



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/30705/2015

THE IMMIGRATION ACTS

Heard at Field House
On 5 May 2017

Decision & Reasons Promulgated
On 10 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HALIM HADDAD
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation

For the Appellant: Mr T. Melvin, Home Office Presenting Officer
For the Respondent: Mr M. Saleen, Counsel instructed by Malik & Malk Solicitors

DECISION AND REASONS

1. The respondent is a citizen of Algeria born on 25 March 1970.
2. On 29 December 2014 the respondent applied for a residence card as confirmation of a right to reside in the UK as an extended family member on the basis of being in a durable relationship with an EEA national. On 28 August 2015, the application was

refused as the Secretary of State (the appellant in this appeal) did not accept that he was in a durable relationship.

3. The respondent appealed to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge Herbert OBE. The judge found that the respondent and his partner were in a durable relationship and on that basis allowed the appeal.
4. The grounds of appeal argue that the judge was not entitled to allow the appeal and should have referred the matter back to the Secretary of State to exercise discretion under Regulation 17(4) of the Immigration (EEA) Regulations 2006.
5. For the reasons given by the Upper Tribunal in Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC) there is no statutory right of appeal against a decision of the Secretary of State not to grant a Residence Card to a person claiming to be an Extended Family Member. Accordingly, the respondent did not have a right of appeal against the decision to refuse him a residence card and the First-tier Tribunal did not have jurisdiction to hear the appeal. The decision of the First-tier Tribunal cannot therefore stand.
6. This finding is sufficient to dispose of the matter. However, for completeness, and in any event, I find that a further error arises from the judge allowing the appeal outright when whether or not to issue a residence card to an extended family member was at the Secretary of State's discretion under Regulation 17(4) of the Immigration (EEA) Regulations 2006. Where, as was the case here, the discretion has not been exercised, the most the judge could have done (if there had been jurisdiction) would have been to allow the appeal as not being in accordance with the law, leaving the matter of how to exercise that discretion to the Secretary of State.

Decision

A. The decision of the First-tier Tribunal is set aside as the Tribunal did not have jurisdiction to hear the appeal.

B. I remake the decision by dismissing the respondent's appeal as there is no statutory right of appeal against the decision to refuse him a residence card as an extended family member of an EEA national.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 9 May 2017