



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

Appeal Number: IA/03445/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 January 2015**

**Decision & Reasons
Promulgated
On 16 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS SHEILA MARIE ANTONIO VALDEZ
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

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

For the Respondent: Miss K Mustapha, Kemi Law Chambers

DECISION AND REASONS

1. The respondent is a citizen of the Philippines and her date of birth is 6 April 1973. I will refer to the respondent as the appellant as she was before the First-tier Tribunal.
2. The appellant made an application for a residence card as an unmarried partner pursuant to the Immigration (European Economic Area) Regulations 2006 on the basis that she is an extended family member. The application was refused by the Secretary of State in a decision of 2

January 2014. because it was not accepted that the relationship between the appellant and the EEA national, Ciaron Phelan, was a durable relationship.

3. The appellant appealed against the decision and the appeal was allowed by Judge of the First-tier Tribunal Fletcher Hill in a decision that was promulgated on 7 October 2014 following a hearing on 10 September 2014. The First-tier Tribunal heard evidence from the appellant and the sponsor. The judge found both credible and that the relationship was durable. She went onto allow the appeal under the 2006 Regulations.
4. The grounds seeking permission argue that the decision of the First-tier Tribunal is not in accordance with Regulation 17(4) of the 2006 Regulations. Whether a residence card is granted is at the discretion of the Secretary of State and the judge should have found the decision as otherwise not in accordance with the law because discretion had not been exercised. It was not open to the judge to allow it under the 2006 Regulations.
5. Permission to appeal was granted by Judge McDade on 27 November 2014. Thus the matter came before me.
6. The appellant submitted a response pursuant to Rule 24 of the 2008 Procedure Rules wherein it is conceded that the judge made a material error of law for the reasons identified in the grounds and that the decision should be set aside and allowed on the basis that it is not in accordance with the law only.
7. The judge made an error of law and the decision misunderstands regulation 17(4) (see **Moneke v Secretary of State for the Home Department [2011] UKUT 00341 (IAC)**). I set aside the decision pursuant to Section 12(2) (a) of the Tribunals, Courts and Enforcement Act 2007 and I remake the decision under Section 12(2) (b)(ii) of the 2007 Act.
8. The judge made a lawful and sustainable finding (which is not challenged in the grounds) that the appellant qualifies as an extended family member. I allow the appeal to the extent that the decision is not in accordance with the law pursuant to Section 86(3A) of the Nationality, Immigration and Asylum Act 2002. The application is outstanding pending a lawful decision.

No anonymity direction is made.

Signed Joanna McWilliam
Deputy Upper Tribunal Judge McWilliam

Date 14 January 2015.