



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

Appeal Number: EA/06269/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment Decision promulgated  
Tribunal on 26 September 2018 on 4 October 2018**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**FRANCIS DEDE  
(anonymity direction not made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Nadeem of Burton & Burton Solicitors.  
For the Respondent: Mr Mills Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. On the 26 June 2018 the Upper Tribunal found that a judge of the First-Tier Tribunal, through no fault of her own, erred in law in relation to not considering the appellant's appeal against the refusal of residence card as an extended family member of an EEA national exercising treaty rights in the United Kingdom.

2. Directions were given for the future conduct of this appeal including the provision by the appellant of additional evidence in relation to this issue. Such evidence was filed and, having been considered by Mr Mills, the respondent accepts that the appellant is in a durable relationship with Ms [AA], an Italian national.
3. The issue of a residence card to an extended family member remains at the discretion of the Secretary of State under regulation 18(4) of the Immigration (European Economic Area) Regulations 2016. In an email to the Upper Tribunal and appellants representative on 25 September 2018, Mr Mills confirmed that the respondent's discretion will be exercised in the appellant's favour.
4. Mr Mills is not in a position to seek to withdraw the decision under challenge, wholesale, because of the rejection of the validity of the claimed proxy marriage by the First-Tier Tribunal Judge which was not found to be infected by arguable legal error.
5. In the circumstances I allow the appeal on the basis the decision to refuse a residence card is contrary to the Community Regulations on the basis it is accepted the appellant is in a durable relationship, but to the extent the Secretary of State is now required to consider the exercise of discretion pursuant to regulation 18(4) of the 2016 regulations.

## **Decision**

6. **I remake the decision as follows. This appeal is allowed**

Anonymity.

7. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 26 September 2018