



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/39819/2014

THE IMMIGRATION ACTS

Heard at Field House
On 16 September 2015

Decision & Reasons Promulgated
On 5 November 2015

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR PRINCE FRIMPONG
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr Bramble
For the Respondent: No appearance

DECISION AND REASONS

1. Mr Frimpong is a citizen of Ghana born in 1967. He appealed against a decision of the Secretary of State made on 15 August 2014 to refuse his application for a residence card pursuant to Regulation 17 of the Immigration (European Economic Area) Regulations 2006. He claimed to be the partner of Ms Susuana Manu, a citizen of the Netherlands and, as such, the “*extended family member*” of an EEA national. The Secretary of State, however, concluded that Mr Frimpong had not demonstrated that he is in a durable relationship with an EEA national, also that Ms Manu is a “*qualified person*” under Regulation 6(2).

2. He appealed.
3. Following a hearing at Birmingham on 2 March 2015 Judge of the First-tier Tribunal Jessica Pacey allowed the appeal.
4. The judge, having noted agreement that the only live issue before her was whether Mr Frimpong and Ms Manu were in a durable relationship, made her findings at paragraphs [15] to [29] of the determination. She concluded (at [31]) that Mr Frimpong and Ms Manu are in a durable relationship.
5. The judge, under "Notice of Decision" allowed Mr Frimpong's appeal under the EEA Regulations.
6. The Secretary of State sought permission to appeal which was granted on 5 May 2015.
7. At the error of law hearing before me there was no appearance by or on behalf of Mr Frimpong. However, a Rule 24 response had been submitted not opposing the Secretary of State's appeal.
8. In that response, and at the hearing from Mr Bramble, the point was made that the issue of a residence card to an "extended family member" is at the discretion of the Secretary of State and as such the matter, on the facts found by the judge, should have been referred back to the Secretary of State for reconsideration.
9. I agreed and set aside the decision to be remade.
10. Regulation 17(4) provides;

"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."*
11. The headnote in **Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 00340 (IAC)** clarifies this further:

"iii) Regulation 17(4) makes the issue of a residence card to an OFM/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."
12. As the Secretary of State has not yet considered the matter under Regulation 17(4) the judge erred in allowing the appeal outright. The decision she should have reached

on the facts found, which are unchallenged, was that the Secretary of State's decision was not in accordance with the law.

Decision

The First-tier Tribunal's decision contains an error on a point of law and it is set aside.

It is remade as follows:

The appeal is allowed to the extent that the decision was not in accordance with the law. The application for an EEA residence card remains outstanding before the Secretary of State.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Conway