



IAC-AH-KEW-V2

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

Appeal Numbers: IA/27344/2014  
IA/27350/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester Upper Tribunal**

**Decision & Reasons  
Promulgated  
On 14<sup>th</sup> April 2016**

**On 15<sup>th</sup> March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**[J U]  
[J C] (A MINOR)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr C Timpson, Counsel

For the Respondent: Miss C Johnstone, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants are respectively mother and daughter. The First Appellant had applied for a residence card as confirmation of a right to reside in the United Kingdom. That application was refused by the Secretary of State by Notice of Refusal dated 10<sup>th</sup> June 2014. The Appellant appealed to the First-tier Tribunal and the appeal came before First-tier Tribunal Judge

Brunnen sitting at Manchester on 28<sup>th</sup> January 2015. In a decision and reasons promulgated on 18<sup>th</sup> February 2015 the judge concluded that the only issue before him for decision was whether the Appellants have a current right to reside in the UK under the 2006 Regulations. They accepted that they did not. The judge did not consider that he needed under the present law to go on to consider any appeal pursuant to Article 8 of the European Convention on Human Rights.

2. On 27<sup>th</sup> April 2015 First-tier Tribunal Judge Bartlett granted permission to appeal on the basis that the Appellant's contention that the First-tier Tribunal Judge should have followed the approach in *JM (Liberia) [2006] EWCA Civ 1402* and considered the appeal under Article 8 raised an arguable error of law.
3. On that basis the appeal came before me to determine whether there was a material error of law in the decision of the First-tier Tribunal Judge. The Appellants appeared by their instructed Counsel Mr Timpson. The Secretary of State appeared by her Home Office Presenting Officer Miss Johnstone.
4. Mr Timpson acknowledged the facts of this case and Judge Burns' finding that the Notice of Refusal did not contain a Section 120 notice and that the Respondent had positively intended that Article 8 would not be considered in the proceedings. He also acknowledged the finding of the Upper Tribunal in *Amirteymour and Others (EEA Appeals; Human Rights) [2015] UKUT 466 (IAC)* which is authority for stating that where no notice under Section 120 of the 2002 Act has been served and when no EEA decision to remove has been made, an Appellant cannot bring a human rights challenge to remove in an appeal under the EEA Regulations and that neither the factual matrix nor the reasoning in *JM (Liberia)* has any application to appeals of this nature.
5. In the light of such findings Mr Timpson invited me to adjourn the appeal bearing in mind that there was a pending application in *Amirteymour* to the Court of Appeal. I advised that in accordance with practice handed down to Upper Tribunal Judges it was not appropriate to stay the proceedings.
6. In such circumstances Mr Timpson indicated his instruction was to withdraw the appeal subject to the provisions of paragraph 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and subject to the approval of the Tribunal and the consent of the Secretary of State. Miss Johnstone on behalf of the Secretary of State provided such consent and I provided the same on behalf of the Tribunal.

### **Notice of Decision**

The Appellants' appeal to the Upper Tribunal is withdrawn pursuant to paragraph 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the decision of the First-tier Tribunal is consequently maintained.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris