



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

**Appeal Number: IA/23855/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**On 2 September 2015**

**On 5 October 2015**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**SAMUEL APPIAH**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms J Isherwood, a Senior Home Office Presenting Officer

For the Respondent: Mr R Griffiths-Anderson, a legal representative with  
Frederick Rine Solicitors

**DECISION AND REASONS**

1. The Secretary of State challenged the decision of the First-tier Tribunal to allow the appellant's appeal against her decision to refuse him an EEA residence card as the extended family member of an EEA national with whom he was in a durable relationship.
2. First-tier Tribunal Judge Graham found as a fact that such a durable relationship existed and allowed the appeal outright, which was wrong in law: the correct outcome should have been to allow the appeal to the

extent that it was not in accordance with the law, to enable the respondent to consider the exercise of her discretion under regulation 17(4) of the Immigration (European Economic Area) Regulations 2006 (as amended).

3. By consent, it was agreed that an appropriate decision should be substituted. The finding of the First-tier Tribunal as to the existence of a durable relationship at the date of hearing (13 April 2015) is expressly preserved.

**Conclusions:**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision and remake it by allowing the claimant's appeal to the extent that the Secretary of State's decision is not in accordance with law and that the claimant's application remains before her for the making of a lawful decision under Regulation 17(4) of the Immigration (European Economic Area) Regulations 2006 (as amended).



Date:

Signed:

Upper Tribunal Judge Gleeson