



IAC-PE-SW-V1

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

Appeal Numbers: IA/30293/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19<sup>th</sup> November 2015**

**Decision & Reasons Promulgated  
On 4<sup>th</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAIRD**

**Between**

**MR EMMANUEL ATITSOGBUI NYANI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No representation

For the Respondent: Mr C Avery - Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Quinn issued on 15<sup>th</sup> May 2015 allowing under the Immigration Rules the appeal of the Appellant against the decision of the Respondent made on 11<sup>th</sup> July 2014 to refuse a residence card under the Immigration (European Economic Area) Regulations 2006 as a confirmation of his right to reside in the United Kingdom.

2. On 27<sup>th</sup> July 2015 Upper Tribunal Judge Renton granted permission to appeal. He said:

“The Appellant appealed a decision to refuse him a residence card as the spouse an EEA citizen exercising Treaty rights in the UK. First-tier Tribunal Judge Quinn (the Judge) allowed the appeal because he was satisfied the Appellant was an extended family member of the Sponsor in accordance with Reg 8(5) of the Immigration (EEA) Regulations 2006, and therefore entitled to a residence card in accordance with Reg 17(4). This is an arguable error of law. Reg 17(4) states that the Respondent has a discretion to issue a residence card to an extended family member and therefore it is arguable that the Judge should have allowed the appeal only to the extent of referring the case to the Respondent for consideration of the exercise of discretion.”

3. The Judge clearly erred in allowing the appeal. Regulation 17(4) is a discretionary provision. It is for the Secretary of State to make the decision.
4. The appeal should have been remitted to the Secretary of State for consideration and for a decision to be made.

### **Notice of Decision**

The appeal is allowed to the extent that it is remitted to the Secretary of State for her to exercise her discretion and make a decision.

Signed

Date: 26<sup>th</sup> November 2015

N A Baird  
Deputy Judge of the Upper Tribunal