



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

Appeal Number: IA/42205/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 March 2015**

**Decision & Reasons Promulgated  
On 13 April 2015**

**Before**

**MR JUSTICE CRANSTON  
DEPUTY UPPER TRIBUNAL JUDGE FRANCES**

**Between**

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

**Appellant**

**and**

**FRANK ACHEAMPONG  
(ANONYMITY DIRECTION NOT MADE)**

**Respondent**

**Representation:**

For the Appellant: Miss A Brocklesby, Home Office Presenting Officer  
For the Respondent: Miss M Bonsu, KC Law Chambers Solicitors

**DECISION AND REASONS**

1. We shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Ghana born on 10 September 1970. His appeal against the Respondent's refusal to issue a residence card as confirmation of a derivative right of residence was dismissed under Regulation 15A(4A) of the Immigration (EEA) Regulations 2006, but allowed on Article 8 grounds to the limited extent that the application remained

before the Respondent for a lawful decision to be made on on the Appellant's human rights claim.

2. The Secretary of State appealed against the decision of First-tier Tribunal Judge C M Phillips dated 14 November 2014. Permission to appeal was granted on 8 January 2015 on the grounds that the judge was required to either allow or dismiss the Appellant's appeal on human rights grounds and the judge had no power to make the order that she purported to make.
3. The grounds rely on Lamichhane v the Secretary of State [2010] EWCA Civ 260 and contend that there was no Section 120 one stop notice served and therefore the Appellant could not raise before the Tribunal any grounds advanced for leave to remain different from that which was the subject of the decision that the Secretary of State appealed against.
4. At the hearing, the Respondent submitted that the judge considered Article 8 and in effect remitted the decision back to the Secretary of State but failed to give reasons for why the decision under the EEA Regulations was unlawful on the basis that Article 8 was not considered. Miss Brocklesby informed us that there was a case to be heard on Tuesday on whether Article 8 was engaged in EEA appeals but in any event there was an error of law in this case because the judge allowed the appeal under Article 8 when she had no power to do so.
5. Miss Bonsu for the Appellant submitted that it was part of the judge's jurisdiction under the Human Rights Act 1998 effectively to consider Article 8 in all cases and therefore she was correct to consider the Article 8 claim, and it was open to her to require the Secretary of State to consider Article 8 also.
6. After a short adjournment there was consideration of whether the appeal should proceed. Miss Bonsu invited us to stay the matter on the basis that there would be a test case on Tuesday, or that the matter be remitted to the First-tier Tribunal for Article 8 to be considered. For the reasons we are about to give we do not propose to take that action.
7. The case law as it stands is JM (Rule 62(7) human rights unarguable) Liberia [2006] UKAIT 00009 in which the Tribunal held that if the Appellant's human rights claim depends on the consequences of removal, his human rights grounds cannot avail him in any appeal against a decision that does not entail removal. That is in fact the case here.
8. Accordingly, we find that the First-tier Tribunal Judge erred in law in allowing the appeal on Article 8 grounds insofar as the decision of the Secretary of State remained outstanding for a lawful decision to be made. The decision to refuse to issue a residence card was a lawful one and it was conceded that the Appellant could not satisfy the EEA Regulations 2006.
9. Since there was no removal decision there would, in our view, be no interference with the Appellant's right to family life because he was not required to leave the UK.

Therefore, had the judge considered Article 8 and made a decision on Article 8 she should have concluded that there would have been no interference and therefore the Article 8 claim could not succeed.

10. The Appellant has not made a claim for leave to remain under the Immigration Rules and it is still open to him to do so.
11. Therefore, the Respondent's appeal to the Upper Tribunal is allowed. The First-tier Tribunal's decision to allow the appeal on Article 8 grounds, to the limited extent that the application remained before the Respondent for a lawful decision to be made on the Appellant's human rights claim, is set aside. Since there was no removal decision there would be no interference with the Appellant's family life and Article 8 was not engaged.
12. There was no error of law in the decision to dismiss the appeal under the EEA Regulations 2006 and the decision of the First-tier Tribunal under those Regulations shall stand.

**Notice of Decision**

The Secretary of State's appeal is allowed.

No anonymity direction is made.

Signed

Date 31st March 2015

Deputy Upper Tribunal Judge Frances

**TO THE RESPONDENT**  
**FEE AWARD**

We set aside the fee award of £70 made by the First-tier Tribunal.

The Appellant's appeal was dismissed under the EEA Regulations 2006 and therefore there can be no fee award.

Signed

Date 31st March 2015

Deputy Upper Tribunal Judge Frances