



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/01546/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 31st August 2017**

**Decision & Reasons
Promulgated
On 1st September 2017**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MR ALI IRBOUH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Juss promulgated on 22 May 2017, in which Mr Irbouh's appeal against the decision to refuse his application for an EEA Residence Card dated 2 October 2015 was allowed on human rights grounds. For ease, I continue to refer to the parties as they were before the First-tier Tribunal, with Mr Irbouh as the Appellant and the Secretary of State as the Respondent.
2. The Appellant is a national of Turkey, born on 13 July 1979, who made an application for an EEA Residence Card as the former spouse of an EEA national exercising treaty rights in the United Kingdom.

3. The Respondent refused the application on 2 October 2015 on the basis that it had not been established that the Appellant's former spouse was a qualifying person (not exercising treaty rights) on the date of divorce.
4. In a decision promulgated on 22 May 2017, Judge Juss dismissed the EEA appeal on the basis that, as accepted by the Appellant, there was no evidence of his former spouse exercising treaty rights in 2013 when they divorced, the latest evidence available being in 2011. The appeal was however allowed on human rights grounds on the basis that there would be a disproportionate interference with his right to respect for family life if required to leave the United Kingdom. This was on the basis of his relationship with a child whose mother was in the United Kingdom as a refugee and following the application of section 117B(6) of the Nationality, Immigration and Asylum Act 2002.

The appeal

5. The Respondent appeals on the sole ground that the First-tier Tribunal did not have jurisdiction in an EEA appeal to allow the appeal on Article 8 grounds in the absence of a section 120 notice.
6. Permission to appeal was granted by Judge Mailer on the sole ground of appeal.
7. At the hearing, Mr Tarlow submitted that, as the Court of Appeal had confirmed in Amirteymour v Secretary of State for the Home Department [2017] EWCA Civ 353, the First-tier Tribunal had no jurisdiction to consider or allow an EEA appeal on human rights grounds.
8. Mr Irbouh confirmed that he understood the grounds of appeal and Court of Appeal's jurisdiction and made no oral submissions.

Findings and reasons

9. Judge Juss, in paragraphs 13 and 14 of the decision, allowed the appeal on human rights grounds without any specific consideration of whether he had jurisdiction to do so in the context of an EEA appeal where there was no evidence of a section 120 notice being served nor any decision to remove or removal directions having been set for the Appellant. In these circumstances, for the reasons set out by the Court of Appeal in Amirteymour, the First-tier Tribunal had no power to consider or allow the appeal on human rights grounds and Judge Juss therefore erred in law in so doing.
10. There is no challenge by either party to the decision to dismiss the appeal under the Immigration (European Economic Area) Regulations 2006 which was unarguably lawful. As the Appellant had accepted, he is unable to establish that his former spouse was exercising treaty rights at the time of their divorce in 2013 such that he can not meet the requirements of the regulations for an EEA Residence Card.

Notice of Decision

The First-tier Tribunal had no jurisdiction to consider this appeal on human rights grounds and erred in law in doing so, the appeal is allowed.

The decision of the First-tier Tribunal is set aside and substituted to dismiss the appeal under the Immigration (European Economic Area) Regulations 2006.

No anonymity direction is made.

Signed 

Date 31st August 2017

Upper Tribunal Judge Jackson