



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

Appeal number: IA/31752/2014

THE IMMIGRATION ACTS

**Decision & Reasons Promulgated
On 3rd November 2015**

Before

Upper Tribunal Judge Kopieczek

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUJA HAJREDIN

Respondent

DETERMINATION AND REASONS

1. For convenience I refer to the parties as they were before the First-tier Tribunal.
2. First-tier Tribunal Judge Beach allowed the appellant's appeal against the respondent's decision to refuse to issue a residence card as an extended family member, being a person in a durable relationship with an EEA national, with reference to regulation 8 of the Immigration (European Economic Area) Regulations 2006. The First-tier judge concluded that the appellant was in a durable relationship with an EEA national who is exercising Treaty Rights.
3. Permission to appeal was granted to the Secretary of State on the basis that the First-tier judge allowed the appeal outright, whereas pursuant to regulation 17(4) the most that she could have done was to allow the appeal for the matter to be considered by the respondent in the

exercise of her discretion under regulation 17(4) as to whether or not to issue a residence card in the light of all the circumstances.

4. By letter dated 5 October 2015, the appellant's representatives wrote to the Tribunal stating that both parties "wish to withdraw the appeal by consent", although email correspondence referred to was not attached as suggested in the letter.
5. In response to that letter, at my direction a letter was sent to both parties on 13 October 2015 as follows:

"In the light of the letter from Malik & Malik solicitors to the Upper Tribunal dated 5 October 2015 stating that both parties "wish to withdraw the appeal by consent", but omitting the referred to email correspondence, the parties are to write to the Tribunal indicating what agreement is proposed in terms of how the forthcoming appeal should be disposed of. The parties may wish to consider inviting the Tribunal to deal with the matter by a consent order pursuant to rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Alternatively, the appellant may consider it appropriate to concede that the First-tier Tribunal erred in law as set out in the respondent's grounds and agreeing that the decision be set aside, for the decision to be re-made giving effect to the respondent's grounds.

The parties must indicate to the Tribunal how they wish to proceed no later than 14 days from the date of sending of this letter, failing which the Tribunal may determine the appeal without a hearing in the manner it considers appropriate having regard to the information provided thus far."

6. It is disappointing to note that neither party appears to have responded to that letter and to the direction to the parties contained within it. In the circumstances, I have decided to determine this appeal without a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 which is a course of action plainly foreshadowed in the letter sent to the parties.
7. The Secretary of State's grounds rely on the decision in *Ihemedu (OFMs - meaning) Nigeria* [2011] UKUT 00340(IAC). Materially, that decision states 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.
8. As already indicated, First-tier Judge Beach allowed the appeal outright. It may be that neither party referred her to the decision in *Ihemedu*. Nevertheless, I am satisfied that on this occasion and in this respect this

experienced judge did err in law in allowing the appeal outright. Accordingly, I set aside her decision and re-make the decision, allowing the appeal but only to the limited extent that the respondent's decision is not in accordance with the law, leaving outstanding before the Secretary of State a decision under regulation 17(4) as to whether in all the circumstances it is appropriate to issue a residence card to the appellant.

Decision

9. The decision of the First-tier Tribunal involved the making of an error on a point of law. The First-tier Tribunal's decision is set aside. I re-make the decision, allowing the appeal but only to the limited extent that the respondent's decision is not in accordance with the law, such that it remains for the respondent to consider whether or not to issue to the appellant a residence card in the light of the findings made by the First-tier Tribunal.

**Upper Tribunal Judge Kopieczek
3/11/15**