



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

Appeal Number: EA/01449/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 February 2018**

**Decision & Reasons  
Promulgated  
On 1 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**BOUBACAR CHERIF DIALLO  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Nwaekwu, Solicitor, Moorehouse Solicitors  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Guinea born on 16 August 1982 who claims to have married a Dutch national on 13 June 2013 under Guinean law.
2. On 13 July 2016 the appellant applied for a residence card to confirm a right of residence in the UK as a family member of an EEA national who is a qualified person under the Immigration (EEA) Regulations 2006 ("the 2006 Regulations"). On 2 February 2017 the application was refused by the respondent on the basis that the appellant had failed to provide

sufficient evidence to show he entered into a marriage that was valid under the law of Guinea.

3. The appellant appealed to the First-tier Tribunal where his appeal was considered on the papers by Judge of the First-tier Tribunal Fowell. In a decision promulgated on 8 May 2017 the judge dismissed the appeal. The appellant is now appealing against that decision.

#### Decision of the First-tier Tribunal

4. Judge Fowell found that the appellant had not established that he was married to, and consequently a family member of, an EEA national under the Immigration (EEA) Regulations 2006. His primary reason for so finding was that the evidence adduced by the appellant to show he was married was not admissible. The appellant had submitted a marriage certificate written in the French language without a translation. The judge observed that under Rule 12(5) of the Tribunal Procedure (Upper Tribunal) Rules, if a document is provided to the Tribunal that is not in English it must be accompanied by an English translation. The judge noted that the absence of a translation was raised by the respondent in the refusal letter, making it surprising that no translation was submitted in the appeal.
5. The judge also considered articles of the Guinean Civil Code concerning the requirements for a proxy marriage that were quoted in the respondent's refusal letter and had not been challenged by the appellant. The judge evaluated these and concluded that they had not been complied with by the appellant and sponsor.
6. At paragraphs 7 and 8 of the decision the judge considered whether the appellant could appeal the respondent's decision on the basis that he was an extended family member of an EEA national. The judge found that there was no jurisdiction to hear such an appeal in light of the Upper Tribunal decision in *Sala (EFM - right of appeal) Albania* [2016] UKUT 411. No factual findings were made on issues relevant to whether the appellant was an extended family member (such as if he was in a durable relationship with an EEA national).

#### Grounds of appeal and submissions

7. The grounds of appeal argue that the judge made an error of law by following *Sala* and failing to consider whether the appellant is an extended family member of an EEA national. The grounds also make several criticisms of the judge's assessment of whether the appellant and his sponsor are family members under the 2006 Regulations.
8. Before me, Mr Nwaekwu, on behalf of the appellant, made clear that the only issue being taken with the decision of Judge Fowell was the failure to

consider whether the appellant and the sponsor were extended family members and that no challenge was being made to the judge's finding that the appellant is not a family member of an EEA national.

9. Mr Tarlow accepted that in light of the recent decision by the Court of Appeal in *Khan* [2017] EWCA Civ 1755 the First-tier Tribunal had jurisdiction to consider whether the appellant was an extended family member and it was an error of law to find otherwise.

### Analysis

10. Judge Fowell correctly followed the then binding decision of *Sala* when finding that the First-tier Tribunal lacked jurisdiction to hear an appeal on whether the appellant was an extended family member. However, *Sala* has been overturned by the Court of Appeal in *Khan* which made clear that the First-tier Tribunal in fact has jurisdiction to hear appeals under the 2006 Regulations on whether an appellant is an extended family member. The decision of the First-tier Tribunal in respect of whether the appellant is an extended family member therefore cannot stand.
11. On the other hand, no error of law has been made in the assessment of whether the appellant is a family member of an EEA national. In order to establish that he was married to the sponsor, the appellant needed to submit, at the very minimum, his marriage certificate. The Tribunal procedure rules make clear that an English translation is required. Moreover, the necessity of an English translation had been highlighted by the respondent. In these circumstances, the judge was entitled to exclude the untranslated purported marriage certificate from consideration and having done so it inevitably followed that the appellant could not show he was a family member of an EEA national. In any event, Mr Nwaekwu made clear at the hearing that the judge's decision regarding the appellant not being a family member of an EEA national was not being challenged.
12. Accordingly, the decision of Judge Fowell in respect of whether the appellant is a family member stands but his decision as to whether the appellant is an extended family member will need to be remade. As there has been no consideration of the factual circumstances relevant to the question of whether the appellant is an extended family member, it is appropriate for the matter to be remitted to the First-tier Tribunal so that appropriate findings of fact can be made.

### **Notice of Decision**

13. The appeal against the decision of the First-tier Tribunal regarding whether the appellant is an extended family member is allowed.

14. The appeal against the decision of the First-tier Tribunal regarding whether the appellant is a family member is dismissed.
15. The appeal is remitted to the First-tier tribunal in order for the issue of whether the appellant is an extended family member of an EEA national under the 2006 Regulations be determined by a judge other than Judge Fowell.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 25 February 2018