



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

Appeal Number: EA/01630/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 14th July, 2017

Determination

Promulgated

On 22nd August, 2017

Before

Upper Tribunal Judge Chalkley

Between

**MR SYED MUMINUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Chaudhry of KC Solicitors

For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh born on 17th September, 1989.
2. On 26th September, 2016 the respondent decided to refuse to issue a residence card as confirmation of a right of residence under European Community law as the extended family of an EEA national exercising treaty rights in the United Kingdom to the appellant. The appellant

appealed and his appeal was heard by First-tier Tribunal Judge E Fowell on 21st November, 2016.

3. The First-tier Tribunal Judge concluded that the First-tier Tribunal had no relevant jurisdiction to hear the appellant's appeal following the decision of the Upper Tribunal in *Sala (EFMs: Right of Appeal: Albania)* [2016] UKUT 411 (IAC). As a result the judge felt that since there was no jurisdiction he had no need to prepare a determination for promulgation by the First-tier Tribunal.
4. Dissatisfied with the judge's decision and relying on *LO (Partner of EEA national) Nigeria* [2009] UKAIT 00034, the appellant sought permission to appeal the judge's decision.
5. Notwithstanding the fact that the First-tier Tribunal had not issued a determination leave was granted on the basis that, "*it is on balance arguable that it is appropriate for the matter to proceed for hearing in the Upper Tribunal as an appeal rather than being required to progress by way of judicial review.*"
6. I explained to Mr Chaudhry that the First-tier Tribunal Judge had concluded that he had no jurisdiction to hear the appellant's appeal and given the decision of the Upper Tribunal in *Sala (EFMs: right of appeal)* [2016] UKUT 00411 (IAC), and that the Vice President of the Upper Tribunal was on the panel in both the case of *Sala* and *LO*, *Sala* represents the Tribunal's current thinking. Mr Chaudhry argued that the decision of the Tribunal in *LO* was a correct statement of law and that the decision in *Sala* was wrong. He confirmed that he had nothing further to add.
7. Given the decision of the Tribunal in *Sala*, which represents the Upper Tribunal's current thinking, I have concluded that the First-tier Tribunal Judge did not err in concluding that he had no jurisdiction.

Notice of Decision

The appeal is dismissed.
No anonymity direction is made.

Richard Chalkley
Upper Tribunal Judge Chalkley

TO THE RESPONDENT **FEE AWARD**

There is no fee payable.

Richard Chalkley
Upper Tribunal Judge Chalkley

