



IAC-FH-NL-V1

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

Appeal Number: IA/38335/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

On 22 July 2015

**Promulgated
On 23 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

v

**Dieudonne Alang FUH
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr C. Avery, Senior Home Office Presenting Officer

For the Respondent: Mr Jacques M. Rene, counsel instructed by Eagles Solicitors

ERROR OF LAW & REASONS

1. The Respondent is a national of Cameroon, born on 27 March 1989. He applied for a residence card as the family member of Mrs Mokulu-Kokonu Lucie Mangbau, a French national exercising treaty rights in the United Kingdom. This application was refused on 9 September 2014 because the Secretary of State was not satisfied that (a) the parties have entered into a valid marriage in

Cameroon and (b) the Appellant is in a durable relationship with the Sponsor as claimed.

2. The Respondent appealed and his appeal came before First Tier Tribunal Judge Grant-Hutchison for determination on the papers on 16 February 2015. In a determination promulgated on 3 March 2015, the Judge found that the parties had not entered into a valid marriage under French law but allowed the appeal on the basis that the Respondent had discharged the burden of proving that he had entered into a durable relationship with his Sponsor.

3. The Secretary of State sought permission to appeal on the basis that the Judge erred materially in law in allowing the appeal outright as the Secretary of State has not exercised discretion in this case under regulation 17(4) of the 2006 EEA Regulations. As the Respondent was found to be an extended/other family member under regulation 8(5) it was submitted that the Judge should have remitted the case to the Secretary of State for consideration under regulation 17(4) instead of allowing the appeal outright *cf.* Ihemedu (OFMs - meaning) Nigeria (2011) UKUT 00340 (IAC).

4. Permission to appeal was refused by a Judge of the First Tier Tribunal but granted by Upper Tribunal Judge Kebede on the basis that it was arguable that, in allowing the appeal outright, the Judge acted inconsistently with the guidance in Aladeselu (2006 Regs - reg 8) Nigeria (2011) UKUT 253 at 29 as referred to in Ihemedu (OFMs - meaning) Nigeria (2011) UKUT 00340 (IAC) with respect to the appropriate course in cases involving the issue of residence cards to extended family members under Regulation 17(4).

5. At the hearing before me Mr Rene stated that he and Mr Avery agreed that the matter should be remitted back to the Secretary of State. Mr Avery confirmed that there was no challenge by the Secretary of State to the findings of fact and reasons by the First Tier Tribunal Judge and he was only challenging the fact that the Judge allowed the appeal outright and not what he said.

Decision

6. For this reason I allow the appeal of the Secretary of State against the decision of First Tier Tribunal Judge Grant-Hutchison. The effect of this decision is that the Respondent's case is remitted back to the Secretary of State for her to consider the exercise of her discretion under regulation 17(4) of the Immigration (EEA) Regulations 2006, in light of the findings of fact by First Tier Tribunal Judge Hutchison at [16-17] that the parties have lived together since the Sponsor's arrival in the United Kingdom and that the Respondent had discharged the burden of proving that he has entered into a durable relationship with his Sponsor.

Deputy Upper Tribunal Judge Chapman

22 July 2015