



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

Appeal Number: IA/07729/2014

THE IMMIGRATION ACTS

**Heard at Birmingham Magistrates Court
On 25th January 2016**

**Decision and Reasons Promulgated
On 4th February 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MR SAIT B.J. CEESAY
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Mahmood of Counsel
For the Respondent: Mr D Mills, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Gambia born on 12 July 1981 appeals against the decision of the respondent dated 18 January 2014 refusing to issue him with a Registration Certificate and Residence Card as confirmation of his right of residence in the United Kingdom under the 2006 EEA regulations as the spouse of an EEA national.

2. First-tier Tribunal Judge Cheales allowed the appellant's appeal, finding that the appellant's and the sponsor's relationship is durable and as such is entitled to a Residence Card as confirmation of his right to live in this country..
3. At the hearing it was accepted by both parties that the First-tier Tribunal Judge should not have allowed the appeal outright but should have sent the appeal to the Secretary of State for her to exercise her discretion.
4. I accept this position because the Upper Tribunal decision in **Ihemedu (OFM's – meaning) Nigeria [2011] UKUT 00340** clarified that in a situation such as this “the most an immigration judge is entitled to do is to allow the appeal as being in not in accordance with the law leaving the matter as to whether to exercise this discretion in the appellant's favour or not to the Secretary of State”.
5. I therefore allow the appellant's appeal to the extent that a lawful decision remains outstanding before the Secretary of State whether or not to exercise her discretion to grant the appellant a Residence Card in accordance with the 2006 Regulations.

DECISION

6. The appeal is allowed to the extent that the appeal be sent back to the Secretary of State awaiting her lawful decision.

Signed by

A Deputy Judge of the Upper Tribunal

Mrs S Chana

Dated the 30th day of January 2016