



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

Appeal Number: IA/37144/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 25 March 2015

**Decision & Reasons
Promulgated
On 31 March 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ERNEST KUDZANAI MUNYANYI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs Pettersen, a Senior Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. The appellant, Ernest Kudzanai Munyanyi, was born on 6 January 1981 and is a male citizen of Zimbabwe. By a decision promulgated on 4 December 2014, the First-tier Tribunal allowed the appellant's appeal in respect of

the issue of a residence card to him as an extended family member (the partner in a durable relationship of Ms Jana Gorina).

2. The respondent has appealed against that decision on the basis that it is contrary to *Ihmedu (OFMs-meaning) Nigeria* [2011] UKUT 00340 and the provisions of Regulation 17(4) of the Immigration (EEA) Regulations 2006. The Secretary of State does not take issue with the findings of fact of First-tier Tribunal (namely, that Ms Gorina and the appellant are and have been in a durable relationship) but complains rather that the appeal should have been allowed to the limited extent that the matter be returned to the Secretary of State for further consideration; the discretion to issue a residence card to an “extended family member” lies solely with the Secretary of State, and not the First-tier Tribunal.
3. I agree with the Secretary of State and explained the position to the appellant I announced my decision in open court.

Notice of Decision

The determination of the First-tier Tribunal promulgated on 4 December 2014 is set aside. I have remade the decision. The appellant’s appeal against the respondent’s decision dated 6 September 2014 is allowed to the limited extent that the matter is returned to the Secretary of State for further consideration. The findings of fact of the First-tier Tribunal are preserved.

No anonymity direction is made.

Signed

Date 30 March 2015

Upper Tribunal Judge Clive Lane