



IAC-AH-PC-V1

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

Appeal Number: IA/22752/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 May 2015**

**Decision & Reasons Promulgated
On 18 May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR RONALDO MENDONCA DE SOUZA
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Claimant

Representation:

For the Secretary of State: Mr L Tarlow, Specialist Appeals Team
For the Respondent/Claimant: Mr F Singarajah, Counsel instructed by Thiago Crespo
Immigration Consultancy (a firm regulated by the
OIFC)

DECISION AND REASONS

1. The Secretary of State appeals to the Upper Tribunal from the decision of the First-tier Tribunal allowing on Article 8 grounds the claimant's appeal against the decision of the Secretary of State to refuse to issue him with a derivative residence card as confirmation of his right to reside in the United Kingdom as the primary carer of Kaue Mendes De Souza, whose date of birth is 13 April 1996. The First-tier Tribunal

did not make an anonymity direction, and I do not consider that the claimant or any member of his family should be accorded anonymity for these proceedings in the Upper Tribunal.

2. The claimant is a Brazilian national, whose date of birth is 3 July 1961. His wife has dual British and Brazilian nationality. They have two grown-up children, one of whom is a British national, and the other of whom is a Brazilian national.
3. The claimant met and married Riamunda Mendes De Souza in Brazil. They came to the United Kingdom in 1998 for their honeymoon. They returned to Brazil in 1989, when Mrs De Souza discovered she was pregnant. She gave birth to their first son Kaio in Brazil on 31 July 1990. In 1991 her sister, who had hosted her on her first visit, asked Mrs De Souza to come back and support her as she had just gone through a divorce. Mrs De Souza responded to this summons, and returned to the UK with her husband and child. After a while they moved out, and Mrs De Souza started taking English lessons. She gave birth to their second son Kaue on 13 April 1996 at St Mary's Hospital in Paddington. They decided to stay permanently in the UK, as the education system in the UK was far better than it was in Brazil, and they wanted the best for their children.
4. The claimant however returned to Brazil in 1997. The reasons for this are not directly canvassed in the evidence. But I note from Mrs De Souza's witness statement dated 12 November 2014 that in 1996 the claimant started studying at Barnet College for a chef's diploma, but dropped out after one year. So his departure to Brazil may be connected to this. At all events, the claimant remained in Brazil until the year 2000. He re-entered with valid leave, and had leave to remain until 31 January 2001. The claimant is recorded as then having overstayed for just over a year, before making an application for further leave to remain on 27 May 2002 in line with his spouse. The claimant was granted leave to remain until 31 July 2003.
5. The claimant is recorded as having made three leave to remain applications in rapid succession between 28 July and 17 September 2003. Two of them are recorded as having been rejected, and one of them as being granted. The oddity is that the rejections apparently postdate the one application which was accepted. The last of the three applications made on 17 September 2003 for leave to remain in line with his wife was apparently granted on 4 October 2003 until 31 October 2004. But the earlier two applications made on 28 July 2003 and 22 August 2003 were apparently rejected on 17 May 2004 and 28 June 2006 respectively.
6. To add further confusion, the appellant is recorded as having made an unsuccessful leave to enter application as a visitor which was refused on 15 June 2004; and an unsuccessful application as a dependant of a student, which was also refused on the same day. But these refusals coincide with a period when the appellant apparently had limited leave to remain in line with his spouse.
7. The claimant clearly overstayed after 31 October 2004, and did not seek to regularise his status until 1 July 2013, when he made his first application for a derivative residence card.

8. In the meantime Mrs De Souza successfully appealed a decision to refuse her ILR on the grounds of long residence, and in due course she and their younger son Kaue, who was born here, obtained British citizenship. Their elder son Kaio, who was born in Brazil, has limited leave to remain.
9. The decision under appeal is the refusal of the claimant's third application for a residence card made on 19 March 2014. The claimant applied on the basis he was a primary carer of Kaue, a British citizen child. The application was refused on the ground that Kaue De Souza had been about to turn 18 when the application was submitted, and so the application had been decided on the basis that the appellant claimed to be the primary carer of a British citizen adult. No medical evidence had been provided which would demonstrate that Kaue De Souza is and would remain wholly dependent on the claimant for his primary care. The evidence he had provided was insufficient to demonstrate that Kaue De Souza would be unable to reside in the United Kingdom or another EEA state if he was required to leave the United Kingdom.

The Hearing Before, and the Decision of, the First-tier Tribunal

10. The claimant's appeal came before Judge Fiona Beach sitting in the First-tier Tribunal at Taylor House on 25 November 2014. The claimant was unrepresented. In his oral evidence, he said he had been working as a motorbike courier for the last ten years. His wife did care work. His eldest son Kato was working part-time, and also had a business. His younger son Kaue was taking a gap year before he started university. He had last been in Brazil in 2004 for about six weeks. His parents, two sisters and one brother remained in Brazil.
11. In her evidence, Mrs De Souza said that she had been initially refused a grant of ILR, but she had successfully appealed the refusal decision.
12. In her closing submissions on behalf of the Secretary of State, Ms Ayodele submitted that the claimant shared responsibility for the care of his sons with his wife. He had remained in the UK since 2004 despite knowing he did not have status here. She submitted he could return to Brazil and make an entry clearance application.
13. In her subsequent decision, Judge Beach set out her findings at paragraphs [23] onwards. She found the claimant did not fulfil the requirements for a derivate residence card as there was no evidence to suggest that his youngest son required care over and above that required by an adult child. There was also insufficient evidence to suggest that the claimant was the primary carer of the youngest child since both he and his wife worked full-time.
14. At paragraph [27] the judge said that the claimant also relied on Article 8. But he could not fulfil the requirements of Rule 276ADE as he had not spent more than twenty years in the UK. He had returned to Brazil at various times during his time in the UK including spending three years in Brazil from 1997 until the year 2000. He had family in Brazil. There was no suggestion there would be very significant obstacles to him returning to Brazil.
15. The judge went on to consider Appendix FM. The claimant had two children in the UK, but they were now both over the age of 18 and so he could not qualify under the

parent route. He had a partner here, who was settled in the UK. But he did not have entry clearance as a partner. He only potentially fulfilled the requirements of Appendix FM if he fulfilled paragraph EX.1. Paragraph EX.1 was not freestanding. It was only accessible to those who had successfully met the requirements under paragraph R-LTRP. The claimant could not do so, because there was insufficient evidence that his wife earned at least £18,600. His own salary could not be taken into account because he did not have permission to work in the UK.

16. Furthermore, there was insufficient evidence before her to show that there would be insurmountable obstacles in his wife relocating to Brazil with him. She had ties to Brazil. There would be no language difficulties. She had employment in the UK but there was no suggestion she could not utilise the same skills to find employment in Brazil.
17. At paragraph [31] she said she had to consider whether there were compelling circumstances that meant it would be appropriate to grant leave to remain outside the Rules. She held there was a genuine and subsisting relationship with the claimant and his wife, and that there remained sufficiently compelling circumstances such that it was appropriate to consider whether leave to remain should be granted outside the Rules.
18. The judge went on to refer to the five-stage **Razgar** test. At paragraph [33], she found the claimant had established a private and family life in the UK, and that removal of the claimant from the UK would lead to an interference of sufficient gravity as to engage Article 8.
19. At paragraphs [35] to [37], the judge considered proportionality. He had lived in the UK for fourteen years. Much of his time in the UK had been without leave although he did make a number of applications and so he kept in contact with the Secretary of State during much of this time. He was in a genuine and subsisting relationship with a British national, and he had two British national children who were now aged over the age of 18. There might well be an argument that little was served in expecting the claimant to return to Brazil simply to make an application for entry clearance when his circumstances were such that he might be separated from his wife and children for a period of time whilst the application was made. In general it would be considered in the interests of immigration control for a person to leave the UK where they did not fulfil the requirements of the Rules or the EEA Regulations. She had also taken account of the general public interest considerations contained in Section 117 as amended by Section 19 of the Immigration Act 2014:

I note that the [claimant] speaks English and is financially independent even discounting his unlawful employment (there was no suggestion this employment wouldn't continue if he were lawfully in the UK) which weakens the public interest argument. He has remained in the UK without leave to remain and his immigration status has been precarious. However, the relationship was not formed at a time when the [claimant's] status was precarious. I do not find that it would be proportionate for the [claimant] to leave the UK with his spouse permanently because she clearly has strong family and other connections to the UK and has lawful leave to remain in the UK as do her children. However, an application for entry clearance would not lead to

the claimant being permanently separated from his spouse or to his spouse having to give up her employment and relocate to Brazil.

20. It was not only the spouse who would be affected by the claimant returning to Brazil to make an entry clearance application. His sons would also be affected. Although they were over the age of 18, they lived as a family unit and the impression given at the hearing was that they were a particularly strong family unit “probably partly as a result of the claimant’s immigration issues over the years”. The claimant had remained in Brazil between 1997 and the year 2000 without attempting to return to the UK at a time when his sons were young. But that was some time ago, and the claimant had since formed what came across as a strong relationship between him and his sons. The claimant leaving the UK to make an entry clearance application would mean a separation of the family unit. The claimant was financially independent and spoke English, and he had strong relationships in the UK. Having taken into account all the evidence and the relevant case law such as **Shahzad**, she found it would not be proportionate to expect the claimant to return to Brazil to make an application for entry clearance.

The Application for Permission to Appeal

21. A member of the Specialist Appeals Team settled an application for permission to appeal on behalf of the Secretary of State. It was submitted the judge had erred in her application of Section 117. She placed weight on the claimant’s financial status. But having already recorded that this work had been illegal, consideration should have been given to the damage which illegal working has on the economy and infrastructure.
22. Additionally, the judge had found irrationally that the fact that his relationship with his wife and children was formed prior to his illegal stay should weigh in his favour in the proportionality assessment. It was submitted that credit should not be given in these circumstances. The relationship may not have begun in the UK, but it was certainly formed and developed here.
23. Given the findings the judge made in relation to the Immigration Rules, and the fact that the claimant voluntarily separated himself from his family for a period of three years in the past, the conclusion that it would be unreasonable to expect him to return to Brazil and make an application for entry clearance was one that was squarely against the public interest.

The Grant of Permission to Appeal

24. On 12 February 2015 First-tier Tribunal Judge White granted permission to appeal on the grounds advanced in the application for permission, and also in respect of an additional ground identified by him.
25. Given that the claimant had applied for an EEA residence card, it was arguable that Article 8 did not arise as the Secretary of State had not served a Section 120 notice, citing **Lamichhane [2012] EWCA Civ 260**.
26. In any event, it was arguable that in performing the balancing exercise the judge had given insufficient weight to the fact that the children were adults (**Kugathas**); the claimant returned to Brazil for a number of years without his family; and the

claimant's lack of immigration status. Furthermore, there appeared to be an arguable contradiction in the judge finding that there was insufficient evidence to show there were insurmountable obstacles in family life between the claimant and his wife continuing in Brazil, and yet the judge also finding that it would not be proportionate to expect the claimant to return to Brazil to make an application for entry clearance.

The Hearing in the Upper Tribunal

27. At the hearing before me, Mr Tarlow adopted what he described as the Robinson obvious point that had been raised by Judge White when granting permission.
28. In reply, Mr Singarajah submitted that the case of Lamichhane had been wrongly decided. The earlier Court of Appeal decision in JM (Liberia) [2006] EWCA Civ 1402 had not been considered by the court in Lamichhane.
29. In Ahmed (Amos; Zambrano; reg 15A(3)(c) 2006 EEA Regs) [2013] UKUT 00089 (IAC) Mr Deller on behalf of the Secretary of State had conceded that JM (Liberia) remained good law:

Mr Deller submitted that although the decision at issue in this case – refusal of a permanent residence card – was not a removal decision, it would appear, on JM (Liberia) [2006] EWCA Civ 1402 principles, that the Tribunal should consider the case on the basis that a putative consequence of the refusal decision is that the respondent would proceed to direct her removal to Pakistan.

30. In respect of the other ground of challenge, he relied on MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC), Mukarkar v Secretary of State for the Home Department [2006] EWCA Civ 1045 and Aissaoui v Secretary of State for the Home Department [2008] EWCA Civ 37. In the last case, the Court of Appeal noted the following submission by Counsel for the appellant at paragraph [31]:

Mr Cox submits that many applicants under the 14 year rule will inevitably have used a false name to obtain work. He points out that under the Immigration Directorate instructions which were published in April 2007 (and therefore not applicable to this appeal), it will not normally be in the public interest to grant indefinite leave to remain to a person *unless he has been economically self-sufficient for a significant period of the time he has spent here* (my emphasis). Thus, he submits, the main purpose of the long residence rule is to enable persons who have been working here albeit unlawfully to regularise their position. He submits, as Miss Fielden did, that if persons like the appellant are excluded from the benefit of the long residence rule solely because they have assumed a false name in order to work, then most of those eligible to take advantage of the rule will be excluded.

31. The significance of this passage, according to Mr Singarajah, is that it showed that the judge had not erred in law in not placing decisive weight on the fact that the claimant had been working illegally. It was perverse for the Secretary of State to have a policy in place which required an applicant to be self-sufficient as a condition of granting ILR on the grounds of long unlawful residence, but in this particular case to hold against the claimant the fact that he was financially independent through working illegally.

Reasons for finding an Error of Law

32. On the reasoning of the Court of Appeal in **Lamichhane**, Judge Beach should not have entertained an Article 8 claim by the claimant, as (a) he was not facing removal; and (b) he had not been served with a Section 120 notice.
33. Giving the leading judgment of the court, Stanley Burnton LJ expressly disapproved the earlier Court of Appeal decision in **Mirza & Others v Secretary of State for the Home Department** [2011] EWCA Civ 159.
34. In **Mirza**, the court found that the Secretary of State had a duty to serve a one-stop notice because it had “duties of fairness towards individuals whose lives are on hold, and who may well be committing a criminal offence by their mere presence, while they await an appealable decision”.
35. Stanley Burnton LJ described this approach as judicial legislation, not interpretation. He went on to reject the submission that the Secretary of State was under a duty to serve a Section 120 notice, or indeed that she was under such a duty unless there was a good reason not to do so. The Section conferred a discretionary power, as held in **AS (Afghanistan)**.
36. He went on to conclude at paragraph [41] that an appellant on whom no Section 120 notice has been served may not raise before the Tribunal “any ground for the grant of leave to remain different from that which was the subject of the decision of the Secretary of State appealed against”.
37. The reasoning of the Court of Appeal in **JM (Liberia)** contains an echo of that to be found in the reasoning of the Court of Appeal in **Mirza**. At paragraph [17] of **JM (Liberia)** Laws LJ said as follows:

On the AIT’s view of the question, namely that the human rights issue is not justiciable on a variation of leave appeal, the unsuccessful appellant in such a case, if he has a potential Article 8 claim which would so to speak come live on his removal, surely faces a very unsatisfactory choice. Either he leaves the United Kingdom, as the criminal law says he must, without his human rights claim being determined, or he remains until removal directions are given, anticipating that at that stage he will be able to ventilate his human rights claim before the AIT.
38. But these observations were *obiter dicta*, as were the subsequent observations in **Mirza** cited above which the Court of Appeal in **Lamichhane** rejected. The *ratio* of **Lamichhane** is not in conflict with **JM (Liberia)**. In the latter case, the Court of Appeal did not purport to address a situation where the Secretary of State has deliberately not served a Section 120 notice. In **JM (Liberia)** a Section 120 notice accompanied the Secretary of State’s refusal to vary the appellant’s leave: see paragraph [23]. So although there was not a removal decision in **JM (Liberia)**, the Tribunal had jurisdiction to entertain JM’s appeal on Article 8 grounds because he had raised Article 8 ECHR in response to a Section 120 notice. On the reasoning of the Court of Appeal in **Lamichhane**, the human rights claim advanced by the appellant in **JM (Liberia)** was properly before the Tribunal because a Section 120 notice had been served.

39. In short, **JM (Liberia)** is distinguishable from both this case and the case of **Lamichhane** on the facts. I am not persuaded that **Lamichhane** is *per incuriam*, as submitted by Mr Singarajah, and I find that it should be followed. Accordingly, Judge Beach had no jurisdiction to entertain an alternative Article 8 claim, having dismissed the claimant's appeal under the Regulations 2006. Her attention was not drawn to **Lamichhane**, but the law always speaks.
40. If I am wrong to find that the Tribunal had no jurisdiction, I consider that the judge erred in law in her freestanding proportionality assessment. The judge was wrong to treat as assisting the claimant's case the fact that his relationship with his wife had been formed when his immigration status was not precarious. He did not have an immigration status at all when he met and married his wife. They were both living in Brazil. What was relevant was that the couple had developed a private and family life in the United Kingdom when at all material times the immigration status of the claimant was either precarious or unlawful. His wife's status was also precarious up until the time that she obtained ILR on the grounds of long residence. So they established family life in the United Kingdom together in the full knowledge that they might not be able to carry on family life in the United Kingdom on a permanent basis unless and until the claimant qualified for ILR or was otherwise able to regularise his immigration status.
41. The judge also erred in treating the "financial independence" consideration as helping to tip the scales in the claimant's favour, rather than the opposite. There is no definition of financial independence in the statute, and so it must be interpreted and applied in the context of relevant case law and Appendix FM of the Rules. The claimant did not satisfy the financial requirements for leave to remain as a spouse under Appendix FM as his wife was not earning at least £18,600 per annum. I was told that she is currently earning £16,000. As explored in **MM (Lebanon) [2014] EWCA Civ 985** at inter alia paragraph [32] the significance of the £18,600 threshold from the Secretary of State's perspective is that it is the minimum level of income at which a couple is unlikely to need to have recourse to public funds:
- Mr Peckover therefore summarised the policy intention of the SSHD as follows:
- "As reflected in paragraph 76 of the Statement of Intent published on 11 June 2012...the Secretary of State's intention therefore is that those who choose to establish their family life in the UK by sponsoring a non-EEA partner to settle here should have sufficient financial independence to be able to support themselves without becoming a financial burden on the taxpayer, and moreover should have the financial wherewithal to ensure that their migrant partner is able to participate in everyday life beyond a subsistence level and therefore able to integrate in British society".^[11]
42. Since the claimant is not financially independent from the perspective of the Rules, he cannot be treated as financially independent from a public interest perspective. For to do so would be to subvert the policy underlying the annual minimum income threshold.
43. Another reason for not treating the financial independence consideration as operating in the claimant's favour is illuminated in **Shahzad (Art 8, legitimate aim) [2014] UKUT 85** at paragraph [105]:

Applying the main principles we have derived from case law on Article 8(2) to the judge's assessment of the claimant's case, it will be immediately apparent that the judge wrongly addressed his task when considering the proportionality of the legitimate aim of "economic well-being" (which was the only legitimate aim he considered to be engaged). Although making reference to "the legitimate aim of securing the economic well-being of the UK by sensible immigration control" (which clearly identified that this head extended to the general (or "macro") level, he wholly confined his actual assessment of the weight to be attached to the legitimate aim pursued by the decision of the SSHD to a simple calculus at the individual or "micro" level, so that all that appeared in the balance sheet were the funds the claimant had paid in course fees and the fact that he had enough to maintain and accommodate himself. He wholly overlooked that even in cases where there is no cost to the state incurred by an individual student in terms of fees and maintenance and accommodation, the immigration rules reflect an assessment made by the government with the sanction of Parliament of what requirements are necessary in order to ensure sufficient control on the number of persons entering into or being able to stay in the UK and for how long and under what conditions. Their terms quintessentially require an assessment at the "macro" level. He failed to take into account whether general aspects of "economic well-being", including the need to limit the numbers who have access to public services and the benefits of the NHS and who are able to compete for housing and for employment with those already here: see *FK & OK* [11] (supra [78]).

44. Illegal working is damaging to society on a macroeconomic level as those without the requisite status potentially take jobs away from others who are settled here or have the requisite status. Moreover, at the lower end of the earnings spectrum, the amount that the illegal worker pays in tax is unlikely to offset the social and economic cost of the increased strain on public services such as the NHS to which an illegal migrant will have free access.
45. Mr Singarajah submits that it is perverse to treat the claimant's self-sufficiency through illegal working as a public interest consideration militating in favour of his removal when historically the Secretary of State treated such self-sufficiency as a positive factor. But, as submitted by Mr Melvin, policies change. It is not in dispute that a more liberal regime was in place before the introduction of the new Rules in July 2012; and that under the old fourteen year Rule working illegally would not have counted against the claimant. But at a time when it was much easier to obtain further leave to remain, the claimant was nonetheless unable to obtain such leave; and so he had no legitimate expectation of being able to regularise his status through an in-country application *after* the Rules were tightened, and the fourteen year Rule was withdrawn and replaced by a twenty year Rule.
46. In short, the judge was wrong to find that the claimant was financially independent "even discounting his unlawful employment", and she was wrong to find that the public interest argument was weakened in consequence. She ought to have found that the claimant's lack of financial independence strengthened the public interest in him going back to Brazil, with or without his wife.
47. In **R (on the application of Chen) v Secretary of State for the Home Department (Appendix FM - Chikwamba - temporary separation - proportionality) IJR [2015] UKUT 00189 (IAC)** Upper Tribunal Judge Gill held that Appendix FM does not

include consideration of the question of whether it would be disproportionate to expect an individual to return to his home country to make an entry clearance application to re-join family members in the UK. There may be cases in which there are no insurmountable obstacles to family life being enjoyed outside the UK but where temporary separation to enable an individual to make an application for entry clearance may be disproportionate. In all cases, it will be for the individual to place before the Secretary of State evidence that such temporary separation will interfere disproportionately with protected rights. It will not be enough to rely solely upon the case-law concerning **Chikwamba v SSHD [2008] UKHL 40**.

48. The difficulty faced by Judge Beach was that the claimant was unrepresented, and the Presenting Officer invited her to make a finding on the viability of the claimant returning to Brazil to obtain entry clearance – despite the fact that the claimant had not in the grounds of appeal to the First-tier Tribunal or in the witness statement evidence relied on before the First-tier Tribunal advanced a case that temporary separation would be a disproportionate outcome.
49. The upshot was that the judge did not, and indeed could not, give adequate reasons for allowing the claimant’s appeal under Article 8 ECHR on the ground that it would be disproportionate to require him to regularise his status by returning to Brazil and making the appropriate application for entry clearance once he met the financial requirements (as a result of his wife taking on extra hours or obtaining a second job or the family making good the income shortfall through an accumulation of savings).

The Remaking of the Decision

50. Both parties were in agreement that I should remake the decision on the evidence that was before the First-tier Tribunal. Accordingly, I remake the decision in favour of the Secretary of State.
51. As discussed in my error of law ruling, the First-tier Tribunal had no jurisdiction to entertain an alternative claim under Article 8 as it had not been advanced in response to a Section 120 notice.
52. But if I am wrong about that, the Article 8 claim failed under the Rules as the criteria of EX.1 were not satisfied (as the judge found, and in relation to which there is no cross-appeal); and the evidence before the First-tier Tribunal did not and does not disclose a viable Article 8 claim outside the Rules, having regard to the **Chikwamba** line of authority (which includes **Hayat** – see below) and to **Chen**.
53. In **Hayat [2012] EWCA Civ 1054** at paragraph [50] Elias LJ said that the first instance judge had rightly focused on three matters which went both to the substantive merits of an Article 8 claim and were also relevant to the question of whether it was in any event legitimate to require the applicant to make his application from Pakistan;

The first is that, as persons only permitted to be temporarily in the UK, neither the applicant nor his wife had any legitimate expectation of a right to remain. The second is that the family life could continue in Pakistan, although the wife would for obvious reasons not wish to return. The third was any period of separation would be short. In **Chikwamba** Lord Brown specifically identified the length and degree of family disruption as a factor which would be highly relevant to the question whether it is proportionate to insist that the application be made from abroad.

54. At paragraph [51], Elias LJ said these were all proper considerations to weigh in the balance when considering the merits of the Article 8 claim. As the Secretary of State pointed out in her submissions, there was strong Strasbourg and domestic authority to the effect that only in exceptional circumstances would a couple who had formed a union in full knowledge of the precarious immigration status of either of them be entitled to remain pursuant to Article 8 rights: see Y v Russia [2010] 51 EHRR 21 at paragraph [104].
55. The claimant has not sought to show that requiring him to return to Brazil to seek entry clearance would be unjustifiably harsh, and hence disproportionate.

Decision

The decision of the First-tier Tribunal dismissing the claimant's appeal under the EEA Regulations did not contain an error of law, and accordingly the decision stands.

The decision of the First-tier Tribunal allowing the claimant's appeal under Article 8 ECHR contained an error of law, and accordingly the decision is set aside and the following decision is substituted: the claimant's appeal under Article 8 ECHR is dismissed for want of jurisdiction, alternatively on the merits.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Monson