



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

Appeal Number: IA/36374/2014

THE IMMIGRATION ACTS

Heard at Field House

On 29 April 2015

**Determination
Promulgated**

On 13 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR WASEEM WAQAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Singh of Malik Law Chambers Solicitors

For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan, born on 11 October 1986.
2. He appealed against the respondent's refusal to issue him with a residence card dated 2 September 2014. The appeal was heard by Judge Holder who, in a decision promulgated on 7 January 2015, allowed the appellant's appeal "*..... on immigration grounds*". Further, the judge said

that the appellant was entitled to a residence card subject to production of his original passport.

3. The respondent's grounds claim that the judge materially erred in law by allowing the appellant's appeal outright instead of remitting it back to the respondent for consideration under Regulation 17(4) of the 2006 EEA Regulations. That was because the judge failed to follow the correct approach as indicated in headnote (iii) of **Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 00340 (IAC)**.

Submissions on Error of Law

4. Mr Singh conceded the judge erred and asked me to remit the appeal to the respondent, which submission was supported by Mr Kandola.

Conclusion on Error of Law

5. The judge erred in allowing the appeal outright. See **Ihemedu** headnote (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.”

6. I remake the decision by allowing the appeal as being not in accordance with the law so that the Secretary of State can consider whether to exercise her discretion.

Decision

Appeal allowed.

No anonymity direction is made.

Signed

Date 6 May 2015

Deputy Upper Tribunal Judge Peart