IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/32545/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 March 2016	**On 13 April 2016**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

MIRATIM MEZINE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance and not represented
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Kosovo born on 3 September 1985. He arrived in the United Kingdom in 2000.

2. On 20 May 2014 he made an application for a residence card as confirmation of a permanent right of residence in the United Kingdom. That application was refused in a decision dated 4 August 2014.

3. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Oakley ("the FtJ") at a hearing on 18 February 2015. Judge Oakley concluded that the appellant was unable to meet the requirements of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations") and his appeal on that basis was dismissed. The appeal was also dismissed under the Immigration Rules with reference to Article 8 of the ECHR.

4. The grounds of appeal before the Upper Tribunal on behalf of the appellant contend that the FtJ erred in law in his consideration of paragraph 276ADE(vi) (very significant obstacles to integration in Kosovo).

5. It is also asserted that he erred in law in failing to give adequate reasons for concluding that the appellant was able to return to Kosovo.

6. In granting permission to appeal, Upper Tribunal Judge Markus highlighted the issue of jurisdiction, in terms of whether the First-tier Tribunal ("FtT") had jurisdiction to consider Article 8 in circumstances where it was dealing with an appeal against a refusal to issue a residence card under the EEA Regulations.

7. At a hearing before the Upper Tribunal on 3 November 2015 the appeal was adjourned pending the decision of the Court of Appeal on appeal from the decision of the Upper Tribunal in *Amirteymour and others (EEA appeals; human rights)* [2015] UKUT 00466 (IAC). An application for a further adjournment was made subsequent to that hearing on the basis of the forthcoming listing of the appeal in *Amirteymour*. That application was refused in the light of the decision of the Court of Appeal in *TY (Sri Lanka) v Secretary of State for the Home Department* [2015] EWCA Civ 1233. A further application for an adjournment of the hearing listed before me was refused prior to the hearing by a judge of the Upper Tribunal.

8. On 24 February 2016 the appellant's solicitors wrote to the Upper Tribunal asking that the appeal be determined 'on the papers' and reiterating something of the history of the appeal proceedings. Yet again, a request was made for the proceedings to be adjourned to await the outcome of the decision of the Court of Appeal in *Armirteymour*.

9. At the hearing before me the respondent was represented and ready to proceed. Having regard to rule 2 of the Tribunal Procedure (Upper Procedure) Rules 2008, I decided not to adjourn the hearing because I did not consider that it was in the interests of justice to do so, in the light of the existing jurisprudence. Similarly, I decided not to make a decision without a hearing under rule 34 ('on the papers') but to proceed to a hearing and consider any submissions made on behalf of the respondent.

Accordingly, I decided to proceed in the absence of the appellant and his representative, under rule 38.

10. Mr Kotas simply relied on the 'rule 24' response which, in summary, referred to the decision of the Upper Tribunal in *Armirteymour*. I was invited to find that the FtJ had no jurisdiction to deal with Article 8.

11. My conclusions can be expressed in short order. *Armirteymour* decided that where no notice under s.120 of the Nationality, Immigration and Asylum Act 2002 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. It further concluded that neither the factual matrix nor the reasoning in *JM (Liberia)* [2006] EWCA Civ 1402 has any application to appeals of that type.

12. It is not suggested that in the appeal before me there was a s.120 notice, and none is apparent from the Tribunal file.

13. Although as at the date of the hearing before me *Armirteymour* was awaiting a hearing in the Court of Appeal, on 1 December 2015 the Court of Appeal gave judgment in the case of *TY (Sri Lanka*) in which, in summary, the Court of Appeal endorsed the decision of the Upper Tribunal in *Armirteymour*. In the circumstances, the appellant did not, and does not, have recourse to Article 8, whether under the Article 8 Immigration Rules or under Article 8 proper, in his appeal against the refusal to issue a residence card.

14. It follows that the FtJ had no jurisdiction to entertain an appeal on Article 8 grounds under the Rules or otherwise, albeit that the appeal on those grounds was dismissed. Nevertheless, I am satisfied that the First-tier Tribunal erred in law in considering Article 8 at all, which it had no jurisdiction to do. It follows that the grounds of appeal to the Upper Tribunal cannot on any view succeed.

15. Notwithstanding the error of law on the part of the First-tier Tribunal, this is not a case in which it is appropriate to set aside its decision because the error of law could not have affected the outcome of the appeal.

Decision

16. The decision of the First-tier Tribunal involved the making of an error on a point of law. However, its decision is not set aside and its decision to dismiss the appeal on all grounds therefore stands.

Upper Tribunal Judge Kopieczek 1/04/16