



IAC-AH-KEW-V1

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

Appeal Number: IA/18087/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 13 July 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

**MUHAMMAD FAISAL IQBAL
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr G Harrison, Senior Home Office Presenting Officer

For the Respondent: Ms G Brown, instructed by Farani-Javid-Taylor, Solicitors

DECISION AND REASONS

1. The respondent, Muhammad Faisal Iqbal, was born on 1 January 1979 and is a male citizen of Pakistan. He had appealed against a decision of the respondent to refuse to grant him a residence card as confirmation of a right of residence as a family member of an EEA national exercising treaty rights within the United Kingdom. That decision was dated 18 February 2014. The appellant appealed to the First-tier Tribunal (Judge Farmer) which, in a determination promulgated on 16 February 2015, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal. I shall hereafter refer to the respondent as the appellant and to

the appellant as the respondent (as they appeared respectively before the First-tier Tribunal).

2. At the hearing before me at Manchester on 13 July 2015, Ms Brown, for the appellant, accepted that Regulation 17(4) of the Immigration (EEA) Regulations 2006 provides that the Secretary of State alone has a discretion to issue a residence card to a “extended family member.” As Judge Fisher acknowledged when granting permission [3], the proper course of action for the judge, having found that the appellant and his partner were in a durable relationship, was to remit the case to the Secretary of State so that she might exercise that discretion. The refusal letter of 4 April 2014 makes no reference to the existence of any durable relationship.
3. I set aside the decision of the First-tier Tribunal. I have remade the decision. The appeal of the appellant is allowed to the limited extent that the matter is remitted to the Secretary of State in order that she might consider the exercise of her discretion to grant the appellant a residence card on the grounds that he is “an extended family member.” The findings of fact of the First-tier Tribunal, which are not tainted in any way by the judge’s failure to find that the Secretary of State’s decision was not in accordance with the law, shall stand.

Notice of Decision

The determination of the First-tier Tribunal promulgated on 16 February 2015 is set aside. The decision of the Secretary of State was not in accordance with the law. Accordingly, the appeal is allowed to the limited extent that the matter is remitted to the Secretary of State to consider the exercise of a discretion as to whether to issue the appellant with a residence card as an extended family member (see Regulation 17(4) of the 2006 Regulations).

No anonymity direction is made.

(Note: For reasons that are unclear, this decision (which was prepared on the day of the hearing and, according to my records, signed off on 30 July 2015) does not appear to have been properly promulgated.)

Signed

Date 30 July 2015

Upper Tribunal Judge Clive Lane