



IAC-FH-CK-V1

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

Appeal Number: IA/20652/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14<sup>th</sup> July 2015

Decision & Reasons Promulgated  
On 30<sup>th</sup> July 2015

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KELLY**

**Between**

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

Appellant

**and**

**MS ROBINA KOSAR  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Duffy, Home Office Presenting Officer

For the Respondent: Mr A Chohan, Counsel instructed by Immigration Chambers

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against a decision of Judge Wyman to allow the appeal of Ms Robina Kosar, who is the niece of a European Union citizen exercising her Community Treaty rights in the United Kingdom.
2. The respondent applied for an EEA residence card on the ground that she was an extended family member. In order to establish this, it was necessary for her to show that she was either dependant upon or a member of the same household as the EEA

citizen. Contrary to the earlier finding of the Secretary of State, Judge Wyman was satisfied that she met this definition.

3. Under the heading 'Notice of Decision', Judge Wyman simply stated that the appeal was allowed. He did not specifically state upon what ground he had allowed it. However, the implication of the lack of any qualification to his decision to allow the appeal is that he allowed it on the ground that the decision was contrary to Ms Kosar's rights as an extended family member of an EU citizen exercising Treaty rights in the UK.
4. The law relating to appeals by 'extended family members' is now well-established. They do not have a right of residence. Their right is simply to have their application for a residence permit considered and, in the event of rejection, to be provided with written reasons. The decision whether to grant the permit is entirely within the discretion of the Secretary of State. That much is clear from the terms of Regulation 17(4) of the Immigration (European Economic Area) Regulations 2006, and this was highlighted by the decision of this Tribunal in Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 00340(IAC).
5. Mr Chohan on behalf of the Respondent to this appeal did not seek to argue that Judge Wyman had not made an error of law in allowing the appeal on the ground that he did. It follows that the decision should be set aside and substituted by a decision that the Secretary of State's conclusion that the appellant is not an extended family member is not in accordance with the law. The Secretary of State must now consider whether to exercise her discretion in favour of granting a Residence Card.

### **Notice of Decision**

6. The Secretary of State's appeal is allowed. The decision of the First-tier Tribunal is set aside and is substituted by a decision to allow the appeal on the ground that the Secretary of State's finding that the appellant does not qualify as an extended family member is not in accordance with the law.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Kelly