



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01533/2016

THE IMMIGRATION ACTS

Heard at Field House
On 12th January 2018

Decision and Reasons Promulgated
On 05th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR ZAEEM GULSHAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan (Counsel)
For the Respondent: Mr N Bramble (Senior HOPO)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan who was born on 22nd October 1988 and is a male. He appeals against the decision of the Respondent Secretary of State made on 21st January 2016, refusing the Appellant a grant of an EEA residence card, as a confirmation of his right to reside in the UK. The decision was made under Regulation 8 of the Immigration (European Economic Area) Regulations 2006 that deals with the issue of residence cards to Extended Family Members (EFMs). The Appellant claims to be a partner of an EEA national and is in a durable relationship because he and his partner are not married or in a civil partnership.

2. On 19th September 2016, the decision in **Sala (EFMs - Right of Appeal) [2016] UKUT 411** was promulgated, and this was to the effect that there is 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. On 18th March 2017 the Appellant's representative wrote to the Tribunal contending that the case of **Sala** was wrongly decided and deprived the Appellant of a right of appeal. However, the representations did not explain why the decision of **Sala** was wrong. The Tribunal decided that there was an insufficient basis to allow the appeal.
4. By a decision dated 5th May 2017, the Tribunal refused permission to appeal on the basis that there was a want of jurisdiction.
5. The Appellant appealed to the Upper Tribunal, and at the hearing today, both Mr N Bramble, the Senior Home Office Presenting Officer, and Mr S Khan, of Counsel, appearing on behalf of the Appellant, agreed that there was an error of law in the decisions below, such that the matter should be remitted back to the First-tier Tribunal such that a proper right of appeal can be exercised.
6. I have taken into account the decision in **Khan v SSHD [2017] EWCA Civ 1755**, which is to the effect that the First-tier Tribunal was wrong in law to conclude that it did not have jurisdiction to hear the appeal with the result that the decision be set aside. As evidence is to be led it is appropriate that it be reheard in the First-tier Tribunal.

Notice of Decision

7. The decision of the First-tier Tribunal involved the making of an error on a point of law. It is set aside and in terms of Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007, and of practice statement 7.2, remitted to the First-tier Tribunal for a fresh hearing before a judge other than Judge Mitchell.
8. No anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

26th February 2018