



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/01608/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at: Manchester**

**Decision & Reasons**

**Promulgated**

**On: 18<sup>th</sup> October 2017**

**On: 19<sup>th</sup> October 2017**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**MAHEBOOB ESMAIL MUSA TAILOR  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: unrepresented

For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of India born on the 14<sup>th</sup> March 1965. He seeks from the Respondent confirmation of his derivative *Zambrano* right of residence as a direct family member caring for a British citizen. The British citizen in question is his mother. It is asserted that if the Appellant and his wife were to leave the UK his mother would be compelled to leave with them.

2. The First-tier Tribunal dismissed the appeal for two reasons. First, it found that there was a want of jurisdiction, applying Sala (EFMs – right of appeal) [2016] UKUT 411 (IAC). Second, the appeal was dismissed on the facts for a lack of evidence, the Appellant having failed to attend or supply any further documents in pursuit of his appeal.
3. The Appellant is unrepresented, and drafted the grounds of appeal himself. In short his position is that there has been a procedural unfairness in that he had made a request that his case be moved from London to Manchester, the area where he was then living. Thinking that request had been actioned, he attended court on the appointed day – the 9<sup>th</sup> December 2016 – in Manchester. The case was heard in London. The Appellant requests that the appeal be relisted so that he can attend and provide oral evidence.
4. Permission to appeal was granted by Deputy Upper Tribunal Judge McGinty on the 25<sup>th</sup> July 2017. He considered it appropriate that there was further investigation into the alleged procedural unfairness. In respect of the jurisdiction point he considered it arguable that the First-tier Tribunal had misapplied Sala.

### **My Findings**

5. The chronology of events, insofar as it is relevant to the point about procedural unfairness, is as follows.
6. The Respondent's decision is dated the 3<sup>rd</sup> October 2015. The appeal was lodged, in-time, with the First-tier Tribunal on the 8<sup>th</sup> October 2015.
7. On the 2<sup>nd</sup> February 2016 he wrote to the Tribunal requesting that his appeal be moved “from Leicester to Manchester”. He gave an address in Bolton and explained that he had moved from Wembley to there. He wanted to attend the hearing with his mother and wife. The reference to Leicester in this letter is hard to understand; as far as I am aware there is no IAC hearing centre in Leicester. I assume that this was a misunderstanding on the part of the Appellant, since he was addressing the letter to the IAC administration headquarters at Arnhem House, which is indeed in Leicester. In any case the point of the letter is clear: he has moved to the Manchester area and would therefore like the appeal to be heard there so that he and his witnesses can attend. I note that the letter referred to the fact that the Appellant had already spoken to someone within the Tribunal and had been advised to write. This claim is reiterated in the grounds of appeal before me. I note that – at least as it appears in the file before me – the letter was accompanied by medical evidence relating to the Appellant's mother. This is to the effect that she is elderly with numerous health complaints and “very poor mobility”; an application had been made to Bolton Council for adaptations to be made to their

house as a result of her disabilities.

8. The first Notice of Hearing sent out to the Appellant is dated the 11<sup>th</sup> July 2016. It was sent to his address in Bolton and instructed him that he should attend court at Hatton Cross in London on the 9<sup>th</sup> December 2016. In his submissions before me the Appellant asserted that upon receipt of this notice he wrote again, requesting that the appeal be heard in Manchester. There was no evidence of this on the court file.
9. The matter came before First-tier Tribunal Judge Chowdhury at Hatton Cross on that day. As I have said, the Appellant did not attend. Nor, it would seem, did the Respondent. Judge Chowdhury reserved her decision.
10. On the 13<sup>th</sup> December 2016 the Tribunal received a handwritten letter from the Appellant. He explained that he had attended the hearing centre in Manchester on the morning of the 9<sup>th</sup> December 2016. He had been there at 9.30am. He apologised and referred to his earlier letter, of 2<sup>nd</sup> February 2016, in which he had requested that the appeal be moved to Manchester.
11. Judge Chowdhury came to determine the matter on the 6<sup>th</sup> January 2017 (the determination is in fact dated 2016 but I assume this to be an error). She had by then been passed the letter from the Appellant dated the 13<sup>th</sup> December 2016 explaining that he had attended Manchester IAC in error. At paragraph 23 of the determination Judge Chowdhury states “for the reasons I outline below I find that it is not in the interests of justice to grant an adjournment on any basis”. What follows is a brief assessment of the evidence relating to the Appellant’s mother, and the conclusion that it has not been shown that she would be unable to call upon the services of other agencies such as social services for help. The determination then makes reference to Sala, finds there to be no jurisdiction and the appeal is dismissed.
12. Judge McGinty considered it arguable that in so doing, the First-tier Tribunal acted unfairly. I agree. This was an unrepresented Appellant who had informed the Tribunal, by way of telephone call and letter that he wished his appeal moved to Manchester so that he might attend the hearing with his elderly, disabled mother. She was obviously an important witness. Whilst he was clearly in error in assuming that his request had been granted there was before the First-tier Tribunal the letter received on the 13<sup>th</sup> December 2016 explaining that the mix-up had occurred. The Tribunal was of course at that point entitled to proceed to determine the matter regardless. It had a discretion to exercise as to whether the matter should be adjourned and relisted in Manchester. What is not at all evident from the determination is why it exercised its discretion in the way that it did. The sentence at paragraph 23 (“for the reasons I outline below I find that it is not in the interests of justice to grant an adjournment on any basis”) is not followed with any discussion of that matter. There is

no explanation as to why the Tribunal decided not to adjourn. The paragraphs that follow 23 simply set out the reasons why the appeal is dismissed.

13. In her submissions Mrs Aboni suggested that, the reasons for not adjourning the matter were in fact found before that sentence, in the preceding paragraph. I find that difficult to accept, since that paragraph begins “There was no explanation for his absence, no application for an adjournment and no information to show that the position would be different on any other occasion”. The only way I can read that sentence is that this was the reason that the Judge reserved her decision in open court on the 9<sup>th</sup> December 2016. It cannot be said to have been her thinking on whether to determine the matter on the 9<sup>th</sup> January 2017, since she plainly by then did have an explanation for the Appellant’s absence, an indication that he wished the matter to be adjourned, and his assertion that he very much wished to attend the hearing”.
14. It would seem most likely that the determinative factor in the Tribunal’s decision making process was the matter of jurisdiction. In Sala the Upper Tribunal held that extended family members under Regulation 8 of the Immigration (European Economic Area) Regulations 2006 had, contrary to what had previously been assumed, no right of appeal. Although it is not spelled out in the determination, I infer from paragraph 29 that the Tribunal saw no point in adjourning and relisting the matter if there was no right of appeal. As Judge McGinty observed in granting permission, this was a mis-application of Sala, since this was not an application for permission to reside as an extended family member. The Appellant sought a residence card under Regulation 15A as a direct family member who is the primary carer of a British citizen. As a coda I note that the decision in Sala has now been overturned by the Court of Appeal.
15. I conclude that this determination must be set aside. The First-tier Tribunal was not obliged to adjourn and relist this appeal, but in the absence of any intelligible reason why it declined to do so, it is not possible to understand why the discretion was exercised in the way that it was. The most likely explanation is the Sala point, which as I note above, was wrong in law. Mrs Aboni urged me to dismiss the appeal on the grounds that this was an appeal that was unlikely to succeed. She submitted that the Appellant had failed to demonstrate that his mother could not be cared for by social services. In the final analysis that may well be the outcome of the appeal, however in a case involving an elderly and unwell British citizen who asserts that she is being cared for round-the-clock by her closest relatives, I am unable to say that it is the only possible result. As a matter of fairness the Appellant should be given another opportunity to put his case in the First-tier Tribunal.

## Decisions

16. The decision of the First-tier Tribunal contains an error of law such that the decision must be set aside in its entirety.
17. The matter is to be re-heard de novo in the First-tier Tribunal, sitting at Manchester.
18. I was not asked to make a direction for anonymity and on the facts I can see no reason to do so.

A handwritten signature in black ink, consisting of the letters 'CBE' in a cursive, flowing style.

Upper Tribunal Judge Bruce  
19<sup>th</sup> October 2017