



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

Appeal Number: IA/47831/2014

THE IMMIGRATION ACTS

Heard at Glasgow

**Decision and Reasons
Promulgated**

On 1 December 2015

On 14 December 2015

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M A AWAN

Respondent

Representation:

For the Appellant: Mrs S Saddiq, Senior Home Office Presenting Officer
Respondent present, with sponsor; no legal representative

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to the appellant as the SSHD and to the respondent as the claimant.
2. The SSHD appeals against a determination by First-tier Tribunal Judge Dickson, promulgated on 24 February 2015, allowing the claimant's appeal against refusal of a residence card under the Immigration (European Economic Area) Regulations 2006.

3. The determination reaches findings favourable to the claimant in respect of his relationship with the sponsor, and concludes “the appeal is allowed”.
4. The point raised in the SSHD’s grounds of appeal to the Upper Tribunal is that under regulation 17(4) the SSHD has a discretion whether to issue a residence card to an extended family member; that discretion has not yet been exercised in this case; and the appeal “should only have been allowed to the limited extent that the SSHD’s decision was not in accordance with the law and the application remains outstanding for the respondent to consider the exercise of discretion.”
5. On 18 February 2015 permission was granted, on the view that it was arguable that the judge’s findings “should have led him to remit the matter to the Secretary of State for her to exercise discretion, and should not have led to the appeal apparently being allowed outright.”
6. The grant of permission referred to *Ihemedu* (OFMs – meaning) [2011] UKUT 00340. Mrs Saddiq referred to paragraph 12, which in turn relies on 2 previous decisions to similar effect.
7. Although Mrs Saddiq indicated that the respondent might have sought to find error in the positive findings of fact, there was no scope to do so either in terms of the SSHD’s grounds of appeal to the Upper Tribunal or in terms of the grant of permission. Those findings of fact shall stand.
8. The judge did not have the advantage of any submission from the Secretary of State on the form the determination might take, if the judge were to reach findings of fact favourable to the claimant. Particularly in the absence of any submission from either party, it seems a marginal question whether saying simply “the appeal is allowed” discloses any error of law. The First-tier Tribunal does not have the power to “remit” matters to the SSHD for decision. The true effect of the determination may have been no more and no less than it ought to have been.
9. However, the SSHD’s point has a good starting point in the regulations and case law, and *may* have more than technical significance. As proceedings have gone this far, the outcome should now be put beyond doubt. The determination is **set aside**, and the following decision is substituted: the appeal, as originally brought by the claimant to the First-tier Tribunal, is allowed on the basis that the SSHD’s decision was not in accordance with the law. In effect, consideration of discretion in terms of regulation 17(4) remains outstanding before the SSHD.
10. In view of the very protracted history of this relatively straightforward case, it is to be hoped that a further decision by the SSHD will not be long delayed.
11. No anonymity order has been requested or made.



Upper Tribunal Judge Macleman

3 December 2015