



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

Appeal Number: EA/14060/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 December 2018**

**Decision & Reasons  
Promulgated  
On 16 January 2019**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**BLESSING EKWUTOS NWANKWO  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

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

For the Respondent: The Respondent did not appear and was not represented.

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent (hereinafter “the claimant”) against the decision of the Secretary of State refusing her a residence card as the wife of an EEA national. The appeal was allowed by the First-tier Tribunal but the Secretary of State was given permission to appeal by the First-tier Tribunal. The Secretary of State alleges, in effect, that there were procedural irregularities by the First-tier Tribunal. Particularly the First-tier Tribunal, wrongly, according to the Secretary of State, refused to allow the Secretary of State to raise other matters in addition to those already raised before the hearing, including concerns

about the alleged relationship relied upon in the application for the residence card.

2. The day before the hearing the claimant's solicitors wrote to the Tribunal (copy to the Presenting Officers Unit) and said they were instructed to "request for a withdrawal of the appeal". The letter continued that the reason for the application was that the claimant "has now decided to re-submit a fresh application for the UK residence card". Given this letter it is not surprising that the claimant did not attend before me. She plainly knows about the hearing and has instructed solicitors about it. It is therefore appropriate to continue in her absence and make the obvious comment that the appeal before me is not one in which she is in any position to withdraw. The appeal is brought by the Secretary of State.
3. The Tribunal Procedure Rules under "Rule 17" are slightly novel in that they do not provide for a litigant to be able to withdraw an appeal, but the litigant can with the permission of the Tribunal withdraw a case. I interpret this letter as a request to withdraw the case. The claimant clearly does not wish to advance anything, neither does she wish to defend the decision because she wants it out of the way to make a fresh application. I permit her to withdraw her case which means that the Secretary of State's case before me is unopposed. On reflection this is probably the position she would be in if she had not written a letter, but I may have been confused about her absence.
4. In the circumstances I have no hesitation in saying that the First-tier Tribunal erred in law. The First-tier Tribunal should not have prevented the Secretary of State from raising further grounds. Possibly the First-tier Tribunal should have adjourned to let the claimant deal with them, but it is basic immigration law going back as far as the decision in R v IAT and another ex parte Kwok On Tong [1981] Imm AR 214 that appeal under the rules cannot be allowed unless the Tribunal is satisfied that all of the points necessary have been resolved in the appellant's (or claimant's) favour. Even if that decision is not strictly relevant in a case under the EEA Regulations I am satisfied that on these facts the Respondent should have been allowed to introduce a potentially highly pertinent new point.
5. In short the Secretary of State's grounds, which are not opposed, are made out.
6. I think it is right that I make it plain that the criticisms of the decision do not go to the credit of the claimant but to the conduct of the hearing. No findings are preserved and there is nothing in this decision that illuminates any subsequent application that the claimant might make.
7. Nevertheless I have no hesitation in saying that the First-tier Tribunal erred in law. I set aside the decision and I substitute a decision dismissing the appeal against the decision of the Secretary of State.

**8. Notice of Decision**

The First-tier Tribunal should not have allowed the appeal. I set aside its decision and I substitute a decision dismissing the appeal against the decision of the Secretary of State.

  
Signed  
Jonathan Perkins

Judge of the Upper Tribunal

Dated 8 January 2019