



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/27115/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 30<sup>th</sup> March 2016

Decision & Reasons Promulgated  
On 12<sup>th</sup> April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VINCENT ARUWA  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation**

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Ms H Short, Counsel instructed by Wilson Solicitors

**DECISION AND REASONS**

1. The respondent (hereinafter “the claimant”) is a citizen of Nigeria born on 13 August 1974. On 19 May 2014 he applied for a residence card as confirmation of his right to reside in the UK as the unmarried partner of an EEA national. The appellant (hereinafter “the Secretary of State”) refused the application on the basis that the claimant failed to demonstrate he was in a durable relationship with an EEA national such that Regulation 8(5) of the Immigration (EEA) Regulations 2006 (hereinafter “the 2006 Regulations”) was satisfied.

2. The claimant appealed and his appeal was heard by First-tier Tribunal ("FtT") Judge Kamara, whose decision was promulgated on 16 September 2015. The FtT allowed the appeal, finding that the claimant and his EEA national sponsor were in a durable relationship such that the claimant met the definition of an extended family member under Regulation 8(5).
3. The grounds of appeal argue that the FtT erred by allowing the appeal outright when the issue of a residence card to an extended family member is a matter of discretion for the Secretary of State.
4. Before me, Ms Short conceded that the FtT made an error of law by failing to recognise the Secretary of State's discretion.

### Consideration

5. The 2006 Regulations distinguish between family members and extended family members. Under Regulation 17(1) the Secretary of State must issue a residence card to a family member of a qualified person. In contrast, under Regulation 17(4) the Secretary of State may issue a residence card to an extended family member. As clarified in *Ihemedu (OFM's - meaning) Nigeria* [2011] UKUT 00340 (IAC):

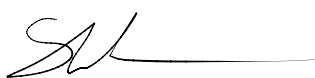
*Regulation 17(4) makes the issue of a residence card to an OFM/extended family member a matter of discretion. Where the Secretary of State has not yet exercised that discretion the most an Immigration Judge is entitled to do is to allow the appeal as being not in accordance with the law leaving the matter of whether to exercise this discretion in the appellant's favour or not to the Secretary of State.*

6. The FtT correctly found that the claimant was in a durable relationship with, and an extended family member of, an EEA national. However, it erred by failing to recognise the Secretary of State's discretion under Regulation 17(4).
7. Accordingly, I set aside the FtT's decision and allow the claimant's appeal on the basis that the Secretary of State's decision was not in accordance with the law and it remains for the Secretary of State to exercise its discretion having regard to the FtT's findings of fact, which have not been challenged.

### Decision

8. The FtT's decision contains an error on a point of law and is set aside.
9. The decision I substitute is to allow the claimant's appeal to the extent that his application for a residence card as an extended family member remains outstanding before the Secretary of State to exercise discretion under Regulation 17(4) of the 2006 Regulations.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 4 April 2016