



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/22291/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 4<sup>th</sup> September 2014

Determination Promulgated  
On 15<sup>th</sup> September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

MR BABATUNDE TAOHEED DOSUMU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Glass - Counsel  
For the Respondent: Mr Avery - Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal by Mr Babatunde Taoheed Dosumu a citizen of Nigeria born 10<sup>th</sup> July 1988. He appeals against the determination of First-tier Tribunal Judge Talbot issued on 1<sup>st</sup> April 2014 dismissing in terms of the Immigration (European Economic Area) Regulations 2006 his appeal against the decision of the Respondent

made on 15<sup>th</sup> March 2013 to refuse his application made on 25<sup>th</sup> September 2012 for an EEA residence card as the extended family member of an EEA national.

2. The Appellant sought to appeal against that decision on the basis that the Judge had erred in failing to deal with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). On 16<sup>th</sup> May 2014 a First-tier Tribunal Judge refused permission pointing out that the Appellant had not made an application under Article 8 ECHR. In any event no decision to remove had been made and the judge was not obliged to consider Article 8.
3. What is submitted in the grounds is that Article 8 was raised in the Grounds of Appeal and in the skeleton argument which was adopted by the representative. Reliance is placed on the decision **Ahmed (Amos; Zambrano; reg 15A(3)(c) 2006 EEA Regs) [2013] UKUT 00089** at paragraph 79 in which it was held that Article 8 should be considered in an application under the EEA Regs. Application was then made to the Upper Tribunal, again relying solely on Article 8 and on **Ahmed** and on **Huang and Anor v SSHD [2007] UKHL 11**. Permission was granted by Upper Tribunal Judge Macleman. He pointed out that a removal decision is not needed before Article 8 issues may be considered per **GM (Liberia) [2006] EWCA Civ 1402** and went on to say:

“Parties will be expected to direct the UT to any authorities upon the following questions:

A8 is now (largely) subsumed into the Immigration Rules. The ground that a decision is not in accordance with those Rules is not available on an appeal under the Regs (Reg 26 and Schedule 1 para 1 2002 Act, Section 84(1)(a) excepted). The Respondent invites the Appellant to apply under the Rules if he thinks he has an A8 claim - does this mean there is no real interference to consider? (Is it relevant that there may be a charge for an application?)

A judge should (presumably) approach all A8 cases through the Rules before embarking upon a ‘free ranging’ A8 consideration so how might an Appellant present a case, in an appeal which cannot be allowed under the Rules?”

4. The submission of Ms Glass was that it is clear that the Appellant has a family life with his uncle. He is an orphan. He also has a private life. Article 8 was raised in the skeleton argument and in the grounds and it should have been dealt with by the Judge.
5. Immigration Judges are divided on the question of whether or not Article 8 should be considered in an EEA case. There is a view as was expressed by Justice Blake in **Bee & Anor (permanent/derived rights of residence) [2013] UKUT 00083** that a decision on an application for a residence permit is not an immigration decision as defined in Section 82 Nationality, Immigration and Asylum Act 2002 and that in any event in the absence of a decision to remove, there is no prospective interference with any Article 8 rights. Justice Blake makes a distinction between an immigration

decision and an EEA decision with a right of appeal under Regulation 26(1) of the 2006 Regs.

6. It is to be hoped that some guidance on this matter is forthcoming but in any event I do not consider that it is relevant to this particular appeal since there is nothing to suggest that any evidence on Article 8 family or private life was relied on by the Appellant's representatives at the hearing or that any submissions were made on Article 8. I accept that it was raised in the skeleton argument and that the skeleton argument was relied on by Mr Khalaf, the Appellant's representative, but Judge Talbot in his conclusions said,

"Mr Khalaf confirmed that he did not wish to pursue the issue of Article 8 at this time."

7. Ms Glass sought to persuade me that this sentence is ambiguous but I can see no ambiguity in it. She suggested that having adopted the skeleton argument Mr Khalaf probably meant that he just did not want to make any detailed submissions on Article 8 at that time but I cannot read the sentence as meaning that. It seems to me clear that the representative did not wish to pursue the issue of Article 8 before Judge Talbot and that in those circumstances it cannot be said that Judge Talbot made an error of law in failing to deal with it. Indeed he may well have been guilty of erring in law had he proceeded to make a decision on Article 8 having been asked not do so by the Appellant's representative. I do not accept that there is any overriding obligation on a judge to deal with Article 8 in an EEA case.

### **Decision**

8. I find that there is no material error of law in the determination of the First-tier Tribunal and that decision therefore stands.

Signed

Date

Deputy Upper Tribunal Judge Baird