2006 (the "EEA Regulations").

2. For the purposes of this decision, I refer to Mr. Singh as the Appellant and to the Secretary of State as the Respondent, reflecting their positions as they were before the First-tier Tribunal.
3. The decision of the First-tier Tribunal was in respect of Mr. Singh and Ms Pudlo. The appeal was brought only in relation to Mr. Singh, and not in relation to the decision insofar as it relates to Ms. Pudlo.
4. The grounds of appeal submit that Judge Lodge erred in law by allowing the Appellant's appeal outright. The Respondent had not exercised her discretion under Regulation 17(4) of the EEA Regulations to grant a residence card. As the Appellant had been found to be an extended family member under Regulation 8(5), it was submitted that the judge should have remitted the case to the Respondent for consideration under Regulation 17(4), instead of allowing the appeal outright. Reliance was placed on the case of Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 00340.
5. Ihemedu states in the headnote, paragraph (iii):

"Regulation 17(4) makes the issue of a residence card to an OFM/extended family member a matter of discretion. Where the Secretary of State has not yet exercised that discretion the most an Immigration Judge is entitled to do is to allow the appeal as being not in accordance with the law leaving the matter of whether to exercise this discretion in the appellant's favour or not to the Secretary of State."
6. Mr. Avery submitted that the case should have been sent back to the Respondent to consider the exercise of discretion under Regulation 17(4). Mr. Chohan agreed that this was the right approach, and that the appeal should have been allowed only to the extent of remitting it back to the Respondent. It was agreed that the only part of the decision under challenge was the decision to allow the appeal outright.
7. Once the First-tier Tribunal had found that the Appellant was an extended family member for the purposes of Regulation 8(5), given that the Respondent had not considered whether to exercise discretion to issue the Appellant with a residence card under Regulation 17(4), the judge should have remitted the matter to the Secretary of State. Judge Lodge therefore made an error of law in allowing the appeal outright.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law.

The reasoning of the First-tier Tribunal is preserved up to and including paragraph [21].

Paragraph [22] and the final decision of the First-tier Tribunal is set aside. The decision is remade as follows. The appeal is allowed to the extent that the refusal is not in accordance with the law. The matter is remitted to the Secretary of State to consider whether she will exercise discretion to issue a residence card in accordance with Regulation 17(4) of the EEA Regulations.

I do not make an anonymity direction.

Signed

Date 17 September 2015

Deputy Upper Tribunal Judge Chamberlain