

Ms Nicole Smith
Deputy Director
European Migration and Citizens' Rights Unit
2 Marsham Street
London
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1st July 2019

Dear Ms Smith

Thank you for your letter of 19 June.

I have discussed this with Michael Clements, the President of the Immigration and Asylum Chamber of the First-tier Tribunal. He has seen this letter in draft and agrees with its contents.

I am happy to treat your letter as an acknowledgment that, for the reasons you explain, there is an issue within the 2016 Regulations, as amended by the 2019 Regulations, so far as concerns extended family members. I also note what the Home Office intends to say in its decision letters to extended family members who are refused the documentation requested by them; namely, that there is a right of appeal to the First-tier Tribunal, notwithstanding the wording of regulation 36(4), because that wording should be read down, so as to make it compatible with EU law. You also helpfully make it plain that the Home Office will not make any procedural arguments under the Regulations, if the person concerned submits an appeal to the First-tier Tribunal.

In the light of the above, it may be thought to be very unlikely that, in practice, such a person would nevertheless be found by a judge of the First-tier Tribunal to have no right of appeal. Since, however, the possibility cannot be entirely excluded, it would not be right for me in this letter to give any formal judicial view about whether the relevant wording requires to be read down. I am, nevertheless, able to confirm that both Mr Clements and I would make appropriate arrangements to enable a

challenge to any such finding to be adjudicated upon by the Upper Tribunal as a matter of urgency.

We are happy to place this letter and yours on the Tribunals' website and content for you to do likewise.

Yours sincerely

Hon Mr Justice Lane

Upper Tribunal | Immigration & Asylum Chamber | President's Office | Field House | 15-25 Breems Buildings | London | EC4A 1DZ

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