IAC-HW-AM-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/52295/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 April 2015	**On 21 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

EMMANUEL MBAYO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Amunwa, Legal Representative
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. Although this is strictly an appeal by the Secretary of State I have, for the sake of consistency, continued to refer to the parties as they were in the First-tier Tribunal. The Secretary of State thus continues to be called "the respondent".

2. The Secretary of State has appealed, with permission, against the decision of First-tier Tribunal Judge Napthine promulgated on 31 December 2014 in which he allowed the appellant's appeal against the respondent's refusal to grant him an EEA residence card as an extended family member under

Regulation 8 of the Immigration (EEA) Regulations 2006. The appellant's claim had been that he was entitled to a residence card under Regulation 15(1)(b) and that he had a permanent right of residence as a family member who had resided in the UK for a continuous period of five years.

3. Permission to appeal was granted on 11 February 2015. The essential reason for granting permission was said to be as follows:

> "The judge appears to have ignored the fact that a durable partnership is not a marriage; it was not appropriate to apply the *ratio* in Samsam, relating as it does to family members, to the circumstances in this appeal which involves an extended family member. No evidence has been produced by the appellant to show that his ex-partner was exercising treaty rights at the time that their relationship broke down – and given that he is an extended family member only, it is not for the respondent to provide that evidence."

4. At the commencement of the hearing before me both representatives told me that they agreed that there had been a clear error of law by the First-tier Tribunal Judge for the very reasons set out above in the grant of permission. The judge had applied the law as if the appellant had been married to his ex-partner and it was clear that they had never been married. A further error of law was that the judge had not considered at all the appellant's human rights under Article 8 which may have particular relevance bearing in mind that the appellant and his ex-partner have two children together.

5. It was agreed that the decision of the First-tier Tribunal must be set aside in its entirety with no part of the decision preserved. It was also agreed that the appeal must be remitted to the First-tier Tribunal for a full rehearing both on the substantive issues and in relation to any application under Article 8.

Notice of Decision

It having been agreed by both parties that the decision of the First-tier Tribunal contained an error of law, I set aside that decision in its entirety. The appeal is to be remitted to the First-tier Tribunal at Hatton Cross for rehearing before any judge (other than Judge Napthine).

Designated David Taylor
Deputy Upper Tribunal Judge
20 April 2015