Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: **AA/07934/2011**

THE IMMIGRATION ACTS

Determined at Field House	**Date Sent**
On 22 August 2013	**On 22 August 2013**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

ARASH TORABI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. This appeal came before me again on 21 August 2013. On 11 March 2013 I gave the following directions:

    1. By a decision dated 8 May 2012 Upper Tribunal Judge Craig found that there was an error of law in the decision of the First-tier Tribunal in relation to Article 8 ECHR such that the decision was set aside to be re-made by the Upper Tribunal.

    2. Subsequent to that decision, the appellant has been granted a residence card under the Immigration (European Economic Area) Regulations 2006, as the family member of an EEA national.

3. The provisional view of the Upper Tribunal is that the granting of a residence card does not constitute leave to remain such that the appeal before the Upper Tribunal falls to be abandoned under section 104(4A) of the Nationality, Immigration and Asylum Act 2002, the residence card merely being documentary confirmation of his right to reside in the UK.

4. It is also the provisional view of the Upper Tribunal that in re-making the decision the appeal should be allowed under Article 8 ECHR on the basis that the respondent's decision could not be said to pursue a legitimate aim, alternatively is not proportionate, in circumstances where it is accepted that the appellant has the right to reside in the UK as the family member of an EEA national exercising Treaty rights.

5. If either party disagrees with the views expressed in paragraphs 3 or 4 above, that party must notify the Tribunal of its reasons for disagreement no later than 14 days from the date on which these directions are sent out. After the expiry of that time the Upper Tribunal will, after taking into account any views expressed by the parties, decide how the appeal is to be disposed of, without further reference to the parties.

6. The parties are to note again, as indicated at the hearing on 21 January 2013, that in any determination of this appeal a decision may be made on the issue of the removal decision under section 47 of the Immigration, Asylum and Nationality Act 2006 having been incorporated in the decision to refuse to vary leave to remain, following the decisions in Ahmadi (s. 47 decision: validity; Sapkota) [2012] UKUT 00147 (IAC) and Adamally and Jaferi (section 47 removal decisions: Tribunal Procedures) [2012] UKUT 00414 (IAC).

2. No response from the Secretary of State has been received to those directions. On 13 August 2013 the appellant's representatives wrote to the Tribunal referring to a reply to the directions having been sent on 18 April 2013, a copy of which is on the Tribunal file. The letters confirm that the appellant's representatives are in agreement with the proposals made in paragraphs 3 and 4 of the Directions.

3. In the circumstances, it is appropriate to determine the appeal in the manner indicated in paragraph 4. The appeal is therefore allowed under Article 8 of the ECHR. That decision supersedes any consideration of the lawfulness of the removal decision, which on the basis of the authorities referred to in paragraph 6 of the directions is not a lawful decision.

Upper Tribunal Judge Kopieczek 22/08/12