



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/49773/2014

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 1 February 2016

Decision and Reasons Promulgated  
On 8 February 2016

Before

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

Between

**MUHAMMAD IMRAN KHAN**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Worrall counsel instructed by M-R Solicitors

For the Respondent: Ms C Johnstone Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Ince promulgated on 23 June 2015 who allowed the Appellant's appeal against the

decision of the Respondent dated 11 November 2014 to refuse to grant him a Residence Card under Regulation 8(2) of the Immigration (EEA) Regulations 2006 as an extended family member of his uncle Shafiq Ur Rehman a citizen of Belgium.

### The Judge's Decision

3. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Ince ("the Judge") allowed the appeal against the Respondent's decision.
4. The Judge heard evidence from the Appellant and his EEA national sponsor, his uncle and had a bundle of documentary evidence.
5. The Judge found both witnesses to be credible and on the basis of their oral and documentary evidence he found that the Appellant was currently a member of his uncles household and was dependent on him. He also found that the sponsor was self employed as claimed and was therefore a qualified person.
6. Grounds of appeal were lodged arguing that having found that the Appellant was an extended family member of the sponsor the issue of a residence card to an extended family member is at the discretion of the Secretary of State and as such the matter should have been remitted back to the Respondent. They relied on Ihemedu (OFMs – meaning) Nigeria [2011] UKUT 00340 (IAC).
7. On 21 September 2015 First-tier Tribunal Judge Froom gave permission to appeal.
8. Before me Worrall also conceded that the Judge made an error of law and that the decision should be remade.

### Finding on Material Error

9. Having heard those submissions I reached the conclusion that the Tribunal made a material error of law.
10. There was no challenge to the findings made by the Judge that the Appellant was an extended family member of an EEA national under Regulation 8(2) of the EEA Regulations. The only matter in issue was what the Judge should have done thereafter.
11. I am satisfied that Regulation 17(4) makes the issue of a residence card to an extended family member a matter of discretion. Where the Secretary of State has not yet exercised that discretion the most an Immigration Judge is entitled to do is to allow the appeal as being not in accordance with the law leaving the matter of whether to exercise this discretion in the Appellant's favour or not to the Secretary of State. This is what the Judge should have done in this case.

### **Decision**

12. **There was an error on a point of law in the decision of the First-tier Tribunal with regard to the exercise of the discretion available under Regulation 17(4) of the EEA Regulations such that the decision is set aside**
13. **I remake the appeal.**

14. **I allow the appeal as being not in accordance with the law leaving the matter of whether to exercise this discretion in the Appellant's favour or not to the Secretary of State.**

Signed

Date 2.1.2016

Deputy Upper Tribunal Judge Birrell