



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

Appeal Number: IA/37733/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 13 April 2015**

**Decision &
Promulgated
On 29 April 2015**

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PS

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer

For the Respondent: Miss K Smith, instructed by Braitch RB, Solicitors

DECISION AND REASONS

1. I shall refer to the Respondent as the Appellant and to the Appellant as the Respondent (as they appeared respectively before the First-tier Tribunal).
2. The Appellant was born in India on 20 March 1978 and applied for a residence card based on his relationship with a citizen of Romania. His application was refused on 15 September 2014 by the Respondent. The Appellant appealed to the First-tier Tribunal (Judge Robson) which, in a determination promulgated on 31 December 2014, allowed the appeal.

3. It is common ground between the parties that the judge should not have allowed the appeal outright. It is for the Secretary of State to exercise a discretion as to whether to issue a residence card to an extended family member under the Immigration (EEA) Regulations 2006 (see *Ihemedu (OFMs - meaning) Nigeria* [2011] UKUT 00340). I therefore set aside the judge's determination and have substituted a decision allowing the appeal but only to the extent that the matter is returned to the Secretary of State to consider whether to issue a residence card to the Appellant.

Notice of Decision

4. The determination of the First-tier Tribunal which was promulgated on 31 December 2014 is set aside. I remake the decision. The Appellant's appeal is allowed to the limited extent that the matter is remitted to the Secretary of State for her to consider whether to issue a residence card to the Appellant.

Signed

Date 28 April 2015

Upper Tribunal Judge Clive Lane