



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

Appeal Number: OA/22037/2013

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 23rd February 2015

On 2nd March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

THE ENTRY CLEARANCE OFFICER FREETOWN

Appellant

and

**MR GOURESSI CAMARA
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms Everett, Senior Home Office Presenting officer

For the Respondent: No attendance

PROVISIONAL DECISION AND REASONS

1. The respondent, Mr Gouressi Camara date of birth 15th March 1978, is a citizen of Sierra Leone. Having considered all the circumstances I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the ECO against the determination of First-tier Tribunal Judge Beach promulgated on 24 November 2014, whereby the judge allowed the respondent's appeal against the decision of the ECO dated 14 November 2013. The decision by the ECO was to refuse the Respondent a family permit as an extended family member of an EEA

qualified person exercising treaty rights, who was resident and working in the United Kingdom.

3. By decision made on the 14th January 2014 leave to appeal to the Upper Tribunal was granted.
4. In allowing the appeal Judge Beach had allowed the appeal outright. The grounds of appeal raise the issue that there was a discretion to be exercised under Regulation 12(2) and that consistent with the cases of Aladeselu v SSHD [2013] EWCA Civ 144 and Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 340 (IAC) the appropriate course was for the discretion in the first instance to be considered and exercised by the ECO. Whilst the cases are concerned with the discretion under Regulation 17, the provisions are in the same terms and contain the same discretion.
5. There was no attendance by the respondent or his representative at the hearing. There is on the file correspondence, which indicates that the respondent accepts that the judge in allowing the appeal outright erred in law and that they were aware of the limitations of the jurisdiction of the judge in line with the case law.
6. Notice had been sent out that as it was accepted that there was an error of law and that the case would be disposed of as a paper case in accordance with the parties agreed approach. That approach appears to be whilst the appeal would continue to be allowed it would be allowed to the limited extent that it was for the ECO to consider whether to exercise the discretion in accordance with the findings of fact made by the judge.
7. The full correspondence between the parties however is not before the Tribunal. It appears to be accepted that in the first instance that discretion has to be exercised by the ECO and that the appropriate course is for this matter to be allowed with the direction that the ECO should consider the application and consider exercising discretion. As I do not have the full correspondence, I make a provisional decision in the following terms:-

There is an error of law in the original decision and I allow the appeal by the ECO and substitute the following decision :-

The appeal is allowed to the limited extent that there is a valid application before the Entry Clearance Officer, which requires him to consider exercising the discretion under Regulation 12(2) of the Immigration (EEA) Regulations 2006 and requires him to make a lawful decision in accordance with the findings of fact made by the judge.

No fee award is made

If either party disagrees with the provisional decision, they have 5 working days to notify the Upper Tribunal and ask for the appeal to be listed for a further hearing.

Signed

Date 02/03/2015

Deputy Upper Tribunal Judge McClure