



IAC-FH-CK-V1

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

Appeal Number: IA/28905/2014

THE IMMIGRATION ACTS

**Heard at Field House
On the 3rd June 2015**

**Decision & Reasons Promulgated
On the 22nd June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS ABENA OWUSU SEKYERE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr M Harris, HarperBell Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Brown, who on the 2nd February of this year at Taylor House heard the appeal of Abena Owusu Sekyere against the decision of the Secretary of State to refuse to issue her with a residence card under the EEA Regulations. The issue was whether or not Miss Sekyere was in a durable relationship with Mr Hassan Ishiaku Ibrahim, who is a German national and therefore an EEA citizen. Both are originally from Ghana and at one stage had sought to rely upon a Ghanaian customary marriage. That, however, was not recognised by the Secretary of State and there

was no evidence to show that such a marriage would have been valid under German law as required by the case of Kareem.

2. In the determination the Judge found on the evidence before him that they were in a durable relationship. We make it clear at this stage that the Secretary of State does not challenge that factual finding.
3. The decision was set out in paragraph 18 and the Judge simply stated this: "The appeal under the Immigration (European Economic Area) Regulations 2006 is allowed".
4. The Secretary of State takes issue with that manner of finding relying on the headnotes in the case of Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 340 (IAC). Headnote 3 stated this:
 - "iii) Regulation 17(4) makes the issue of a residence card to an OFM/extended family member a matter of discretion. Where the Secretary of State has not yet exercised that discretion the most an Immigration Judge is entitled to do is to allow the appeal as not being in accordance with the law leaving the matter of whether to exercise this discretion in the Appellant's favour or not to the Secretary of State."
5. We observe that the finding in paragraph 8 is to some extent ambiguous and it is accepted by both parties to this appeal that the appeal should have been allowed on a limited basis and limited for the exercise of discretion. I think in some ways this is perhaps a belt and braces approach. The decision itself did not oblige the Secretary of State to issue a residence card and the Secretary of State could have taken the exercise of the discretion upon herself. However, as it is before the Upper Tribunal to the extent that there is an error in this case and it was purported that a residence card should have been issued we set aside that part of the decision, we remake the decision and remit to the Secretary of State for the exercise of her discretion to decide whether or not, in the circumstances that there is a durable relationship in this case, the Appellant should be in fact granted a residence card.

NOTICE OF DECISION

The appeal is allowed to the extent that the Secretary of State's decision is not in accordance with the law and the case is remitted to the Secretary of State to make a decision with regard to the exercise of discretion relating to the issue of a residence card.

No anonymity direction is made.

Signed

Date 18th June 2015

Deputy Upper Tribunal Judge Parkes

Fee Award

This was an appeal by the Secretary of State and in those circumstances there can be no fee award.

Signed

Date 18th June 2015

Deputy Upper Tribunal Judge Parkes