



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

**Appeal Number: EA/10932/2016**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 19 October 2018**

**Decision & Reasons Promulgated  
On 30 October 2018**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**MR JOSEPH TOE**

**(ANONYMITY NOT DIRECTED)**

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant:

Mr A Williams (Solicitor)

For the Respondent:

M A McVeety (Senior Home Office Presenting Officer)

## DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal (the tribunal) which it sent to the parties on 12 October 2017; whereupon it decided it did not have jurisdiction to entertain the claimant's appeal from a decision of an entry clearance officer of 12 August 2016 refusing to grant his application for a Family Permit.
2. The tribunal had thought it did not have jurisdiction following what had been decided by the Upper Tribunal in *Sala EFM's: Right of Appeal* [2016] UKUT 411 (IAC). However, after a hearing of 13 July 2018, I set aside the tribunal's decision on the basis that *Sala* had been reversed by the Court of Appeal such that there had been a right of appeal.
3. Having heard from the parties I decided I would remake the decision in the Upper Tribunal after a further hearing and I issued some case management directions in order to facilitate that.
4. The matter next came before me on 19 October 2018. Representation was as stated above. I have been assisted by the straightforward approach of the two representatives. Indeed, Mr McVeety on behalf of the Secretary of State, indicated, in effect, that he was content for me to remake the decision by allowing the claimant's appeal against the entry clearance officer's decision. In those circumstances my explanation as to why I have acceded to that request is short, there no longer being any disagreement between the parties as to the appropriate outcome.
5. The entry clearance officer had refused the application because he was not satisfied that the claimant and his sponsor had been in a "durable relationship" such that the claimant could not be regarded as an extended family member of an EEA national (the sponsor). That was on the basis that, whilst there did not seem to be any dispute about the genuineness or indeed the longevity of the relationship, the two had not been living together for a period of two years. The entry clearance officer's position as to that was that such a requirement could and should be read into regulation 8 of the Immigration (European Economic Area) Regulations 2006 in consequence of there being such a requirement, or there seeming to be such a requirement, in paragraph 295A of the Immigration Rules.
6. Before me, Mr McVeety said he would accept that the living together for two years requirement was not an absolute requirement and that, in the circumstances of this case, and in light of what had been said in *YB (EEA) reg. 17(4) - proper approach Ivory Coast* [2008] UKAIT 0062, he would accept that there was a durable relationship such as to satisfy the requirements of the EEA Regulations.
7. There then remained the question of the requirement for an extensive examination of the personal circumstances of the claimant pursuant to regulation 12(5). Here, the entry clearance officer had not conducted any such extensive examination. However, Mr McVeety indicated that he would accept that there was nothing to suggest that any such extensive examination would reveal any difficulties. So, on that basis, he said he was content for me to allow the appeal outright. In those circumstances and given Mr McVeety's conciliatory and helpful approach, it was not necessary for me to hear further from Mr Williams.

8. In light of the above I have decided to allow the claimant's appeal from the entry clearance officer's decision.

**Decision**

The decision of the First-tier Tribunal involved the making of an error of law and has already been set aside.

In remaking the decision: the Upper Tribunal allows the claimant's appeal from the entry clearance officer's decision of 12 August 2016.

No anonymity direction is made. None was sought.

Signed: Date: 29 October 2018

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT  
FEE AWARD**

I make no fee award.

Signed: Date: 29 October 2018

Upper Tribunal Judge Hemingway