



IAC-FH-AR-V1

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

Appeal Numbers: IA/50000/2014  
IA/50007/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5<sup>th</sup> October 2015**

**Decision & Reasons Promulgated  
On 12<sup>th</sup> October 2015**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

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

Appellant

**and**

**F J-N**

**and**

**PASN**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

*For the Appellant: Mr I Jarvis, Home Office Presenting Officer*

*For the Respondent: Miss T Hyatt, Counsel, Rotherham & Co Solicitors*

**Anonymity**

***The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.***

***I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) and consequently, this determination identifies the appellants by initials only.***

**DECISION AND REASONS**

1. Both respondents are nationals of Gambia, the first having been born on 29<sup>th</sup> December, 1978 and being the mother of the second respondent who was born on 9<sup>th</sup> October, 2003. References I make to the respondent henceforth are to the first named appellant.
2. The respondent entered the United Kingdom on 7<sup>th</sup> September, 2005 having been granted an EEA family permit because of her marriage to AN, a Belgian national exercising treaty rights within the United Kingdom. She was later granted a residence card valid until 10<sup>th</sup> November, 2012. Sadly, the respondent was divorced from her husband on 3<sup>rd</sup> June, 2012 and by that time they had three children, the second respondent and R born on 8<sup>th</sup> January, 2007 and L, born on 13<sup>th</sup> April, 2010.
3. On 18<sup>th</sup> October, 2012 the respondent sought permanent residence under the Immigration (European Economic Area) Regulations 2006 which was refused. The respondent appealed that decision but it was dismissed and the respondent became appeal rights exhausted on 19<sup>th</sup> June, 2014.
4. On 27<sup>th</sup> June, 2014 the respondent sought a derivative residence card under the 2006 Immigration (European Economic Area) Regulations which the respondent rejected.
5. On 22<sup>nd</sup> August, 2014 the respondent again sought a derivate residence card for herself and for her son, the second respondent.
6. As a result of that application being refused, she appealed to the First-tier Tribunal and her appeal was heard by First-tier Tribunal Judge Chapman at Birmingham on 16<sup>th</sup> April, 2015.
7. Counsel who appeared on behalf of the respondent conceded before the judge that the appeal could not be allowed under the 2006 Regulations. The judge went on to consider the Article 8 rights of the respondent and concluded that the decisions in respect of both respondent were disproportionate and purported to allow the appeals under Article 8.
8. The appellant sought to challenge the decision and in making application for permission to appeal pointed out that there were no removal directions and no Section 120 notice. As a result, the impact of the Secretary of State's decision on the respondent' private and family lives were minimal.
9. Permission to appeal was subsequently granted.
10. At the hearing before me Miss Hyatt suggested that the judge may well have been influenced by what was said by the Secretary of State at paragraph 7 of page 5 of the reasons for refusal letter of 1st December 2014. There the Secretary of State simply said:

*"As you appear to have no alternative basis of stay in the United Kingdom you should now make arrangements to leave. If you fail to do so voluntarily your departure may be enforced. In that event we would first contact you again and you would have a separate opportunity to make representations against the proposed removal."*

11. Counsel appeared to suggest that this paragraph in some way persuaded the judge that he had jurisdiction to hear the Article 8 appeal. She also relied on the decision in *JM (Liberia)* and the decision in *Nazir Ahmed v Secretary of State for the Home Department* [2013] UKUT 00089.
12. Mr Jarvis relied on the recent decision of the Tribunal in *Amirteymour and Others (EEA appeals; human rights)* [2015] UKUT 00466, the head note for which says

*“Where no notice under section 120 of the 2002 Act 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. Neither the factual matrix nor the reasoning in JM (Liberia) [2006] EWCA Civ 1402 has any application to appeals of this nature”.*
13. The respondent can of course at any time make an Article 8 appeal to the Secretary of State by completing the necessary form and paying the requisite fee. In purporting to allow this appeal under Article 8, First-tier Tribunal Judge Chapman has erred in law. In dismissing the appeal under the Immigration (European Economic Area) Regulations 2006 the judge was correct and that part of the judge’s decision is upheld. That part allowing the respondent's appeal under Article 8 is set aside.

### **Notice of Decision**

The Secretary of State for the Home Department’s appeal against the decision of First Tier Tribunal Judge Chapman to allow the respondents’ Article 8 human rights appeal is allowed and that part of the determination is set aside.

### **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.

*Richard Chalkley*  
**Upper Tribunal Judge Chalkley**