



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

Appeal Numbers: EA/09043/2016

THE IMMIGRATION ACTS

Heard at Field House

On 27 March 2018

**Decision & Reasons
Promulgated
On 06 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

**MUSBAUDEEN AKINLOYE OKIJI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Kareem, Solicitor

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

DECISION AND REASONS ON ERROR OF LAW

1. The appellant's appeal brought under Regulation 26 of the Immigration (European Economic Area) Regulations 2006 against the decision of the respondent date 18 July 2016 to refuse him a residence card acknowledging his right of residence as an extended family member (durable relationship) of an EEA national was dismissed by the First-tier Tribunal, which considered it did not have jurisdiction to hear the appeal in line with the decision in *Sala (EFMs: Right of Appeal)* [2016] UKUT 00411 (IAC).

2. It is now clear that *Sala* was wrongly decided: see *Khan v SSHD & Anr* [2017] EWCA Civ 1755. It follows that the First-tier Tribunal, whilst it applied the law as it was then understood to be, made a material error of law. The decision is set aside.
3. The representatives were in agreement that the appeal should be remitted to the First-tier Tribunal for a fresh hearing before another judge. Having considered the Senior President's Practice Direction of 15 September 2012, I make an order under section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007.
4. The appeal will be reheard in the First-tier Tribunal so that the appellant can present his evidence and arguments to show whether or not he can bring himself within Regulation 8(5) of the EEA Regulations. If the appellant succeeds in showing he comes within Regulation 8(5), it will then be necessary for the respondent to consider whether to grant a residence card under Regulation 17(4).
5. No section 120 notice was served in this case. To the extent the First-tier Tribunal declined to hear the appellant's human rights arguments, it did not err in law: see *Amirteymour v SSHD* [2017] EWCA Civ 353. For the avoidance of doubt, therefore, the appellant may not raise human rights arguments in the remitted appeal.

Notice of Decision

The Judge of the First-tier Tribunal made a material error of law and his decision dismissing the appeal is set aside. The appeal is remitted to the First-tier Tribunal to be reheard by another judge.

No anonymity direction is made.

Signed

Date 27 March 2018

Deputy Upper Tribunal Judge Froom