



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

Appeal Number: EA/01126/2016

THE IMMIGRATION ACTS

Heard at Field House

On 5 January 2018

**Decision & Reasons
Promulgated
On 31 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR ISSAH ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. Karim, counsel instructed by Mensons & Associates
For the Respondent: Mr Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Issah Ali, a national of Ghana born on 29 October 1978. He appealed against a decision of the Respondent dated 12 January 2016 refusing to grant him permanent residence on the basis of his marriage to an EEA national, following an application for permanent residence on 4 August 2015. This was based on a marriage conducted by proxy to an EEA national who was exercising treaty rights. The basis of the refusal was that the Respondent, having accepted that the Appellant's former spouse was a qualified person at the time of divorce and had been exercising treaty rights since the divorce and that they had resided

together for the required period, concluded that they were not married within the meaning of Regulation 7 of the EEA Regulations 2006.

2. The appeal came before Judge of the First-tier Tribunal Carroll for hearing on 19 April 2017. In a decision dated 8 May 2017, the appeal was dismissed solely on the basis of a want of jurisdiction in light of the decision of the Upper Tribunal in Sala (EFMs Right of Appeal) [2016] UKUT 00411 (IAC) in which it was held that there was 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.
3. An application for permission to appeal was made in time on 9 May 2017, on the basis that the judge erred materially in law in that she did have jurisdiction. Secondly, the issue before the judge did not engage the decision in Sala (op cit) given that it was a Regulation 7 case as opposed to a Regulation 8 case i.e. a direct family member as opposed to an extended family member and that in any event Sala had been wrongly decided.
4. Permission to appeal was granted to the Upper Tribunal in a decision dated 10 November 2017, by First-tier Tribunal Grant-Hutchison on the basis that:

"It is arguable that the judge has erred in law for although the judge correctly applied the case of Sala (OPCIT) at the time of promulgation of her decision and reasons the case has been overturned by Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755 which was issued on 9 November 2017."

Hearing

5. At the hearing before the Upper Tribunal Mr Bramble helpfully accepted that the judge had erred materially in law in finding a want of jurisdiction, firstly in light of the decision of the Court of Appeal in the case of Khan (op cit) and he served a copy of the consent order in that case on the Upper Tribunal and secondly, on the basis that it would appear that, in any event, this was not a *Sala* case, in that the application and appeal had been brought on the basis that the Appellant is a direct and not an extended family member.
6. In light of Mr Bramble's helpful concession it was not necessary for me to hear from Mr Karim.

Notice of Decision

I find that the decision of the First-tier Tribunal contained material errors of law, in particular, the refusal to entertain the appeal for want of jurisdiction. The decision is set aside and the appeal is remitted for a hearing *de novo* before the First-tier Tribunal to be heard by any judge apart from Judge Carroll.

No anonymity direction is made.

Signed: Rebecca Chapman

Date: 29 January 2018

Deputy Upper Tribunal Judge Chapman