



IAC-FH-AR-V1

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

Appeal Number: IA/04363/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 October 2015**

**Decision & Reasons Promulgated
On 29 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**LINDA BOAKYE DANSO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: Mr B Amunwa, Counsel, instructed by Ravi Sethi Solicitors

DECISION AND REASONS

1. The Secretary of State was granted permission to appeal against the decision of First-tier Tribunal Judge Lal promulgated on 21 May 2015 allowing the claimant's appeal against her decision to refuse her a residence card under Regulation 17 with reference to Regulation 15 of the Immigration (European Economic Area) Regulations 2006 as amended.
2. The claimant applied for a residence card on 5 November 2013 as a family member of a European Economic Area national. Her application was made on the basis that she was the spouse of an EEA national who was exercising their free movement rights in the UK. The respondent rejected

that application on the basis that the claimant had not demonstrated that the proxy marriage was valid. The respondent further concluded that the claimant was not in a durable relationship with an EEA national.

3. The First-tier Tribunal accepted that the claimant was in a durable relationship with an EEA national and the Secretary of State does not challenge that finding.
4. Permission was granted by First-tier Tribunal Judge Colyer on 10 August 2015 on the basis that the issue of a residence card to an extended family member is subject to the discretion of the Secretary of State. Where an applicant is found to be in a durable relationship but that discretion has not been exercised the proper course is to allow the appeal on the basis that the decision is not in accordance with the law and remit the application to the Secretary of State.
5. Regulation 17(4) of the Immigration (EEA) Regulations 2006 provides that

“The Secretary of State may issue a residence card to an extended family member not falling within Regulation 7(3) who is not an EEA national on application if (a) the relevant EEA national in relation to the extended family member is a qualified person or an EEA national with a permanent right of residence under Regulation 15; and (b) in all the circumstances it appears to the Secretary of State appropriate to issue the residence card.”
6. The First-tier Tribunal found that the claimant was in a durable relationship with an EEA national which had existed for more than two years and that she met the requirements of Regulation 8 (5) of the EEA Regulations. The First-tier Tribunal then allowed the appeal outright. It is clear both from Regulation 17 (4) and from the cases of **MR and Others (EEA family members) Bangladesh [2010] UKUT 449** and **Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 00340** that Regulation 17(4) (b) makes the issue of a residence card to an extended family member a matter of discretion for the respondent.
8. Where the Secretary of State has not exercised that discretion the proper course is to set the decision aside and remake it allowing the appeal to the extent that the claimant's application for a residence card as an extended family member remains outstanding before the Secretary of State for a lawful decision.

Notice of Decision

9. I therefore set aside the decision of the First-tier Tribunal and remake the decision. The appeal is allowed to the extent that the question whether a residence card should be issued to the claimant is outstanding before the Secretary of State for a lawful decision thereon.
10. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge L J Murray