



IAC-FH-NL-V1

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

Appeal Number: IA/27038/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25<sup>th</sup> February 2016**

**Decision & Reasons  
Promulgated  
On 24<sup>th</sup> March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**and**

**MISS HUMA ALTAF**

Appellant

Respondent

**Representation:**

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer  
For the Respondent: Mr R Solomon, Counsel instructed by Shanthy & Co  
Solicitors

**DECISION AND REASONS**

1. The Respondent, Ms Altaf is a citizen of Pakistan whose date of birth is recorded as 20<sup>th</sup> June 1987. She made an application for a Residence Card as an extended family member having regard to Regulation 8 of the Immigration (EEA) Regulations 2006 ("the Regulations"). On 13<sup>th</sup> June 2014 a decision was made to refuse the application and so she appealed.

Her appeal was heard on 13<sup>th</sup> August 2015 by Judge of the First-tier Tribunal Birk sitting at Hatton Cross.

2. In every material particular Judge Birk found the case advanced by Ms Altaf credible and made positive findings but then went on to allow the appeal outright.
3. Not content with that decision, by Notice dated 11<sup>th</sup> September 2015 the Secretary of State made an application for permission to appeal to the Upper Tribunal having regard to the guidance in the case of **Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 00340 (IAC)**. The point in issue is that because the Regulations which mirror Directive 2004/38/EC gives the Secretary of State a discretion in these circumstances it was not open to the judge to allow the appeal outright.
4. Mr Solomon sought to persuade me that there was no error because the judge had not allowed the appeal under Regulation 17(4) but under Regulation 8(2).
5. I find, with respect to Mr Solomon that the distinction is without a difference. The reality is that it was not for the Tribunal to make the ultimate decision. It is for the Secretary of State. However she should take into account the findings now made.

### **Notice of Decision**

In the circumstances I find that there was a material error of law in the decision of the First-tier Tribunal which I now set aside. I re-make the decision without interfering with any of the findings, all of which are preserved and allow the appeal so that it is now for the Secretary of State to exercise her discretion.

**Signed**

**Date**

**Deputy Upper Tribunal Judge Zucker**