



IAC-FH-AR-V1

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

Appeal Number: IA/31196/2014

THE IMMIGRATION ACTS

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

**Decision & Reasons
Promulgated
On 23rd September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**VICTOR JAMES MARTINS
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Mr R O Ojukotola, Counsel, instructed by SLA Solicitors

**DECISION AND REASONS
EX TEMPORE JUDGMENT**

1. The Appellant before me is the Secretary of State for the Home Department who was the Respondent at the First-tier Tribunal and the Respondent before me is Mr Victor James Martin, the Appellant at the First-tier Tribunal. For the sake of simplicity I shall refer to the parties as they were known in the Tribunal below.

2. The Respondent appeals the decision of the First-tier Tribunal in which Judge Oakley allowed the Appellant's appeal outright on the basis of findings of fact to the point that the Appellant is an extended family member of his European national Sponsor as a result of the enjoyment of a durable relationship.
3. The grounds complain that the judge exceeded their authority in that context because there is a discretion relevant to the issue of a residence card to somebody who is in a durable relationship which involves an exercise of discretion which is not within the jurisdiction of the First-tier Tribunal.
4. There was no issue before me that the challenge has determinative merit and the parties were in agreement that I should set the decision of the Tribunal aside to the extent that it has been allowed under the Immigration Rules and remake the decision to the point that the appeal is allowed to the limited extent that the matter is remitted to the Secretary of State for the consideration of the exercise of discretion.

Notice of Decision

The decision of the Tribunal is set aside to the extent that it has been allowed under the Immigration Rules and I remake the decision so as to allow the appeal to the limited extent that the matter is remitted to the Secretary of State for the consideration of the exercise of discretion.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Davidge