



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

Appeal Number: EA/01227/2016  
EA/01230/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 March 2018**

**Decision & Reasons Promulgated  
On 8 March 2018**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**MRS DOLORES ANDAYA  
MRS MARIA CORAZON BONAGUA BAGACINA**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Appeared in person

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. These are appeals by two nationals of the Philippines who applied for a residence permit as the extended family members of an EEA national who is said to be British. The Appellants claim that they are entitled to remain in the UK on the basis of the “Surrinder Singh” principle because their sponsor has exercised Treaty rights outside the UK and is returning to live here.

2. The Appellants' applications were refused by the Respondent on 20 January 2016. They were however given a right of appeal against the Respondent's decision.
3. On 7 April 2017, the appeals came before First-tier Tribunal Judge NMK Lawrence. By a decision promulgated on 27 April 2017 ("the Decision"), the Judge dismissed the appeals on the basis that there was no valid right of appeal. He did so in reliance on the case of Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC) ("Sala"). At that time, Sala represented the law on appeal rights for extended family members and, as a reported decision of this Tribunal, the Judge was bound to follow it. However, in the case of Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755, the Court of Appeal held that Sala was wrongly decided. That is now also confirmed by the Supreme Court in SM (Algeria) v Entry Clearance Officer, UK Visa Section [2018] UKSC 9. Sala has therefore been overturned and is no longer good law.
4. Permission to appeal the Decision was granted by Upper Tribunal Judge Pitt on 21 December 2017 in the following terms:-
  - "1. In the light of Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755, the First-tier Tribunal was wrong in law to conclude that it did not have jurisdiction to hear the appeal.
  2. The Tribunal is minded to find an error of law, set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal.
  3. That is also the view of the Tribunal where the approach to the medical evidence provided in support of an adjournment raises an arguable procedural error.
  4. A party who is opposed to this course is directed to inform the Tribunal in writing (giving reasons), not later than 7 days from the date this decision is sent by the Upper Tribunal. Following that period, the Upper Tribunal will issue its decision."
5. No written objection was received by either party. Strictly, therefore, the further decision remitting the appeal could have been made without a hearing. However, the appeals were placed in my list and since I did not become aware of the nature of the case until late in the day and the Appellants are in person, I dealt with the matter at the hearing and explained to the Appellants that I would be remitting their appeals in accordance with Judge Pitt's decision and would provide my reasons in writing as now represented by this decision.
6. There is an error of law in the Decision based on the Judge's finding, premised on Sala, that he had no jurisdiction to decide the appeals. Accordingly, I set aside the Decision and remit the appeals for re-hearing before a First-tier Tribunal Judge other than Judge NMK Lawrence.

## **Decision**

**I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge NMK Lawrence promulgated on 27 August 2017 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a different Judge.**

Signed 

Dated: 7 March 2018

Upper Tribunal Judge Smith