



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

Appeal Number: IA/30623/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 3 March 2017**

**Decision & Reasons Promulgated
On 26 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**DENTON ALWYN LINDSAY
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kotas, Home Office Presenting Officer
For the Respondent: Ms E Narh, Legal Representative

DECISION AND REASONS

1. The Secretary of State appeals against the decision of Judge of the First-tier Tribunal Shiner (hereafter "the Judge") promulgated on 16 September 2016 allowing the appeal of Mr Lindsay against the Secretary of State's decision refusing his application for a Residence Card.

2. While this is an appeal by the Secretary of State, I shall refer to the parties as they were before the First-tier Tribunal.
3. The Appellant is a citizen of Jamaica born on 22 September 1966. It is not necessary to set out the Appellant's background in full, but it is germane to note that his application for a Residence Card as an Extended Family Member of an EEA national, namely, his partner, a German national, was refused by the Respondent on 20 August 2015. That decision was not upheld by the Judge essentially because he accepted the Appellant and his partner were in a durable relationship, and that, his partner was exercising Treaty rights in the UK.
4. The First-tier Tribunal granted permission to appeal on 11 January 2017 on the basis that it was arguable the Judge erred in law in finding that the Appellant had a right of appeal following the Upper Tribunal's decision in **Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC)**.
5. The Judicial head note to the decision in **Sala** (ibid) reads as follows: *"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."* At the outset of the hearing before me, the representatives agreed that in light of this decision, the First-tier Tribunal had no jurisdiction to hear the appeal.
6. The decision in **Sala** is declaratory of the law as it currently stands and must be applied notwithstanding that it was a decision reported subsequent to the decision of the First-tier Tribunal. I thus apply that decision to this appeal. I find that the First-tier Tribunal had no jurisdiction to hear the appeal as there is no right of appeal against the Respondent's decision not to issue a Residence Card to an applicant claiming to be an Extended Family Member.

Disposal

7. The Appellant has no right of appeal. The First-tier Tribunal had no jurisdiction to hear the appeal. It erred in law in doing so. Its decision is set aside. I substitute a decision that there was no valid appeal before the First-tier Tribunal.

No anonymity direction is made.

Signed

Dated : 3 March 2017

Deputy Upper Tribunal Judge Bagral