



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

Appeal Number: IA/31390/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 21 June 2017**

**Decision & Reasons Promulgated
On 03 July 2017**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR TIMILEHIN RAYMOND AKINDEJOYE

Respondent

Representation:

For the Appellant: Mr P Deller, Home Office Presenting Officer

For the Respondent: Mr Akindejoye in person

DECISION AND REASONS

1. The Secretary of State appeals against a decision of Judge of the First-tier Tribunal Plumptre, who in a determination promulgated on 21 November 2016 allowed the appeal of Mr Timilehin Raymond Akindejoye against a decision of the Secretary of State to refuse him leave to remain under the provisions of Regulation 8(5) of the Immigration (EEA) Regulations 2006, that is, he was refused leave to remain as an “other family member”.
2. The judge was aware of the fact that following the determination of the Upper Tribunal in **Sala (EFMs: Right of Appeal) [2016] UKUT 411**

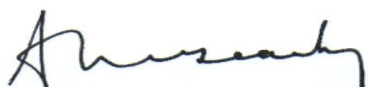
(IAC) there was in fact no right of appeal against a refusal of an application under Regulation 8. However, by the time the matter came to court Mr Akindejoye and his partner had married. The judge therefore considered that she was entitled to look at the appeal under the provisions of Regulation 7 of the Immigration (EEA) Regulations 2006. She clearly accepted that this was a genuine marriage and she allowed the appeal on that basis.

3. The Secretary of State argued that the judge was not entitled to allow the appeal and moreover that there was no valid appeal. I consider that the argument of the respondent is clearly correct and that there is a clear error of law in the determination of the judge in that there was not in effect a valid appeal before her, as is made clear in the determination in **Sala**. She should therefore not have accepted that it was appropriate to hear the appeal, let alone allowed it. I therefore allow the appeal of the respondent and set aside the decision of the Judge in the First-tier. I remake the decision and dismiss the appellant's appeal.
4. Mr Deller has, however, quite properly said that on the evidence before the court and new evidence which he has appraised he will be asking the Secretary of State to make a further decision on the basis that Mr Akindejoye is entitled leave to remain under Regulation 7. That is clearly the appropriate course of action and I trust that the Secretary of State will make a decision as soon as possible.
5. If for any reason that the application was refused then there would be a further right of appeal but that appears unlikely on the evidence now before the court.

Notice of Decision

The decision of the Judge in the First-tier is set aside and the appeal of the Secretary of State is allowed.

Signed



Date 3 July 2017

Upper Tribunal Judge McGeachy