



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/27624/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

Decision & Reasons

Promulgated

On 19 June 2017

On 20 June 2017

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VARDA SHAH

Respondent

Representation:

For the Appellant: Mr Brown, Counsel

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the SSHD against a decision of the First-tier Tribunal ('FTT') dated 26 July 2016, in which it allowed Mrs Shah's appeal against the SSHD's decision dated 22 July 2015 to refuse her application for a residence card as confirmation of her right to reside in the UK as an extended family member ('EFM') of an EEA national under the Immigration (European Economic Area) Regulations 2006 (as amended).

FTT decision

2. The FTT heard oral evidence from Mrs Shah, her husband and her father-in-law and considered extensive documentation in support of the appeal. The FTT accepted the evidence adduced on behalf of the appellant to be

credible and concluded that there is a wealth of evidence to support Mrs Shah's dependence on her father-in-law, with whom she lived together with her husband and child, in the same household. The First-tier Tribunal found Mrs Shah to be an EFM and allowed the appeal.

Issues arising

3. In a decision dated 2 November 2016, the SSHD was granted permission to appeal on the basis that the FTT failed to deal with Mrs Shah's position before her arrival to the UK and in so doing failed to apply Dauhoo (EEA-reg 8(2)) [2012] UKUT 79 (IAC). This decision also drew attention to the "jurisdictional issues" raised in Sala (EFMs: Right of Appeal) [2016] UKUT 411 (IAC). The headnote to Sala states:

"There is no statutory right of appeal against the decision of the Secretary of State not to grant a Residence Card to a person claiming to be an Extended Family Member."

4. In a decision dated 14 March 2017 DUTJ McGinty adjourned the appeal before the Upper Tribunal for two reasons: first, the SSHD only provided a copy of a decision made by FTTJ Levin regarding Mrs Shah that morning; second, to enable further time to be provided for further appellate authority regarding the Sala point.

Hearing

5. At the hearing before me Mr Brown applied for a stay on the basis that there remained an absence of any further appellate authority addressing Sala. To his knowledge the issue may have been considered by the Supreme Court, when addressing another issue. No further information was available. Mr Brown's alternative argument was that if I was minded to find an error of law in the FTT decision, I should do so and remit the matter to be remade by the FTT, by which time further authority might be available.
6. Mr Bates invited me to reject the application for a stay and to find that the FTT did not have jurisdiction in line with Sala.
7. I indicated at the hearing that a stay is not appropriate or in the interests of justice. This is a matter of some vintage. The application was refused nearly two years ago. Sala has been available for a relatively lengthy period and there has been no clear indication that it is to be revisited or if it is, when it will be. In a reported decision the Upper Tribunal has clearly decided that EFM appeals do not carry a statutory right of appeal to the FTT. This is the law to be

applied. It is also open to Mrs Shah to make a new application, relying upon the FTT's positive findings of fact. She therefore has an alternative remedy available to her. For these reasons, I declined to grant a stay.

Jurisdiction

8. Mrs Shah applied for a residence card as the EFM of an EEA national with whom she claimed to have a "durable relationship". As such, for the purposes of any appeal against the decision, she was an EFM under reg 8(5) of the 2006 Regulations. I accept that the FTT did not have jurisdiction to consider the appeal for the reasons set out in Sala.
9. As there was no jurisdiction to hear the appeal at all it is inappropriate to consider whether if there was, there was a material error to support a remittal to the FTT. Absent jurisdiction, I have no power to remit to the FTT.

Disposal

10. The appellant has no right of appeal. The FTT had no jurisdiction to hear the appeal. It erred in law in doing so.
11. I set aside the decision to allow the appeal and substitute a decision that there was not a valid appeal before the FTT.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:

19 June 2017