



IAC-AH-CO-V1

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

Appeal Number: IA/01432/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 7 December 2015**

**Decision & Reasons Promulgated  
On 6 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**VARGHESE JISS  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**DECISION AND REASONS**

1. The appellant, Varghese Jiss, was born on 20 May 1987 and is a male citizen of India. The appellant entered the United Kingdom on a student visa in May 2011. He was subsequently granted leave to remain until 27 October 2014. On 16 October 2014, he was served with removal directions having been found in breach of employment restrictions. He subsequently sought to obtain a residence card as the unmarried partner of a Lithuanian citizen but his application was refused on the basis there was insufficient evidence of a durable relationship. A subsequent application on the same grounds was refused by a decision dated 29 December 2014. The appellant appealed to the First-tier Tribunal (Judge M Davies) which, in a decision promulgated on 29 April 2015, allowed the

appeal. The respondent now appeals, with permission, to the Upper Tribunal.

2. The grounds rely on *Ihemedu (OFMs - meaning) Nigeria* [2011] UKUT 00340. The judge did not have the jurisdiction to allow outright an appeal where there remained a discretion to be exercised by the Secretary of State as regards the issue of a residence card under paragraph 17(4) of the 2006 Regulations. The second ground of appeal concerns the alleged failure of the judge accurately to set out the position of the Secretary of State in the appeal. At [24], the judge noted that there was “clear evidence, has been accepted by Mr Richardson [the Home Office Presenting Officer] the appellant and sponsor have been residing together in a durable relationship akin to marriage for the last eighteen months.” The Secretary of State asserts that no such concession had been made either prior to the First-tier Tribunal hearing or by the Presenting Officer who represented the Secretary of State at that hearing.
3. I find the first ground has merit. It was not for the judge to allow the appeal outright. He should instead have allowed the appeal to the limited extent that the matter was remitted to the Secretary of State to consider exercising her discretion to issue a residence card under Regulation 17(4).
4. As regards the other ground, I find that this does not succeed. I have read Mr Richardson’s attendance note of the First-tier Tribunal hearing and I am prepared to accept that Judge Davies did err at [24] by wrongly recording that the evidence of cohabitation had been accepted by the Presenting Officer. However, separately from that supposed concession, the judge has himself assessed the evidence and found that the appellant, the sponsor and the sponsor’s mother had given truthful evidence and that he was prepared to accept that the couple had been residing together in a durable relationship akin to marriage for at least the last eighteen months prior to the hearing. Had the judge left the matter at that point, the Secretary of State would have had no reason for complaint. Likewise, if the judge had not made his own assessment of the credibility of the evidence but relied on any “concession” then he may well have erred in law. The fact remains that the “concession” adds nothing to the judge’s own assessment of the credibility of the evidence.

### **Notice of Decision**

The decision of the First-tier Tribunal dated 29 April 2015 is set aside. I have remade the decision. The appeal against the respondent’s decision dated 29 December 2014 is allowed to the limited extent that the matter is returned to the Secretary of State so that she may exercise her discretion as to the issuing of a residence card to the appellant under Regulation 17(4) of the 2006 Regulations.

No anonymity direction is made.

Signed

Date 20 December 2015

Upper Tribunal Judge Clive Lane