



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

Appeal Number: IA394742013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 31 July 2017**

**Decision &  
Promulgated  
On 30 August 2017**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**MRS MARQUINHA ANTONIO CASSULE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Not represented

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appeal of Mrs Cassule against the Secretary's decision refusing to issue a derivative residence card. The matter was considered as long ago as 2015 before a panel of the Tribunal including me in which it was decided in relation to the judge's decision that he erred in law under the

EEA Regulations but there was an error of law about the Article 8 issue. Thereafter the appeal was adjourned because the point had been raised by the Presenting Officer that there was an argument being put forward on behalf of the Home Office that there was no power for a First-tier or Upper Tribunal Judge to make a decision on Article 8 human rights in the case where there was an EEA decision of this kind in play. There was then a decision by the Upper Tribunal in a case Mr Jarvis has referred to called Amiteymour which decided that there was no Article 8 right of appeal in a case such as this and that decision as he has also said was upheld by the Court of Appeal in May of this year. So as a matter of law the judge erred in raising Article 8 issues and as a matter of law I cannot consider Article 8 issues but as Mr Jarvis has also said the reason for that is because there has been no removal decision and so the appellant is entirely free to make an application to the Home Office on human rights grounds when she can raise matters such as the health problems and any other issues and if there is a decision made against her then she has a right of appeal against that. So she has not actually lost anything. All I am saying is that the human rights appeal cannot be brought in connection with the EEA rights claim which she brought but it can be brought as a separate free-standing challenge to a further decision of the Home Office in light of any representations she makes. If she can get legal advice then obviously I would encourage her to do so. But in any event she should make an application to the Home Office based on an Article 8 human rights claim. She should see what that decision is and that decision will tell her about appeal rights.

**Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.



Signed

Date 3 August 2017

Upper Tribunal Judge Allen

**TO THE RESPONDENT**

**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

A handwritten signature in black ink, appearing to be 'A. Allen', written in a cursive style.

Signed

Date: 29/08/2017

Upper Tribunal Judge Allen