



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

Appeal Number: IA/24722/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 29th February 2016**

**Decision & Reasons
Promulgated
On 10th March 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

AMETH DIOP

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Caskie, instructed by McGuire Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Senegal, born on 2nd February 1987. On 18th December 2012 he applied for a residence card as the family member of a UK citizen under the Immigration (EEA) Regulations 2006, based on the

“*Surinder Singh*” principle. On 6th June 2013 the respondent refused his application for lack of evidence.

2. The appellant appealed to the First-tier Tribunal. Judge N Manuel dealt with the case without an oral hearing (none having been sought) and dismissed it by determination promulgated on 20th December 2013.
3. The judge found that the appellant failed to discharge the burden of proof to show that he was entitled to a residence card. In absence of an application, the respondent had not considered whether removal would breach Article 8 of the ECHR. The decision under appeal did not require the appellant to remove. The judge said that save for a short sentence in the grounds of appeal he had no information and was not in a position to give due consideration to any Article 8 claim, and did not purport to determine the appeal on human rights grounds. It was dismissed under reference only to the Regulations.
4. The appellant appealed to the Upper Tribunal, seeking to argue that the judge should have considered and allowed the appeal under Article 8 of the ECHR.
5. Proceedings were delayed pending further authority, which has been forthcoming in *Amirteymour and Others* [2015] UKUT 466 (IAC) and then in *TY* [2015] EWCA Civ 1233. These decisions are to the effect that an appellant cannot raise Article 8 ECHR matters within the scope of an appeal such as this.
6. In a note of argument dated 29th January 2016 the respondent invites the Upper Tribunal to follow *Amirtuymour* and *TY*, to find that the appellant’s written submissions based on the EU Charter do not lead to any other approach, and to dismiss the appeal.
7. The respondent applies for evidence to be admitted to show that on 10th November 2015 the appellant was sentenced to a period of imprisonment of 22 months 16 days, dating from 30th October 2015. This followed upon his conviction after trial of an assault on his former partner (not his estranged wife, to whom the residence card application relates).
8. The respondent says that the further evidence may be relevant to both error of law and to the remaking of the decision, if that stage were to be reached.
9. Written submissions had also been filed on behalf of the appellant. However, Mr Caskie did not seek to press any argument that *Amirteymour* and *TY* ought not to be followed, or that the EU Charter has the effect that Article 8 of the ECHR should be considered on a substantive basis in appeals of this nature. He did not object to the application for admission of further evidence. His understanding was that a process has begun in light of the conviction which is likely to lead to deportation proceedings.

10. Although Mr Caskie said that there was no point on the appellant's behalf in pursuing the present proceedings, and that he could not then resist the respondent's submission that this appeal should be dismissed, he did so under reservation of the appellant's position that through his wife's "*Surinder Singh*" rights he is entitled to a residence card, and under reservation in future proceedings of arguments that *Amirteymour* and *TY* should not be followed.
11. In the circumstances, it need only be said that the submissions for the respondent are preferred, and that *Amirteymour* and *TY* are applied.
12. The appellant's appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal shall stand.
13. Mr Caskie confirmed that the appellant has an appeal pending in the First-tier Tribunal (reference IA/23770/2014), which is presently sisted pending the outcome of this case. I observe in passing that both parties should now take steps to bring those proceedings also to a conclusion.
14. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

2 March 2016
Upper Tribunal Judge Macleman