



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

Appeal Number: IA/30620/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 18 February 2015**

**Decision & Reasons  
Promulgated  
On 31 March 2015**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

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

Appellant

**and**

**OLUYEMI ADEYEMI ADELEKE  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Diwyncz, a Senior Home Office Presenting Officer  
For the Respondent: Not present or represented

**DECISION AND REASONS**

1. The respondent, Oluyemi Adeyemi Adeleke, was born on 30 November 1982 and is a citizen of Nigeria. In December 2013, the appellant applied for a residence card. That application was refused on 24 February 2014.

The appellant made two further applications including that which resulted in the refusal by the respondent of 18 July 2014 which is the subject of this appeal. I shall hereafter refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).

2. The First-tier Tribunal (Quigley) in a determination promulgated on 4 November 2014, allowed the appeal under the Regulations on the basis that he was satisfied that the appellant and his EEA national sponsor had been in a durable relationship for at least two years. The grounds assert that he was wrong to do so because he exercised discretion which is the prerogative of the Secretary of State. Having found that the appellant and the EEA national sponsor had been in durable relationship, the judge should have allowed the appeal only to the extent that the decision be remitted to the Secretary of State for further consideration.
3. I proceeded with the hearing in the appellant's absence. I am satisfied that he had received the notice of hearing sent out on 21 January 2015 to his last known address. In any event, I find that the grounds of the Secretary of State have been made out and I agree that the judge should not have simply allowed this appeal outright but should instead have remitted it to the Secretary of State so that she might consider the judge's finding at [21] that the appellant and EEA national sponsor had been in a durable relationship for at least two years.

### **Notice of Decision**

The determination of the First-tier Tribunal promulgated on 5 November 2014 is set aside. I remake the decision. The appeal against the respondent's decision of 18 July 2014 is allowed to the limited extent that the matter is remitted to the Secretary of State to reconsider the decision in the light of the First-tier Tribunal's preserved finding at [21] that the appellant and the EEA national sponsor have been engaged in a durable relationship for at least two years.

No anonymity direction is made.

Signed

Date 30 March 2015

Upper Tribunal Judge Clive Lane