



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

Appeal Number: IA/15912/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 06 January 2016**

**Decision Promulgated
On 07 January 2016**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMAD OWAIS SHEHARYAR KHAN

Respondent

Representation:

For the Appellant: Mr L. Tarlow, Home Office Presenting Officer

For the Respondent: Ms P. Solanki, Counsel instructed by Lawta Law

DECISION AND REASONS

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.
2. The appellant appealed against the respondent's decision to refuse to issue a residence card recognising his right of residence in the UK as the extended family member (partner in a durable relationship) of an EEA national.

3. First-tier Tribunal Judge R. Sullivan allowed the appeal in a decision promulgated on 02 March 2015. She made unchallenged findings that the appellant was likely to be in a durable relationship with his EEA partner and allowed the appeal in the following terms: *"I find that the refusal is not in accordance with the law and the applicable regulations."*
4. The respondent seeks to challenge the decision on the ground that it was an error of law for the First-tier Tribunal to "allow the appeal outright" in light of the Tribunal's decision in *Ihemedu (OFM's - meaning) Nigeria* [2011] UKUT 00340.
5. The appellant's rule 24 reply pointed out that the appeal was allowed on the ground that the decision was not in accordance with the law although the phrasing at paragraph 30 did appear to confuse matters.
6. I am satisfied that, despite the wording of paragraph 27, and the final statement in paragraph 30 that the appeal was allowed under EEA Regulations, there is no indication in the body of the decision that the judge sought to compel the issuing of a residence card. The judge allowed the appeal on the ground that it was not in accordance with the law and the reference to the appeal being allowed in respect of the EEA Regulations is merely standard phrasing in an EEA appeal.
7. With the agreement of both parties I find that there is no error of law and that it is sufficient merely to clarify that the appeal is allowed to the limited extent that the decision is not in accordance with the law. It now remains for the respondent to consider whether to issue a residence card pursuant to regulation 17(4) of the EEA Regulations 2006.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The First-tier Tribunal decision shall stand

Signed 

Date 06 January 2016

Upper Tribunal Judge Canavan