Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/30251/2014**

THE IMMIGRATION ACTS

Heard at UT (IAC)
Birmingham Employment Tribunal
On 8th September 2015

Decision & Reasons Promulgated
On 11th September 2015

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

CYNTHIA AMAKA OKOLO

Respondent

Representation:
For the Appellant: Mr I Richards Senior Home Office Presenting Officer
For the Respondent: Mr M Ruparelia instructed by Just Legal Group

DETERMINATION AND REASONS

1. The appellant (hereafter the SSHD) sought and was granted permission to appeal a decision of the First-tier Tribunal which allowed the appeal of Ms Okolo on Article 8 grounds to the limited extent that the decision was not in accordance with the law and the appellant awaited a lawful decision.

2. Mr Ruparelia agreed that there had been no 'cross-appeal' and that the decision by the FtT dismissing the appeal under the EEA Regulations was not challenged.

3. The SSHD's decision the subject of the appeal stated

"Since you have not made a valid application for Article 8 consideration, consideration has not been given as to whether your removal from the UK would breach Article 8"

4. Hence the basis of the FtT decision. Permission was granted on the grounds that the FtT judge had erred in failing to understand firstly that Ms Okolo could and should have made an application on Article 8 grounds which she had not done; secondly because the appeal was dismissed under the EEA Regulations for the reasons given in the refusal letter then it could not at the same time be allowed under Article 8 on those grounds and be remitted to the SSHD for a decision and thirdly that there was nothing to prevent the FtT judge from reaching a decision on that ground in any event.

5. Mr Ruparelia relied upon *Granovski* [2015] EWHC 1478 (Admin) where a deputy High Court Judge held that the SSHD had a residual discretion derived from statue which required Article 8 to be considered.

6. In *Amirteymour and others (EEA appeals: human rights*) [2015] UKUT (IAC) it was held that where no s120 notice had been served and where no EEA decision to remove had been made, an appellant cannot bring a human rights challenge to removal in an appeal under the EEA regulations. It does not appear that the Deputy High Court Judge had his attention drawn to any of the relevant caselaw with regard to this issue, such caselaw being analysed in *Amirteymour.*

7. On that basis I am satisfied that the FtT judge erred in law in allowing the appeal to the limited extent he did. Furthermore had the judge considered a decision on Article 8 should have been taken he should in any event proceeded to make it in accordance with the grounds of appeal relied upon.

8. I set aside the decision of the FtT.

9. I remake the decision by dismissing it – there is no obligation or duty upon the SSHD to make an Article 8 decision absent an application being made. The Tribunal was not and is not required to determine an Article 8 ground of appeal in these circumstances – particularly where the appellant (as in this case) was not required to leave the UK and had extant leave to remain under the Immigration Rules.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by dismissing Ms Okolo's appeal against the decision of the SSHD dated 15th July 2014 on all grounds

Date 10th September 2015

Upper Tribunal Judge Coker