



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

Appeal Number: IA/43798/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16<sup>th</sup> October 2015**

**Decision & Reasons Promulgated  
On 23<sup>rd</sup> November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MUHAMMAD LUQMAN**

Claimant

Representation:

For the Appellant: Mr S Whitwell, Senior Presenting Officer

For the Claimant: Mr G Davison, Counsel; instructed by Adam Bernard  
Solicitors

**DETERMINATION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Meah allowing the Claimant's appeal to the limited extent that it was remitted to the Secretary of State for consideration of the Article 8 claim.
2. In a Refusal Letter, dated 24 October 2014, the Secretary of State refused the Claimant's application for confirmation of a right to reside as the dependent of his brother, a British citizen under Regulation 9 of the Immigration (European Economic Area) Regulations 2006 ("2006 Regulations"). An appeal was brought under Regulation 26 of the 2006

Regulations. The First-tier Tribunal promulgated its decision allowing the Claimant's appeal to the limited extent indicated on 19 May 2015.

3. The Secretary of State appealed against that decision and was granted permission to appeal by First-tier Tribunal Judge Grimmett. The ground upon which permission was granted may be summarised as follows:
  - (i) It is arguable that the judge erred in remitting the appeal back to the Secretary of State to consider Article 8 where no error on the part of the Respondent was alleged.
4. I was not provided with a Rule 24 response from the Claimant but was addressed in oral submissions by his counsel.

### **Error of Law & Re-making**

5. Both parties were in agreement that the judge's decision revealed an error of law such that it should be set aside. For the Claimant, Mr Davison accepted that the aspect of the appeal relating to Regulation 9 should have been dismissed as he maintained before the First-tier Tribunal. Contrary to the course of action pursued before the First-tier Tribunal, Mr Davison also now agreed with Mr Whitwell that the Article 8 consideration should have been the subject of a fresh application and the appeal should be dismissed in light of the recent decision of the Upper Tribunal in *Amirteymour & Ors (EEA appeals; human rights)* [2015] UKUT 466 (IAC).
6. At the close of submissions, I indicated that in light of that agreed position, and given the decision in *Amirteymour*, I could see no reason to disagree with the parties mutual submissions and proposed to follow that course of action.
7. Consequently, I find that there was an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.
8. The Claimant does not seek to pursue his appeal under Regulation 9 of the 2006 Regulations and consequently that element of the appeal before the First-tier Tribunal remains untouched.
9. Similarly, the Claimant now discontinues his position that the appeal should have been remitted to the Secretary of State for consideration of his Article 8 matters. The Claimant now accepts that such matters will be considered by the Secretary of State should he submit a further application and pay a fee in order to have his human rights considered. Given that broad concession, I do not propose to interfere with it for my own part and do not propose to give comment on that matter.
10. Of final note, it is noteworthy that consideration of the Claimant's Article 8 rights do not require consideration by the Tribunal in the instant scenario. This is reinforced by the recent decision of the Upper Tribunal in *Amirteymour*, which confirms as follows:

Where no notice under section 120 of the 2002 Act has been served and where no EEA decision to remove has been made, an appellant cannot bring a Human Rights challenge to removal in an appeal under the EEA Regulations. Neither the factual matrix nor the reasoning in JM (Liberia) [2006] EWCA Civ 1402 has any application to appeals of this nature

11. In the present context, as the parties agree, the Claimant's Article 8 matters do not require consideration by the Tribunal. This would anyhow be so given that there has been no section 120 notice and no EEA decision to remove.
12. There being nothing remaining to determine, the appeal is remade with the resultant effect that it is dismissed on all grounds.

### **Decision**

13. The appeal to the Upper Tribunal is allowed.
14. The decision of the First-tier Tribunal is set aside.
15. The appeal is dismissed on all grounds.

### **Anonymity**

16. The First-tier Tribunal did not make an anonymity order. I was not invited to make any such order and in any event I see no reason to make such an order.

Signed

Date

Deputy Upper Tribunal Judge Saini