



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

Appeal Number: IA/10523/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 February 2015**

**Decision & Reasons
Promulgated
On 26 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MR BENJAMIN KOOMSON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance.

For the Respondent: Ms. Petterson, Home Office Presenting Officer.

DECISION

1. No application for anonymity has been made in these proceedings and there is no reason why such an order should be made.
2. The appellant is a citizen of Ghana born on 13 June 1966. He applied for a residence card as the husband of an EEA national exercising treaty rights in the United Kingdom. His application was refused and his appeal was subsequently considered on papers by Judge of the First-tier Tribunal M. D.

Dennis who in a decision promulgated on 30 October 2014 dismissed it under the European Economic Area Regulations 2006.

3. The appellant applied for permission to appeal. His application was granted by Judge P. J. M. Hollingworth on 17 December 2014. His reasons for so doing were:-

“An arguable error of law has arisen. The grounds of appeal refer to Article 8. The judge has not dealt with this either adequately or in accordance with **Razgar** principles. The appeal was only dismissed under the Immigration (EEA) Regulations 2006.”

4. Thus the appeal came before me today.
5. I was satisfied that the appellant had been properly served with notice of today's hearing. He did not appear and in all the circumstances I decided to proceed.
6. Ms. Petterson acknowledged that Article 8 was at large within this appeal and that the judge had erred in failing to deal with the issues.
7. On my own analysis there is consequently here a material error of law. It was incumbent upon Judge Dennis to deal with Article 8 as it was raised in the grounds of appeal and clearly referred to in the appellant's witness statement considered within the First-tier Tribunal.
8. Therefore, having dismissed the appellant's appeal under the EEA Regulations (a decision which stands) the singular issue outstanding to be determined is that of Article 8.
9. The appeal will therefore proceed to a remitted hearing in the First-tier Tribunal where the singular issue will be Article 8 alone. There is no reason why Judge Dennis should not complete his task in dealing with all matters within this appeal.
10. In deciding whether to set aside the decision of the First-tier Tribunal under Section 12 of the Tribunals, Courts and Enforcement Act 2007, I can dispose of the appeal in one of two ways, either by remitting the case to the First-tier Tribunal or by remaking the decision. The choices regulated by paragraph 7 of Part 3 of the Practice Directions of the Immigration and Asylum Chamber of the Upper Tribunal which only contemplate a remittal in very limited circumstances. This though is such a case. The appellant has been deprived of a fair hearing in respect of his Article 8 claim and the opportunity of putting his case forward to be considered by the First-tier Tribunal. In those circumstances I remit the case to the First-tier Tribunal subject to the attached directions.

Signed

Date 25 March 2015

Deputy Upper Tribunal Judge Appleyard

DIRECTIONS FOR REMITTAL TO THE FIRST-TIER TRIBUNAL

1. The appeal is to be remitted to the First-tier Tribunal at Glasgow and to be listed before Judge of the First-tier Tribunal M. D. Dennis.

Signed

Date 25 March 2015

Deputy Upper Tribunal Judge Appleyard