



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/01789/2016
EA/01790/2016
EA/01791/2016

THE IMMIGRATION ACTS

Heard at Field House
On 16 June 2017

Decision Promulgated
On 19 June 2017

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

BEN NYARKO AFFUL
SETH TETTEH ABBEY
FRANCIS ANTWI NYARKO

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr D Adams, instructed by BWF Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal, with permission, against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision to refuse to issue them with residence cards under the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations").
2. The appellants, who say they are cousins, are citizens of Ghana born, respectively, on 20 March 1970, 1 December 1970 and 14 July 1977. They entered the UK in 2006. On 25 April 2007 they applied for residence cards as the extended family members of their cousin Juliana Nyarko, a Dutch national, but their applications were refused on 28

September 2007. They were issued with residence cards on 26 August 2008 further to their subsequent applications on 21 January 2008. However on 13 November 2013 their applications of 24 July 2013 for permanent residence were refused and their appeals against that decision were dismissed by the First-tier Tribunal on 2 July 2014. They applied for residence cards again on 11 August 2014 but their applications were refused on 21 October 2014 and again their appeals against the decision were dismissed, on 15 May 2015.

3. The appellants then applied for residence cards once again on 19 August 2015 as the extended family members of their cousin Juliana Nyarko. Their applications were refused on 22 January 2016. The appellants lodged notices of appeal appealed against the decisions, but were referred by the Tribunal, in a Notice issued on 17 November 2016, to the decision in Sala (EFMs: Right of Appeal) [2016] UKUT 00411 and were directed to provide legal reasons why their appeals should be regarded as valid in light of the decision in that case. The appellants did not respond to the directions.

4. The “appeals” then came before Designated First-tier Tribunal Judge McCarthy who found that the appellants did not have valid rights of appeal and accordingly dismissed the “appeals” for want of jurisdiction.

5. The appellants sought permission to appeal Judge McCarthy’s decision on the grounds that, having previously been issued with residence cards under Regulation 7(3) of the EEA Regulations, they had become family members and were therefore no longer to be treated as extended family members. As such the decision in Sala did not apply to them and the judge had erred in law by considering that it did. They were therefore entitled to a right of appeal against the refusal decisions.

Appeal hearing and submissions

6. At the hearing Mr Adams relied on the grounds of appeal, submitting that the appellants had become “family members” rather than “extended family members” when they were issued with residence cards in August 2008, pursuant to Regulation 7(3), and that that continued to be their status at the time of the appeal before Judge McCarthy. Accordingly they did not fall within the ambit of Sala and they had a right of appeal against the respondent’s decision refusing to issue them with residence cards.

7. Mr Tarlow relied on the respondent’s Rule 24 response which referred to the appellants’ failure to respond to the Tribunal’s directions and to the absence of evidence to show that their previous residence cards had not expired or been revoked.

The EEA Regulations 2006

8. I set out the relevant parts of the Regulations as follows:

Family member

7. – (1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as the family members of another person –

- (a) his spouse or his civil partner;
- (b) direct descendants of his, his spouse or his civil partner who are –
 - (i) under 21; or
 - (ii) dependants of his, his spouse or his civil partner;
- (c) dependent direct relatives in his ascending line or that of his spouse or his civil partner;
- (d) a person who is to be treated as the family member of that other person under paragraph (3).

(3) Subject to paragraph (4), a person who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card shall be treated as the family member of the relevant EEA national for as long as he continues to satisfy the conditions in regulation 8(2), (3), (4) or (5) in relation to that EEA national and the permit, certificate or card has not ceased to be valid or been revoked.

“Extended family member”

8. – (1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and –

- (a) the person is residing in an EEA State in which the EEA national also resides and is dependent upon the EEA national or is a member of his household;
- (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
- (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household. “

Consideration and findings.

9. The appellants’ grounds rely on Regulation 7(3), asserting that following the issuing of residence cards in August 2008 they were to be treated as family members of their EEA national sponsor and were thus not applying as extended family members and therefore not subject to the restrictions on rights of appeal in Sala.

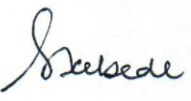
10. This was, of course, an argument which was not raised before Judge McCarthy. The appellants provided no response to the directions issued by the Tribunal on 17 November 2016 for submissions to be made as to legal reasons why the appeals should be regarded as valid following the decision in Sala. Accordingly, and in accordance with those directions, Judge McCarthy went on to consider the issue of validity of the appeals and, in the absence of any reasons given by the appellants as to why Sala did not apply to them, was fully entitled to conclude that Sala did apply and that the appeals were not valid.

11. In any event, the submission now made in regard to Regulation 7(3) is patently wrong as it ignores the second part of that Regulation which provides that the persons be treated as family members of the EEA national “for as long as he continues to satisfy the conditions in regulation 8(2), (3), (4) or (5) in relation to that EEA national and the permit, certificate or card has not ceased to be valid or been revoked”. The appellants have provided no evidence that their residence cards have not ceased to be valid. As Mr Tarlow submitted, the residence cards issues in 2008 would have expired in 2013 and there is no evidence that they have been extended. On the contrary, the evidence is that applications made on 24 July 2013 for permanent residence cards were refused on 13 November 2013 and further applications made on 11 August 2014 as extended family members were refused on 21 October 2014. On both occasions the appellants were found not to be extended family members of the EEA national sponsor as they were not dependent upon her and had not continually been members of her household. Those decisions were both upheld by the First-tier Tribunal, with clear findings made on both occasions that the appellants were not extended family members. Extracts from Judge Thomas’s decision of 2 July 2014 are contained in the refusal decision of 26 January 2016 and Mr Tarlow provided me with the full decision of Judge Chapman in the appeals decided on 15 May 2015 in which the judge found the appellants not to be credible in their claims as to dependency and that they were not dependent on the sponsor or members of her household. Clearly, therefore, the appellants had been unable to satisfy the conditions in Regulation 8(2) for some time after being issued with their residence cards in 2008 and accordingly ceased, at least from 2013, to be treated as family members.

12. As such the applications made by the appellants on 19 August 2015 were not made as family members of the EEA national sponsor, but as alleged extended family members, and the refusal of their applications clearly fell within the terms of Sala such that they were not entitled to a right of appeal. Judge McCarthy accordingly properly found that their appeals were not valid and correctly and lawfully dismissed the “appeals” for want of jurisdiction. There are no errors of law in his decision.

DECISION

13. The appellants’ appeals are accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. The decision to dismiss the appellants’ appeals therefore stands.

Signed: 
Upper Tribunal Judge Kebede

Dated: 16 June 2017