



IAC-AH-CO-V1

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

Appeal Number: IA/48456/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 29 September 2015**

**Decision & Reasons Promulgated
On 25 January 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AQEEL HUSSAIN KAYANI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs Pettersen, a Senior Home Office Presenting Officer
For the Respondent: Not present or represented

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). At the hearing on 29 September 2015, the appellant, Aqeel Hussain Kayani (who was born on 23 August 1985 and is a male citizen of Pakistan), did not attend nor did his representatives do so. In the circumstances I have proceeded with the hearing in the absence of the appellant and his representatives.

2. First-tier Tribunal (Judge Saffer) in a decision promulgated on 25 February 2015, had allowed the appellant's appeal against the decision of the respondent dated 20 November 2014 refusing his application for a residence card. Judge [7] accepted that the appellant and his partner (a Slovakian national) had a child together who had been born in January 2015 and that they had established, by way of documentary evidence adduced, that they had been and were continuing to reside together. The judge was satisfied that the appellant and his partner were members of the same household involved in a durable, genuine and subsisting relationship.
3. The grounds of appeal assert that the judge erred in law by allowing the appeal outright. It is for the Secretary of State to exercise her discretion under Regulation 17(4) of the 2006 EEA Regulations. Having found that the Appellant was an extended/other family member under Regulation 8(5) the judge should have remitted the matter to the Secretary of State for further consideration and for the exercise of discretion under Regulation 17(4). (*Ihemedu (OFMs - meaning) Nigeria* [2011] UKUT 00340 (IAC)). I find that the judge did err in law by allowing the appeal outright.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 25 February 2015 is set aside. The finding that the appellant and the partner, Martina Peterova have been involved in and continues to be involved in a durable, genuine subsisting relationship with a Slovakian citizen shall stand (see decision [7]). The matter is remitted to the Secretary of State in order so that she may exercise her discretion under Regulation 17(4) of the EEA Regulations 2006.

No anonymity direction is made.

Signed

Date 10 November 2015

Upper Tribunal Judge Clive Lane