



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

Appeal Number: EA/00339/2018

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 5 December 2018**

**Decision & Reasons**

**Promulgated**

**On 10 December 2018**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**KENNETH PITCH DUNCALFE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Frantzis, instructed by Freeths LLP

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

- 1.** The appellant is a citizen of Canada. He appeals against a decision of the First-tier Tribunal promulgated on 12 July 2018 dismissing his appeal against a decision of the Secretary of State dated 7 December 2017 refusing his application for a residence card as the family member of Doreen May Smith, a British citizen.
- 2.** Mr Diwnycz, who appeared for the Secretary of State, told me that, in light of the decision in *Banger* [2018] EUECJ C-89/17, that the respondent now

accepted that the judge had erred in law. He further acknowledged that the decision should now be remade allowing the appeal.

**Notice of Decision**

- 3. The decision of the First-tier Tribunal promulgated on 12 July 2018 is set aside. I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 7 December 2017 is allowed.**

Signed

Date 5 December 2018

Upper Tribunal Judge Lane