



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

Appeal Number: IA/31612/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 28 September 2017**

**Decision &
Promulgated
On 6 October 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**MUHAMMAD ATIF
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Syed Ahmed (Legal Representative)

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

(Given orally on 28 September 2017)

1. This is an appeal by Mr Muhammad Atif against a decision of First-tier Tribunal Judge Wellesley-Cole, promulgated on 18 November 2016.
2. The context of the appeal to the Upper Tribunal can be summarised thus. First-tier Tribunal Judge Wellesley-Cole identifies in her decision that the appeal before her was brought against a decision made by the Secretary of State on 5 June 2015, refusing to issue the appellant with an EEA residence card. She concluded, for reasons set out in Sala (EFMs: Right of


Appeal) [2016] UKUT 00411, that the First-tier Tribunal had no jurisdiction to entertain such an appeal.

3. Judge Wellesley-Cole is wrong in all respects, having been clearly misled by the Presenting Officer and the majority of the contents of the Secretary of State's bundle.
4. The appeal before the Judge was in fact brought against a decision made by the Secretary of State on 9 September 2015, not 5 June 2015. This is clear from examining the contents of the IAFT-1 (which is dated 22 September 2015). Furthermore, the appeal was not against a decision refusing to issue an EEA residence card to an EEA national, but rather against decisions refusing to vary leave the appellant's leave and to remove the appellant from the United Kingdom - the appellant having previously made of an application for leave under the points-based system. That this is so is clear from examining the decision letter of 9 September 2015.
5. As a consequence, it is clear that the First-tier Tribunal did have jurisdiction to entertain the appeal before it. It is plain from what I have said that the First-tier Tribunal's decision contains multiple errors of law. Mr Kotas submitted, albeit in only the briefest of terms, that such errors were not material because the appeal was in any event hopeless. With the greatest respect to Mr Kotas, if that were the appropriate course in a matter such as this then there would be little point in having an appeal right at all. This is an appeal in which there has not been even the briefest consideration of the appellant's case by a judge. The proper place for that consideration to take place is before the First-tier Tribunal, not in the context of a consideration by the Upper Tribunal as to whether to exercise its discretion under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 to set aside of a decision of the First-tier Tribunal.
6. For all these reasons, I set aside the decision of the First-tier Tribunal and remit the appeal back to the First-tier Tribunal to be decided afresh by a judge other than Judge Wellesley-Cole.

Notice of Decision

The decision of the First-tier Tribunal is set aside. The appeal is remitted to the First-tier Tribunal to consider afresh.

Signed:



Upper Tribunal Judge O'Connor