



IAC-FH-CK-V1

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

Appeal Number: IA/16852/2015

THE IMMIGRATION ACTS

Heard at Field House

On 9th March 2016

**Decision &
Promulgated**

On 8th April 2016

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS VANESSA RAMOS DYSON
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kotas, Home Office Presenting Officer

For the Respondent: Miss Dyson in Person

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State I refer to the parties as they were in the First-tier Tribunal.
2. The Appellant, a citizen of Brazil, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 17th April 2015 to refuse her application for a residence card as an extended family member of an European Economic Area national.

3. First-tier Tribunal Judge Hindson allowed the appeal finding that the Appellant had established that she is in a durable relationship with her partner as claimed within the provision of Regulation 8(5) of the Immigration (EEA) Regulations 2006.
4. The judge went on to state at paragraph 14: "I am satisfied that theirs is a durable relationship in all the circumstances and that the appeal be allowed." The judge allowed the appeal under the EEA Regulations.
5. The Secretary of State applied for and was granted permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal Judge erred in allowing the appeal outright given the provision of Regulation 17(4) of the EEA Regulations which gives the Secretary of State discretion as to whether to issue a residence card to an extended family member.

Error of Law

6. There is no challenge to the judge's findings of fact or to his conclusion that the Appellant is in a durable relationship with an EEA national and therefore an extended family member within Regulation 8(5) of the Regulations. These findings therefore stand.
7. However, the contention that the judge erred in allowing the appeal outright is made out. This is because Regulation 17(4) (b) gives the Secretary of State discretion as to whether to issue a residence card to an extended family member and the Secretary of State has not yet exercised that discretion. Regulation 17(4) provides;

"17 (4) 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."

8. In these circumstances, in light of the findings of fact, the appeal should have been allowed only to the extent that the Secretary of State's decision is not in accordance with the law leaving the matter of the exercise of the discretion to the Secretary of State.
9. I therefore preserve the findings of the First-tier Tribunal and allow the appeal only to the extent that it is not in accordance with the law and the issue of the exercise of discretion is yet to be exercised by the Secretary of State.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law and I set the decision aside preserving all of the findings of fact.

I remake the decision by allowing the appeal to the extent that the decision is returned to the Secretary of State to await the exercise of her discretion under regulation 17(4)(b) of the EEA Regulations.

No anonymity direction is made.

Signed

Date: 23rd March 2016

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 23rd March 2016

Deputy Upper Tribunal Judge Grimes