



IAC-FH-AR-V2

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

Appeal Number: IA/19582/2014

THE IMMIGRATION ACTS

**Heard at Taylor House (Field Decision & Reasons Promulgated House)
On 9 October 2015
Prepared 9 October 2015**

On 13 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR DESMOND RASANAYAGAM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Brocklesby-Weller, Senior Presenting Officer

For the Respondent: Ms M Malhotra, Counsel instructed by S Satha & Co

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent as the Claimant. The Claimant, a national of Sri Lanka, date of birth 15 February 1983, appealed against the Secretary of State's decision dated 1 April 2014 to refuse to issue a residence card with reference to Regulation 6 of the Immigration (European Economic Area) Regulations 2006. As expressed in the Notice of Immigration Decision it indicated the application had been made but had failed because the EEA

family member, Miss Danson had failed to provide evidence that she was a qualified person for the purposes of Regulation 6 of the 2006 Regulations.

2. The matter came before First-tier Tribunal Judge Widdup who on 19 May 2015 allowed the appeal having assessed all the evidence and being fully satisfied that Mrs Danson, the Sponsor was exercising treaty rights in the United Kingdom, was a qualified person and that there were no other elements of the requirements which needed to be met.
3. Permission to appeal was given to the Secretary of State for the Home Department by FtTJ C Andrew on 15 July 2015.
4. Those findings of fact appeared to me to be wholly unobjectionable and the grounds of application do not assert that there is something irrational or unreasoned or unacceptable about the judge's findings of fact. Rather it is said the judge erred in that he had purported to exercise the discretion under Regulation 17(4) of the 2006 Regulations which it was not open to him to do.
5. The SSHD raised the issue of the case of Ihemedu (OFM's meaning) Nigeria [2011] UKUT 340 (IAC) to which might well be added the case of Ukus [2012] UKUT 307 which again identified that where there is a residual discretion to be exercised by the Secretary of State it is for the Secretary of State to do so and not for a First-tier Judge to undertake that exercise.
6. Accordingly on that sole and narrow issue the judge erred in law and accordingly the Original Tribunal decision cannot stand.
7. The appeal by the Secretary of State is allowed to the extent that the matter is returned to the Secretary of State to await her decision on the exercise of discretion under the 2006 Regulations.

ANONYMITY

8. No anonymity order is required or appropriate.

Signed

Date 10 November 2015

Deputy Upper Tribunal Judge Davey