



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
IA/11648/2014**

APPEAL NUMBER:

THE IMMIGRATION ACTS

**Heard at: Field House
on 23 July 2015**

**Decision and Reasons
Promulgated
on 27 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR LOQMAN ALIU
NO ANONYMITY DIRECTION MADE**

Respondent

Representation

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

**For the Respondent: Mr R O Ojukotola, Legal Representative, SLA
Solicitors**

DETERMINATION AND REASONS

1. I shall refer to the appellant as the secretary of state and to the respondent as "the claimant."
2. The claimant is a national of Nigeria born on 18 June 1976. His appeal against the respondent's decision to refuse his application for a residence card under Regulation 17 of the Immigration (EEA) Regulations 2006 ("the 2006 Regulations") as the husband of the sponsor, a citizen of Estonia,

and an EEA National, was allowed by First-tier Tribunal Judge Boardman in a determination promulgated on 10 April 2015.

3. He found that the claimant and his sponsor were in a durable relationship for the purpose of Regulation 8(5) of the 2006 Regulations.
4. That finding has not been challenged.
5. However, permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Brunnen on 3 June 2015 on the grounds that the Judge erred in allowing the appeal outright and that he should have remitted the matter to the secretary of state for her to exercise discretion under Regulation 17(4) of the 2006 Regulations.
6. Mr Tufan relied on the Upper Tribunal decisions in Ihemedu (OFMs – Meaning) Nigeria [2011] UKUT 340 (IAC) and TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC).
7. Mr Ojukotola accepted that there had been an error of law to the extent referred to. Regulation 17(4) of the 2006 Regulations provides a discretion to the secretary of state to issue a residence card to an “extended family member”. It is evident that in this case the secretary of state has not yet considered the exercise of such discretion. It is not open to the Tribunal to consider the exercise of discretion in the absence of the secretary of state first doing so.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The decision I substitute is to allow the claimant's appeal to the extent that his application for an EEA residence card remains outstanding before the Secretary of State.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Mailer

Date 25/8/2015