



IAC-PE-SW-V1

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

Appeal Number: IA/01271/2015

THE IMMIGRATION ACTS

**Heard at Manchester
On 3rd September 2015**

**Decision & Reasons Promulgated
On 11th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MISS LAURA WILKE MONTOYA GOMEZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Miss Johnstone

DECISION AND REASONS

Introduction

1. The Appellant born on 7th December 1973 is a citizen of Brazil. The Appellant was present. The Respondent was represented by Miss Johnstone a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for an EEA residence card as the spouse of an EEA national who was exercising treaty rights in the UK. The Respondent had refused the Appellant's application. That was refused on

16th December 2014 on the basis that there was insufficient evidence that the couple were in a durable relationship. The Appellant had appealed that decision and her appeal was heard by First-tier Tribunal Judge Foudy sitting at Manchester on 14th April 2015. The judge had allowed the appeal under the 2006 Regulations.

3. The Respondent had appealed on the basis that the Home Office had not yet exercised their discretion under Regulation 17(4) and the judge had therefore made an error in law.
4. Directions have been issued for the matter to be heard by the Upper Tribunal firstly to decide whether or not an error of law had been made in this case.

The Proceedings

5. It is clear that an error was made in this case. The judge was entitled for the reasons given to have found that the Appellant and her EEA national partner were in a durable relationship such that she fell within the terms of Regulation 8 of the 2006 Regulations. However in terms of her application for a residence card given that she was not a family member under Regulation 7 but an extended family member under Regulation 8 the provision of a residence card was a discretionary matter for the Home Office within the terms of Regulation 17(4) of the 2006 Regulations. Given that the Respondent had not accepted that there was a durable relationship in the first instance they had not considered one way or the other the issue of discretion in relation to the granting of a residence card. To that extent the First-tier Tribunal Judge was entitled to allow the appeal but only to the extent of remitting it back to the Home Office to exercise their discretion in whether or not to issue a residence card under the terms of Regulation 17(4).
6. The findings of the judge that this was a durable relationship of course stand and are not challenged.
7. To the extent that this was therefore no more than a technical error it is not necessary to hear further evidence or submissions. I have therefore dealt with this matter which is encapsulated under the decision paragraph below.

Notice of Decision

8. A material error of law was made by the Judge of the First-tier Tribunal and I set aside that decision of the First-tier Tribunal. In remaking that decision I allow the appeal of the Appellant to the extent that the case is remitted back to the Home Office in order for them to exercise their discretion under Regulation 17(4) of the 2006 Regulations.
9. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Lever