



IAC-AH-LEM-V1

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

Appeal Number: OA/12154/2014

**THE IMMIGRATION ACTS**

**Heard at the RCJ  
On 22 February 2016**

**Decision & Reasons Promulgated  
On 28 April 2016**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**ENTRY CLEARANCE OFFICER - ISTANBUL**

**and**

**MR ZURAB TAMAZISHVILI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr S Walker, Home Office Presenting Officer  
For the Respondent: Mr S Harding, Counsel

**DECISION AND REASONS**

1. The appellant has been granted permission to appeal the determination of First-tier Tribunal Judge Mayall allowing the respondent's appeal

against the decision of the Entry Clearance Officer taken on 3 September 2014 to refuse him admission to the UK as the family member of an EEA national exercising treaty rights in the UK.

2. The judge held at paragraph 17 that it was not in dispute that the EEA national was exercising treaty rights. He stated that the only issue raised in the ECM appeal was the nature of the relationship. He noted that since then the parties have married.

3. The judge held as follows:

*“18. I heard the evidence of the sponsor. She struck me as being an obviously credible and honest witness. I accept her evidence. Thus I am satisfied that this couple, who are now married, are in a long-term and durable relationship and intend to live together permanently as husband and wife. They have a daughter together. They have been separated when the appellant returned to Georgia but I am satisfied that they have kept in contact with each other. I am entirely satisfied that the sponsor supports the application.*

*19. In these circumstances I am satisfied that the appellant met the requirements of the EEA Regulations at the time of the decision. He is now the spouse of an EEA national exercising treaty rights.”*

4. The judge then allowed the appeal pursuant to the EEA Regulations.
5. The first issue raised by the appellant was that the judge had materially erred in law by allowing the respondent's appeal outright. The ECO has not exercised their discretion in this case under Regulation 17(4) of the 2006 EEA Regulations. As the respondent was found to be an extended/other family member under Regulation 8(5), the judge should have remitted the case to the Secretary of State for consideration under Regulation 17(4), instead of allowing the appeal outright. Reliance was placed on **Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 003040 (IAC)**, head note (3).
6. The grounds went on to say that whilst the respondent and sponsor may now be married, the relevant date in entry clearance applications is the date of application and therefore the matter considered by the judge and findings he arrived at had to be in line with this. As such it was submitted that despite being married now at the date of the application, the respondent could only be considered as an extended family member and therefore Regulation 17(4) applied.
7. In respect of which date applied when the judge was considering this appeal, Mr Harding relied on the Upper Tribunal's decision in **Boodhoo**

**and another (EEA Regs: relevant evidence) [2013] UKUT 00346 (IAC).**

Head note 1 states:

*“(1) Neither Section 85A of the Nationality, Immigration and Asylum Act 2002 nor the guidance in **DR (Morocco)\* [2005] UKAIT 38** regarding a previous version of Section 85(5) of that Act has any bearing on an appeal under the Immigration (European Economic Area) Regulations 2006. In such an appeal, a Tribunal has power to consider any evidence which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of decision.”*

8. It follows from this decision that the appellant was wrong to rely on **Ihemedu**, as **Ihemedu** was not on all fours with the facts of this case. **Ihemedu** concerned an applicant who was an extended family member of an EEA national. Whilst this appellant was an extended family member at the date he made his application, he had since become a family member of the EEA national following their marriage on 13 August 2014. In the light of **Boodhoo**, I find that the judge did not err in law in considering the evidence that was before him at the date of hearing.
9. The second ground raised by the appellant was that the judge erred in law in not remitting the case to the Secretary of State rather than allowing the appeal outright. I find that this ground cannot succeed in light of my findings at paragraph 8 above. The respondent is now a family member of the EEA national.
10. I find that Regulation 11(2) applies in this case which requires the respondent to be admitted to the UK as he is a family member of an EEA national and is joining the EEA national in the UK. The judge did not err in law in allowing the appeal outright. The judge’s decision allowing the respondent’s appeal shall stand.

Signed

Date

Upper Tribunal Judge Eshun