



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/31936/2013**

THE IMMIGRATION ACTS

Heard at Field House **Determination**
On September 17, 2014 **Promulgated** **On September**
18,2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

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

Appellant

and

MR PEDRO LUIS DIAZ CRUZ

Respondent

Representation:

For the Appellant: Ms Everett (Home Office Presenting
Officer)

For the Respondent: Mr Thoree (Legal Representative)

DETERMINATION AND REASONS

1. Whereas the respondent is the appealing party, I shall, in the interests of convenience and consistency,

replicate the nomenclature of the decision at first instance.

2. The appellant, born April 21, 1968 is a citizen of Ecuador. On April 9, 2013 he sought a residence card as the unmarried partner of an EEA national exercising treaty rights. The respondent refused his application on July 11, 2013 as she was not satisfied he was in a durable relationship.
3. On August 19, 2013 the appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (European Economic Area) Regulations 2006 arguing the Regulations had been met because he was in a durable relationship.
4. The matter was listed before Judge of the First-tier Tribunal Walters (hereinafter referred to as “the FtTJ”) on June 25, 2014. In a determination promulgated on July 15, 2014 he allowed the appeal under 2006 Regulations.
5. The respondent appealed that decision on July 19, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Shimmin on July 30, 2014. He found the FtTJ may have erred for the reasons set out in the grounds.

ERROR OF LAW ARGUMENTS


6. Ms Everett relied on the grounds of appeal and accepted there had been no challenge to the FtTJ’s finding on the durability of the appellant’s relationship. She submitted that because this was an application by an extended family member the FtTJ should have referred the matter back to the respondent if he found the relationship durable. She referred me to Regulation 17(4) of the 2006 Regulations.
7. Mr Thoree accepted there was an error in law and that the FtTJ should have referred the matter back to the respondent having found the relationship was durable.

ERROR OF LAW ASSESSMENT

8. In light of the concession made I find there has been an error in law I direct that the matter be remitted back to the respondent to consider the application afresh in

light of the FtTJ's findings on the durability of the relationship.

DECISION

9. There is a material error of law and I set aside the original decision.
10. The appeal is allowed under the 2006 Regulations to the limited extent that the respondent is invited to consider exercising her discretion under Regulation 17(4) of the 2006 Regulations.
11.  Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I do not make a fee award for the same reasons as previously given.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis