



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/08004/2016
EA/08005/2016
EA/08008/2016

THE IMMIGRATION ACTS

Heard at Field House
On 18 July 2018

Decision & Reasons Promulgated
On 12 September 2018

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS SHAKIRA TEMITOPE ODUWOLE (FIRST RESPONDENT)
MS MARIAM OMOTOLA ODUWOLE (SECOND RESPONDENT)
MS OYINDAMOLA SHERIFAT ODUWOLE (THIRD RESPONDENT)
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondents: Mr L Youssefian, instructed by Richmond Chambers LLP

DECISION AND REASONS

1. This is the appeal of the appellants against a decision of the First-tier Judge promulgated on 18 January of this year dismissing their appeals under the EEA Regulations but allowing the appeals under Article 8 of the European Convention on Human Rights.

2. The initial appeal was made by the Secretary of State against the Article 8 decision and that issue has gone away in the sense that it is accepted, permission having been granted, that the judge should not have come to a conclusion on Article 8. The Tribunal is bound by the conclusions of the Court of Appeal in Amirteymour [2017] EWCA Civ 353 that in a case such as this Article 8 simply does not arise for consideration. It might at some future date but does not at this point. There is then a cross-appeal on the basis that the judge had not made proper findings, in particular with regard to the issue of dependency and that was considered very recently by Judge McCarthy who extended time and granted permission on all grounds.
3. Mr Bramble who appeared for the Secretary of State today had not seen that grant but he had an idea of what the grounds were about and produced helpfully a copy of the decision of the Court of Appeal in Lim [2015] EWCA Civ 1383, and essentially his submission, and Mr Youssefian I think adopts that, is that the judge's decision is materially flawed by an inadequate consideration of the issue of dependency in this case and the decision in Lim certainly bears that out.
4. It is common ground also that the matter needs to go back to the First-tier Tribunal. I hesitate in relation to that only because clearly we are concerned to try and avoid remittal to the First-tier as much as possible but it is I think sufficiently clear, and one can see this for example from paragraph 3 of Judge McCarthy's grant of permission, that the nature of the inadequacy of the findings in this case is such that really the whole issue of dependency has not had a proper consideration before a judge and as a consequence, I think it is appropriate in this case that the matter goes back to the First-tier to be considered in full on the basis that there will need to be proper findings about dependency in this case.
5. So, the appeal is allowed to that extent.

No anonymity direction is made.



Signed

Date

17 August 2018

Upper Tribunal Judge Allen