



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

Appeal Number: IA/07200/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8th May 2015**

**Decision and
Promulgated
On 15th May 2015**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

The Secretary of State for the Home Department

and

**MR RICHARD OFOSU
(NO ANONYMITY DIRECTION MADE)**

Appellant

Respondent

Representation:

For the Appellant: Attended in person

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

DETERMINATION AND REASONS

1. The respondent, Mr Richard Ofosu date of birth 10th November 1992, is a citizen of Ghana. Having considered all the circumstances I do not make an anonymity direction.
2. This is an appeal by the Secretary of State for the Home Department [SSHD] against the decision of First-tier Tribunal Judge Davey promulgated on 31st December 2014, whereby the judge allowed Mr Ofosu's appeal against the decision of the SSHD dated 20th January 2014.

3. The decision by the SSHD was to refuse Mr Ofosu a residence card. Mr Ofosu had applied for a residence card as a family member of an EEA qualified person. It was Mr Ofosu's case that he was married to Ms Natalia Korneluk, a Latvian citizen, who was exercising treaty rights in the UK.
4. The appeal was allowed on the basis that, whilst Mr Ofosu did not qualify as a family member under Regulation 7 of the 2006 Immigration (EEA) regulations, he did qualify as an extended family member under Regulation 8, as a person that was in a durable relationship. Judge Davey in deciding the case noted that it was not being asserted that the marriage was valid, as there was a lack of evidence that the customary marriage had been registered or was lawful in Ghana, and there appeared to be a lack of evidence as to how Latvian law or other criteria necessary for the marriage to be recognised were satisfied. The case was being advanced on the basis that Mr Ofosu and Ms Korneluk were in a durable relationship.
5. During the course of the hearing before me Ms Korneluk and Mr Ofosu spoke as to their relationship and whether their Ghanaian customary marriage was recognised in English law. Ms Korneluk stated that if her marriage was not recognised in English law, it may be that there was no ongoing relationship between herself and Mr Ofosu. That may be a matter that has yet to be investigated.
6. I am concerned with the decision made by Judge Davey. Judge Davey in allowing the appeal outright had identified the relationship as a durable relationship akin to marriage that had lasted for two years qualifying Mr Ofosu under Regulation 8. Judge Davey had allowed the appeal outright. The issue of extended family members is dealt with in the case of **Ihemedu (Nigeria) [2011] UKUT 00340**.
7. In **Ihemedu** it was noted that an extended family member's entitlement to a residence card fell for consideration under Regulation 17(4) of the 2006 Regulations. The grant of a residence card under Regulation 17(4) is subject to a discretion in the SSHD as to whether to grant such. The SSHD had not exercised or considered exercising the discretion.
8. In line with **Ihemedu** the Judge in allowing the appeal should have found that the decision was not in accordance with the law and there was therefore an application before the SSHD which required the SSHD to consider all the facts and in making a lawful decision to exercise the discretion set out in Regulation 17(4).
9. For the reasons set out there is a material error of law in the original decision. I substitute the following decision:-

The appeal is allowed to the limited extent that there is an application before the Secretary of State for the Home Department requiring her to exercise the discretion under Regulation 17(4) of the Immigration (EEA) Regulations 2006 and to make a lawful decision.

Signed

Date

Deputy Upper Tribunal Judge McClure