



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/25913/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 21st March 2018

**Decision & Reasons
Promulgated
On 11th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR OLALEKAN SUNDAY ODEBUNMI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria born on 31st January 1982. On 27th January 2015 the Appellant's solicitors applied on his behalf for a residence card as a confirmation of a right to reside in the United Kingdom. That application was refused by the Secretary of State by Notice of Refusal dated 6th July 2015.
2. The Appellant appealed and the appeal came before Designated Judge of the First-tier Tribunal Manuell sitting at Hatton Cross on 10th March 2017. The Appellant's appeal was dismissed on the basis that following the decision in *Sala [2016] UKUT 00411 (IAC)* there was 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. Following that decision Judge Manuell felt he had no alternative but to dismiss the appeal for want of jurisdiction.

3. Grounds of Appeal were lodged to the Upper Tribunal. On 10th March 2017 Designated Judge McClure granted permission to appeal. Judge McClure noted that the appeal had been dismissed in accordance with the guidance given in *Sala* but noted that the decision in *Sala* had been overturned by the Court of Appeal in *Khan v SSHD [2017] EWCA Civ 1755*.
4. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The appellant appears in person. He advises that he is not legally represented at present on this application. The Respondent appears by her Home Office Presenting Officer Mr Nath.
5. I am considerably assisted by the approach of Mr Nath in this matter who acknowledges that following the decision of the Court of Appeal that there is jurisdiction for an appeal to be heard in this matter. He thus accepts that there has to be inevitably a material error of law in the decision of the First-tier Tribunal Judge. That is not a criticism of the judge he was merely following the law as it stood at that time.
6. In such circumstances bearing in mind that no actual hearing of the issues in this matter have taken place no application is made for me to proceed on finding a material error of law to re-hear the matter I am asked to remit the matter back to the First-tier Tribunal. This I do along with giving appropriate directions.

Decision and Directions

7. The decision of the First-tier Tribunal Judge contains a material error of law and is set aside. Directions are given hereinafter for the re-hearing of this matter.
 - (1) On the finding that there was a material error of law in the decision of the First-tier Tribunal in that the Tribunal is seized with jurisdiction to hear the appeal the decision of the First-tier Tribunal is set aside and the matter is remitted back to the First-tier Tribunal for re-hearing.
 - (2) That the appeal be heard at Taylor House on the first available date 28 days hence with an ELH of two hours. The appeal is to be before any judge of the First-tier Tribunal other than Designated Judge Manuell.
 - (3) That there be leave to either party to file and/or serve an up-to-date bundle of both subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.
 - (4) Whilst the Appellant has indicated he does not require an interpreter in the event that an interpreter is required then the Appellant's legal

representatives/the Appellant in person must notify the Tribunal Service within seven days of receipt of these directions.

No anonymity direction is made.

Signed

Date 09 April 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application has been made for a fee award and none is made.

Signed

Date 09 April 2018

Deputy Upper Tribunal Judge D N Harris