



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

Appeal Number: EA/02097/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 1 October 2018**

**Decision Promulgated
On 5 October 2018**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

SHAHZAIB SYED

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Sowerby, Counsel

For the Respondent: Mr L. Tarlow, Senior Home Office Presenting Officer

**DECISION PURSUANT TO RULE 40(3)(a) OF THE TRIBUNAL PROCEDURE
(UPPER TRIBUNAL) RULES 2008**

1. The appellant appealed to the First-tier Tribunal (“FtT”) against a decision to refuse a residence card as confirmation of a retained right of residence. The FtT dismissed the appellant’s appeal. Permission to appeal against the FtT’s decision was granted to the appellant and thus the appeal came before me.
2. At the hearing before me it was agreed between the parties that the FtT did materially err in law as contended in the grounds of appeal in relation

EA/14088/2016

to the decision of the FtT and that in consequence its decision should be set aside with the appeal being remitted to the FtT for a hearing *de novo*.

3. In the circumstances, and considering the decision of the FtT, the grounds of appeal in relation to its decision, the grant of permission to appeal, and all other relevant documentation, I set aside the decision of the FtT and remit the appeal to the FtT for a hearing *de novo* before a differently constituted First-tier Tribunal.
4. It was agreed between the parties that the following findings of fact (as quoted) made by the FtT are to be preserved, with paragraph numbers of the FtT's decision in brackets:
 - (i) "On the evidence it appears that Mrs Nyiri was a '*qualified person*' at the date of the termination of the marriage." [9]; and
 - (ii) "The various documents demonstrate that the appellant has been living in accordance with these Regs, from 2015 through to 2018." [13].
5. Pursuant to rule 40(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008, no reasons (or further reasons) are required, the decision being made with the consent of the parties.

Upper Tribunal Judge Kopieczek

1/10/18