



IAC-TH-WYL-V1

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

Appeal Number: IA/43632/2014

**THE IMMIGRATION ACTS**

**Heard at Taylor House  
On 8 October 2015**

**Decision & Reasons Promulgated  
On 13 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS**

**Between**

**HENRY TAKYI WIAFE KISSI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr H Kannangara of Counsel instructed by Jade Law Solicitors  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

**The History of the Appeal**

1. The Appellant, a citizen of Ghana, appealed against the refusal of the Respondent to grant him an EEA residence card as confirmation of a right to reside in the UK as the unmarried partner of Miss Juliet Boadaa, an Italian national. His appeal was heard on 11 May 2015 by Judge Aziz sitting at Hatton Cross. In a decision of 17<sup>th</sup>,

promulgated on 19<sup>th</sup>, May, the judge allowed the appeal under the Immigration (European Economic Area) Regulations 2006.

2. Permission to appeal was granted to the Respondent on 15 July 2015 by Judge Davidge in the following terms:-
  - “1. The application is in time.
  2. The grounds assert a material error of law by the judge in allowing an EEA national’s extended family member’s appeal outright as opposed to the limited extent of remitting the matter back to the Respondent to consider the exercise of discretion.
  3. The application reveals an arguable material error of law.”
3. The Appellant and Miss Boadaa attended the error of law hearing before me, which took the form of submissions, which I have taken into account.
4. Both representatives agreed that, in the light of **Ihemedu (OFMs - Meaning) Nigeria** [2011] UKUT 00340 (IAC), the application fell to be allowed to the limited extent of remitting it to the Respondent to enable the exercise of discretion under Regulation 17(4)(b) of the 2006 Regulations as to the issue of a residence card to an extended family member who was not an EEA national. This I accordingly do, in the light of the judicial findings of Judge Aziz, which, as Mr Tarlow accepted, are not challenged by the Respondent.

#### **Decision**

5. The first decision erred in law in allowing the appeal outright. It is set aside to the limited extent that the application is remitted to the Respondent for the exercise of discretion under Regulation 17(4)(b) of the Immigration (European Economic Area) Regulations 2006. This discretion is to be exercised in the light of the judicial findings of Judge Aziz, which are not challenged.

Signed

Dated: 13 October 2015

Deputy Upper Tribunal Judge J M Lewis