



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: EA/02764/2015

THE IMMIGRATION ACTS

Heard at Field House
On 25 February 2019

Decision & Reasons promulgated
On 4 March 2019

Before

Upper Tribunal Judge Gill

Between

Harpreet Singh
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr A. Jaffar, of Counsel, instructed by S.Z. Solicitors.

For the respondent: Ms K Pal, Senior Presenting Officer.

Decision and Directions

1. Judge of the First-tier Tribunal Colyer dismissed the appeal of the appellant, a national of India born on 30 September 1978, against the decision of the respondent of 4 November 2015 to refuse his application for a residence card as the extended family member of Mr Vinay Kumar (the "sponsor"), a German national said to be exercising Treaty rights in the United Kingdom.
2. The respondent's decision was made under the Immigration (European Economic Area) Regulations 2006 (hereafter the "EEA Regulations"). The respondent refused the appellant's application for the following reasons:

- (i) the appellant had not established his relationship with his sponsor; and
 - (ii) he had not established that he was residing with and/or dependent upon the sponsor either immediately before his arrival in the United Kingdom or since his arrival in the United Kingdom.
3. The judge dismissed the appeal on the ground that the First-tier Tribunal did not have jurisdiction to decide the appeal of an extended family member under the EEA Regulations. In this respect, the judge relied upon Sala (EFMs: Right of appeal) [2016] UKUT 00411 (IAC).
4. The judge did not have the benefit of the judgment of the Court of Appeal in Khan [2017] EWCA Civ 1755 which held that Sala was wrongly decided. It is clear from the Court of Appeal's judgment in Khan that the First-tier Tribunal and the Upper Tribunal have jurisdiction to decide appeals from extended family members under the EEA Regulations.
5. I am therefore satisfied that, through no fault of his own, the judge materially erred in law in dismissing the appellant's appeal for want of jurisdiction. I am satisfied that this led the judge to fall into the error of not deciding the disputed facts in this appeal, as summarised at my para 2 above.
6. I therefore set aside the decision of the judge in its entirety.
7. In the majority of cases, the Upper Tribunal when setting aside the decision will re-make the relevant decision itself. However, para 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:
 - "(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."
8. In my judgement, this case falls within both para 7.2 (a) and (b). The appellant has not had a hearing of the disputed issues in this appeal. I am therefore of the view that a remittal to the First-tier Tribunal is the right course of action.

Notice of Decision

The decision of Judge of the First-tier Tribunal Colyer involved the making of a material error of law such that the decision to dismiss the appeal for want of jurisdiction is set aside.

This case is remitted to the First-tier Tribunal for a fresh hearing on the merits on all issues by a judge other than Judge of the First-tier Tribunal Colyer.



Upper Tribunal Judge Gill

Date: 1 March 2019