



IAC-AH-VP-V1

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

Appeal Number: IA/50673/2014

THE IMMIGRATION ACTS

Heard at UT(IAC) Birmingham

On 22 February 2016

Prepared 22 February 2016

**Decision & Reasons
Promulgated**

On 29 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR HEKURAN TORRO
(ANONYMITY DIRECTION NOT MADE)**

Respondent:

For the Appellant: Mr D Mills, Senior Presenting Officer

For the Respondent: Miss I Hussain, Counsel instructed by Ravi Dilan & Hayer
Solicitors

DECISION AND REASONS

1. In this determination the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.

2. The Claimant, a national of Albania ,date of birth 10 September 1986, appealed against the Secretary of State's decision to refuse a residence card with reference to Regulation 8(5) of the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations) on 4 December 2014
3. The appeal against that decision came before First-tier Tribunal Judge Thomas (the judge) who on 28 April 2015 found that the Claimant had discharged the burden of proof upon a balance of probabilities that he and his partner were in a durable relationship and therefore an extended family member for the purposes of the requirements of Regulation 8(5) of the 2006 Regulations. The judge went on to allow the appeal under the EEA Regulations.
4. The Secretary of State appealed against that decision.
5. The Secretary of State's principal ground was that the judge had erred in law because, having found the Claimant and the EEA Sponsor were in a durable relationship, under Regulation 17 of the 2006 Regulations .This was a matter which had not been considered by the Secretary of State. In the light of the case law of Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 00340, Ukus [2012] UKUT 307 and Boodhoo [2013] UKUT 346 the matter should have been returned to the Secretary of State to make a decision in accordance with the law.
6. On 23 June 2015 First-tier Tribunal Judge I Murray gave permission to appeal.
7. At the hearing today it was conceded on behalf of the Claimant that the appropriate course, in the light of the judge's finding, was for the matter to be returned to the Secretary of State to await decision in accordance with the law.

NOTICE OF DECISION The Original Tribunal's decision cannot stand and the matter will be sent back to the Secretary of State to consider this matter, on the basis of the judge's findings of fact, in accordance with the law.

No anonymity direction is made.

Signed

Date 26 February 2016

Deputy Upper Tribunal Judge Davey