



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

Appeal Number: IA/01010/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 July 2016**

**Determination  
Promulgated  
On 22 July 2016**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL  
GA BLACK**

**Between**

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

**-  
Appellant**

**and**

**CHARLES THABISO DLAMIKA  
(NO ANONYMITY ORDER MADE)**

**Respondent**

**Representation:**

For the Appellant: Ms J Isherwood (Home office presenting officer)  
For the Respondent: Mr N Ohanugo (Legal representative)

**DECISION AND REASONS**

1. The appellant in this matter is the Secretary of State and I shall refer to the parties as the "Secretary of State" and to the appellant in the First-tier Tribunal as "the Claimant".

2. The Secretary of State appeals against a decision made by the First-tier Tribunal (“FTT”)(Judge Clarke) who in a decision promulgated on 24<sup>th</sup> January 2016 allowed the Claimant’s appeal outright under Regulation 8(5) Immigration(EEA Regulations) 2006 (“EEA Regs.”), having found that the parties were in a durable relationship.
3. The grounds of application for permission argued that the appeal ought not to have been allowed outright as the Secretary of State had not exercised her discretion under Regulation 17(4) EEA Regs. Permission to appeal was granted on the issues raised in the grounds.
4. The matter came before me as an error of law hearing. Both representatives had reached a preliminary agreement as to how the matter should proceed. It was accepted by both representatives that there was an error in law by the FTT in allowing the appeal outright. The matter should be remitted to the Secretary of State for her to exercise her discretion under Regulation 17(4).

### **Decision**

5. I find that there was a material error of law in the decision made by the FTT who allowed the appeal outright and such a decision was not in accordance with the law. It was not open to the FTT to exercise the Secretary of State’s discretion under Regulation 17(4) of the EEA Regs. The findings as to the durable relationship are not disputed and shall stand.
6. The decision is set aside. I remake the decision based on the preserved findings under Regulation 8(5) that the appellant and his partner are in a durable relationship and the appellant is an extended family member. The appeal is allowed to that extent. The matter is to be remitted to the Sectary of State for consideration under Regulation 17(4) EEA Regs.

No anonymity order made

Signed Date 19.7.2016

GA Black  
Deputy Judge of the Upper Tribunal

No fee award.

Signed Date 19.7.2016

GA Black  
Deputy Judge of the Upper Tribunal