



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

Appeal Number: IA/24903/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 July 2015**

**Decision & Reasons Promulgated  
On 9 September 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA**

**Between**

**MR HAJIDIN CAKA**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Ms A Watterson of Counsel

For the respondent: Mr D Clarke, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant in this appeal is the Secretary of State for the Home Department. The respondent is a citizen of Kosovo born on 14 January 1984. However for the sake of convenience, I shall refer to the Secretary of State as the appellant and Mr Caka as the respondent, which were the designations they had before the First-tier Tribunal.
2. The appellant appealed to the First-tier Tribunal against the decision of the respondent dated 3 June 2014 to refuse to issue him with a residence card as an extended family member of an EEA national under regulation 8 of the Immigration (European Economic Area) Regulations 2006 (hereinafter, 'the 2006 Regulations').

3. First-tier Tribunal Judge SJ Pacey allowed the appellant's appeal in a decision of 25 November 2014. Permission to appeal was refused at first by First-tier Tribunal Judge Grant-Hutchinson but Upper Tribunal Judge Warr granted permission to appeal to the Upper Tribunal on 20 April 2015 stating that it is arguable that regulation 17 (4) which deals with applications for residence card is by extended family members, imports the exercise of discretion.
4. The matter came before me for hearing on 9 July 2015.
5. The main issue that was taken into account in the proceedings before the First-tier Tribunal was whether the relationship between the appellant and his Polish EEA national sponsor was durable and whether the appellant meets the criteria of regulation 8 (5) of the 2006 regulations.
6. The evidence before the Immigration Judge was the oral evidence of the appellant and the sponsor which the Judge found to be persuasive and given in straightforward persuasive terms. He stated that the appellant provided utility bills in their joint names which cover a period from September to November 2012. He took into account the documentary evidence which included copies of electronic exchanges between the parties which he found go to show contact between the parties.
7. The Judge stated that the evidence which were a number of letters from friends of the parties were provided at the hearing, which were not before the respondent when she made her decision which is the reason why the Judge did not make a fee order. The Judge acknowledged that the witnesses did not attend court to give evidence so it could not be tested but nevertheless their statements had probative value. The Judge found that on the totality of the evidence before him he was satisfied that the appellant meets the criteria of regulation 8 (5) of the 2006 Regulations and allowed the appeal outright.
8. The appellant's grounds of appeal argue as follows, in summary. The Judge of the first-tier Tribunal has made a material error of law by allowing the appeal outright under the 2006 Regulations. The appellant claimed to be in a durable relationship with a qualified person but the issuance or otherwise of a residence card to an extended family member is at the Secretary of State's discretion as set out in regulation 17 (4) and (5) of the 2006 Regulations. Paragraph 17 (4) states that the Secretary of State may issue a residence card to an extended family member not falling within regulation 7 (3) who is not an EEA national on application, if (a) the relevant EEA national is in relation to the extended family member not a qualified or an EEA national with a permanent right of residence under regulation 15 and (b) in all the circumstances it appears to the Secretary of State appropriate to issue the residence card. It further states at paragraph (5) that where the Secretary of State receives an application under paragraph (4), it shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application

shall give reasons justifying the refusal unless this is contrary to the interests of national security.

**Decision as to whether there is an error of law in the determination**

9. I find that there is a material error of law in the determination in relation to the application of the 2006 Regulations.
10. The Judge having found that the appellant was extended family member of an EEA national, allowed the appeal outright rather than allowing it only to the extent that the respondent was required to exercise her discretion under regulation 17 (4) of the 2006 regulations. The Judge failed to have regard to the cases of **Ithemedu (OFM's-meaning) Nigeria [2011] UKUT 00340 (IAC)** and **YB (EEA reg 17 (4)-proper approach) Ivory Coast [2008] UKAT 00062**.
11. There was no suggestion that the appellant was a 'family member' of his EEA sponsor for the purposes of the Regulations, as defined in Regulation 7. Therefore, a residence card could only be issued to him under Regulation 17 if he can establish that he satisfies the criteria of paragraph (4) of Regulation 17, which provides that the Secretary of State may issue a residence card to an 'extended family member' of an EEA national, if the other requirements of that paragraph are met. This paragraph can only be applicable to the appellant if it can first be established that he is an 'extended family members' of for the purposes of the 2006 Regulations.
12. For the purposes of the Regulations, the appellant will be an 'extended family member' of his EEA national sponsor if he can satisfy the criteria of any one of paragraphs (2), (3), (4) or (5) of Regulation 8 of the 2006 Regulations.
13. I find there is a material error of law in the determination as the Judge having found that the appellant and her sponsor were in a durable relationship, allowed the appeal outright under the 2006 regulations. The proper course was to have sent it back to the Secretary of State for her to exercise her discretion.
14. I direct that the appeal be sent back to the Secretary of State for her to exercise her discretion.

**DECISION**

I allow the respondents appeal under the 2006 Regulations.

Dated this 8<sup>th</sup> day of September 2015

Signed by

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Mrs S Chana  
A Deputy Judge of the Upper Tribunal