



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
IA/28349/2014**

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 12 August 2015

On: 24 August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR KUGBEY EBENEZER
NO ANONYMITY DIRECTION MADE**

Respondent

Representation

**For the Appellant: Ms A Holmes, Senior Home Office Presenting
Officer**

**For the Respondent: Mr S Tampuri, Legal Representative, Tamson
Legal Services**

DETERMINATION AND REASONS

- 1.** I shall refer to the appellant as the secretary of state and the respondent as "the claimant."
- 2.** The claimant is a national of Ghana, born on 11 February 1983. His appeal against the secretary of state's decision to refuse his application for a residence card under Regulation 17 of the Immigration (EEA)

Regulations 2006 (“the 2006 Regulations”) as the husband of his sponsor, Mrs Amankwaah, a national of Italy, and accordingly an EEA national, was allowed by First-tier Tribunal Judge Coutts in a determination promulgated on 13 April 2015. She found that the claimant and his sponsor were in a durable relationship for the purposes of Regulation 8(5) of the 2006 Regulations. That finding has not been challenged by the secretary of state.

3. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Colyer on 10 June 2015 on the ground that the Judge arguably erred in allowing the appeal outright and should have remitted the case to the secretary of state for her to exercise discretion under Regulation 17(4) of the 2006 Regulations.
4. Ms Holmes relied on the Upper Tribunal decision in Ihemedu (OFM – Meaning) Nigeria [2011] UKUT 340 (IAC).
5. At the hearing before me, Mr Tampuri accepted that there had been an error of law to the extent referred to.
6. Regulation 17(4) of the 2006 Regulations provides a discretion to the secretary of state to issue a residence card to an “extended family member”. It is evident that in this case the secretary of state has not yet considered the exercise of such discretion. It is not open to the Tribunal to consider the exercise of discretion in the absence of the secretary of state first doing so.
7. In the circumstances I allow the appeal of the secretary of state to the limited extent referred to. The case will thus be remitted to the secretary of state for her to exercise discretion under Regulation 17(4) of the 2006 Regulations

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and the decision is set aside. The decision I substitute is to allow the claimant's appeal to the extent that his application for an EEA residence card remains outstanding before the secretary of state.

No anonymity direction is made.

Signed

Date 20 August 2015

Deputy Upper Tribunal Judge Mailer