



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: IA/32062/2014**

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Promulgated**

**Decision and Reasons**

**On: 14 July 2015**

**On: 14 August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAILER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**MR SUNKANMI LATEEF ONAFOWOKAN**

(NO ANONYMITY DIRECTION MADE)

**Respondent**

**Representation**

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer

For the Respondent: Ms L Afful, Solicitor, Lawrencia and Co Solicitors

**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 Nigeria, born on 15 November 1955. His appeal against the respondent's decision dated 5 August 2015 refusing his application for a residence card under the Immigration (EEA) Regulations 2006 ("the 2006 Regulations") was allowed by First-tier Tribunal Judge Colyer in a determination promulgated on 22 January 2015.
3. The Judge allowed the appellant's appeal under Regulation 17 of the 2006 Regulations with reference to Regulation 8(5).
4. The Judge found that the appellant had established all the necessary criteria under the 2006 Regulations [42].

5. On 3 March 2015, First-tier Tribunal Judge R A Cox granted the secretary of state permission to appeal on the basis that it was arguable that the Judge misdirected himself in law in that, having found that there was a durable relationship, he allowed the appeal outright instead of finding that the decision was not in accordance with the law and the 2006 Regulations. The authority of Ihemedu (OFMs – Meaning) Nigeria [2011] UKUT 00340 (IAC) was relied on by the secretary of state in the appeal.
6. There is no dispute as to the finding by Judge Colyer that the appellant is in a durable relationship with an EEA national. Nor is there any dispute that his EEA sponsor was exercising Treaty rights as an employee, as found by the Judge [30].
7. Regulation 17(4) of the 2006 Regulations grants the discretion to the secretary of state to issue a residence card to an extended family member. The secretary of state has not yet considered the exercise of that discretion. I cannot consider exercising that discretion myself prior to the secretary of state doing so.
8. In the circumstances I allow the claimant’s appeal on the basis that the secretary of state’s decision was not in accordance with the law – TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC).

**Decision**

The decision of the First-tier Tribunal Judge involved the making of an error of law and is set aside.

I substitute a decision allowing 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

2015 Deputy Upper Tribunal Judge Mailer

Date: 11 August