



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

**Appeal Number: IA/24781/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 June 2015**

**Determination  
Promulgated  
On 19 June 2015**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

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

Appellant

**and**

**Mr AZEEM RAZA**

Respondent

**Representation:**

For the Appellant: Mr C Avery; Home Office Presenting Officer

For the Respondent: Mr A Miah; Counsel, (instructed by Farani Javid Taylor Solicitors)

**DETERMINATION AND REASONS**

1. The Appellant (the Secretary of State) appealed with permission granted on 16 April 2015 by First-tier Tribunal Judge Colyer against the decision and reasons of First-tier Tribunal Judge Clayton allowing the Respondent's appeal seeking the issue of a residence card under regulation 8 of the Immigration (European Economic Area) Regulations 2006 (as amended) ("the EEA Regulations"). The decision and reasons was promulgated on 23 January 2015.

2. The Respondent is a national of Pakistan, born on 7 August 1991. He claimed that he was in a durable relationship with an EEA national exercising free movement rights in the United Kingdom. The Respondent had no other basis of stay in the United Kingdom.
3. Permission to appeal was granted by Judge Colyer because he considered that the judge had erred when allowing the appeal outright, whereas under regulation 8(5) the Secretary of State had a discretion to exercise pursuant to regulation 17(4).
4. Mr Avery for the Appellant submitted that the judge had manifestly erred as the grant of permission to appeal indicated.
5. Mr Miah for the Respondent agreed. The judge had found in the Respondent's favour on the regulation 8(5) issue, the durable relationship. That finding should be preserved. The discretion under regulation 17(4) could only be exercised by the Secretary of State.
6. The parties were in agreement that the judge had materially erred by ignoring the Secretary of State's discretion. The tribunal agrees and sets aside the decision and reasons. The decision and reasons must be remade to that limited extent. The tribunal finds that the judge found that there was a durable relationship akin to marriage between the original Appellant and his EEA national sponsor, a finding which was not challenged by the Secretary of State and is accordingly preserved. There was no indication that regulation 17(4) had been considered by the Secretary of State, because she had denied that a durable relationship existed. The Respondent's application must accordingly be returned to the Secretary of State for that discretion to be exercised.

## **DECISION**

There was a material error of law in part of the First-tier Tribunal's determination, which is set aside to the extent that the original Appellant's appeal under regulation 8(5) was not correctly determined.

The following decision is substituted:

The original Appellant's appeal under regulation 8(5) is allowed to the limited extent that the Secretary of State's mandatory discretion under regulation 17(4) has not yet been exercised. The original application is accordingly returned to the Secretary of State for regulation 17(4) to be applied in the light of the findings in this determination.

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**

**TO THE SECRETARY OF STATE**  
**FEE AWARD**

The appeal succeeded in substance and a full fee award is made.

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**