



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/31280/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 3<sup>rd</sup> May 2017**

**Promulgated**

**On 16<sup>th</sup> May 2017**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR AHMED MEGHERBI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms J Isherwood, Home Officer Presenting Officer  
For the Respondent: No appearance

**DECISION AND REASONS**

1. Although this is an appeal by the Secretary of State for the Home Department, I shall refer to the parties as in the First-tier Tribunal. The Appellant's appeal, against the refusal of a residence card as confirmation of a right of residence under Regulation 8(5) of the Immigration (EEA) Regulations 2006 [EEA Regulations], was allowed by First-tier Tribunal Judge P S Aujla in a decision dated 19<sup>th</sup> September 2016.
2. The Secretary of State appealed on the ground that the judge had erred in law in allowing the appeal under the EEA Regulations when the matter should have been referred back to the Secretary of State for

- reconsideration under Regulation 17(4). The judge was limited to allowing the appeal insofar as the decision was not in accordance with the law.
3. Permission to appeal was refused by First-tier Tribunal Judge Hollingworth on 25<sup>th</sup> January 2017 on the ground that the judge had no jurisdiction to hear an appeal pursuant to Regulation 8 of the EEA Regulations.
  4. The application for permission was renewed to the Upper Tribunal on the ground that the decision of Judge Hollingworth was inconsistent with the cover sheet and permission should be granted given that the First-tier Tribunal had no jurisdiction to hear the appeal.
  5. Permission to appeal was granted by Upper Tribunal Judge Rimington on 17<sup>th</sup> March 2017. It was arguable that the judge erred in his approach to the law both in accepting jurisdiction in relation to an extended family member under the EEA Regulations and, having done so, in allowing the appeal outright.
  6. The Appellant did not attend and I did not hear submissions from Ms Isherwood. It is clear from the decision of Sala (EFM's: Right of appeal) [2016] UKUT 00411(IAC) that there is no right of appeal under Regulation 8 of the EEA Regulations. Accordingly, the judge erred in law in allowing the appeal under Regulation 7 which was not applicable in this case. The judge had no jurisdiction to hear the appeal.
  7. Accordingly, I allow the Respondent's appeal to the Upper Tribunal and I set aside the decision of First-tier Tribunal Judge Aujla dated 19<sup>th</sup> September 2016. I remake it as follows: The Appellant's appeal is dismissed for want of jurisdiction under the Immigration (EEA) Regulations 2006.
  8. I note that there was no challenge to the judge's finding that the Appellant was in a durable relationship with an EEA national and Ms Isherwood informed me that in cases such as this it was usual for the Secretary of State to reconsider the decision. It may well be that is the course adopted by the Appellant and the reason why he failed to attend the appeal hearing.

### **Notice of Decision**

The Respondent's appeal to the Upper Tribunal is allowed.

The Appellant's appeal against the refusal of a residence card under the Immigration (EEA) Regulations 2006 is dismissed.

No anonymity direction is made.

Signed

Date: 15<sup>th</sup> May 2017

## **J Frances**

Upper Tribunal Judge Frances