



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

Appeal Number: IA/28666/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 29th June 2016**

**Decision & Reasons
Promulgated
On 7th July 2016**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ADEEL BUTT
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms R Pettersen, Home Office Presenting Officer
For the Respondent: In Person

DECISION AND REASONS

1. The claimant is a citizen of Pakistan, born on 7th June 1981.
2. On 11th August 2015 the respondent refused his application for a residence card under Regulation 8(5) of the 2006 Regulations on the grounds that she was not satisfied that he was in a durable relationship with the sponsor.

3. The judge, in a determination promulgated on 23rd October 2015, found that the couple were, as claimed, in a durable relationship and that the requirements of Regulation 8(5) were met. He then allowed the appeal under the EEA Regulations.
4. The Secretary of State did not challenge the judge's findings but sought permission to appeal on the grounds that the judge had materially erred in law by allowing the claimant's appeal outright.

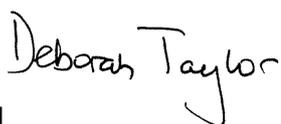
Findings and Conclusions

5. The Secretary of State is correct. She has not had the opportunity to exercise her discretion in this case under Regulation 17(4) of the 2006 EEA Regulations. The correct course was for the judge to have found that the claimant met the requirements of Regulation 8(5) and to have remitted the case to the Secretary of State for consideration under Regulation 17(4).
6. In Ihemedu (OFMs- meaning) Nigeria [2011] UKUT 00340 (IAC) the Tribunal held:

“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 not being 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.”

Notice of Decision

7. The original judge erred in law. His decision is set aside. It is re-made as follows. The appeal is allowed on the basis that the decision was not in accordance with the law and remitted to the Secretary of State for further consideration under Regulation 17(4).



Signed

Date 6 July 2016

Upper Tribunal Judge Taylor