



IAC-FH-CK-V1

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

Appeal Numbers: IA/47868/2014
IA/47872/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 January 2016**

**Decision & Reasons Promulgated
On 9 February 2016**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS MUMTAZ SHARMELA HANIF
MISS ANEESA SALEEMA HAMID
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Ms A Fijiwala, Home Office Presenting Officer

For the Respondents: No Appearance

DECISION AND REASONS

1. In this case there are two respondents, Mumtaz Sharmela Hanif, who was born on 12 February 1973, and her daughter, Aneesa Saleema Hamid, who was born on 27 May 1993. They are both citizens of Guyana. They did not attend the hearing because they made a voluntary departure to Australia on 18 November 2015, having been granted temporary residence in Australia. On 4 January 2016 their solicitor wrote to the Tribunal saying that they wished to withdraw from their appeal hearing today. I note that

they have already departed but as it was the respondent's appeal it was right to continue and resolve the appeal today.

2. On 2 July 2009 they were issued with residence cards because at that point the First Respondent was married to Tony Liparoti but it was subsequently discovered that she had not been divorced from her previous husband, Faizan Khan, in Guyana. Therefore, this marriage was dissolved by the High Court in the United Kingdom. On 30 August 2014 the First Respondent married David Morin, who is a French national, and on 12 September 2014 she applied for residence cards, as his dependents, on behalf of herself and the Second Respondent.
3. The Appellant refused to grant them residence cards on 11 November 2014 and they both appealed on 26 November 2014. On 26 May 2015 First-tier Tribunal Judge Wiseman allowed both their appeals. However, in paragraph 22 of his decision he did not reach any conclusion about whether or not the First Respondent had been legally divorced from her previous husband, Faizan Khan, when she married David Morin. Instead he allowed her appeal on the basis that she was in a durable relationship with David Morin.
4. On 3 June 2015 the Appellant appealed submitting that there had been a material misdirection of law in the first-tier tribunal judge's decision. In relation to the Second Respondent she also noted that there was no provision in Regulation 8 of the EEA Regulations for the daughter of a person in a durable relationship, to be treated as an extended family member of an EEA national and be entitled to a residence card.
5. The Appellant also asserted that First-tier Tribunal Judge Wiseman should not have been allowed the First Respondent's appeal outright. She argued that in cases where reliance was placed on a durable relationship established within the United Kingdom, the Secretary of State should have had the opportunity to exercise her discretion under Regulation 17(4) of the Regulations and consider whether or not she wished to grant a residence cards.
6. She relied upon the case of **Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 00340 (IAC)** which held that the issue of a residence card to other family members was a matter of discretion and that Section 17(4) should be considered. The Appellant submitted that the proper procedure would have been for First-tier Tribunal Judge Wiseman to allow the appeal insofar as it was not in accordance with the law and let the Secretary of State consider whether to exercise her discretion.
7. I also find that there was no basis upon which the Second Respondent was entitled to a residence card as the daughter of someone in a durable relationship.
8. For both these reasons I find that the First-tier Tribunal Judge did make errors of law in his decision.

Notice of Decision

9. I allow the Secretary of State for the Home Department's appeal.
10. I set aside the decision of First-tier Tribunal Judge Wiseman.
11. I do not remit the Respondent's appeals to the First-tier Tribunal as the Respondents have left the United Kingdom.
12. If either party has any submissions to make in relation to (11) they should make representations to me within 21 days of service of this decision.

Signed

Date 2 February 2016

Nadine Finch
Upper Tribunal Judge Finch