



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

Appeal Number: EA/00715/2015

**THE IMMIGRATION ACTS**

**Decided on the papers  
On 12 May 2017**

**Decision & Reasons Promulgated  
On 17 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**MR KHURAM SHAHZAD**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

1. This is an appeal by a Pakistani national who applied for a residence card as the extended family member of his EEA (German) national sponsor, Mr Ansar Chaudhry who is said to be the Appellant's paternal uncle. The Appellant appeals against the Respondent's decision dated 6 August 2015 refusing to issue him with a residence card. His appeal was dismissed by First-tier Tribunal Judge Scott in a decision promulgated on 6 September 2016 ("the Decision").
2. The Judge accepted that the Appellant showed that he is presently dependent on the sponsor in the UK but could not demonstrate that he was dependent on the sponsor whilst in Pakistan or that he was a member of the sponsor's household before he (the Appellant) came to the UK. For that reason, he was unable to meet regulation 8 of the Immigration (European Economic Area) Regulations 2006 which were those in force at the time of the Appellant's application, the Respondent's decision and the Decision. Although not strictly relevant to the basis on which the appeal was dismissed, the Judge also did not accept that the relationship between

the Appellant and the sponsor was as claimed and expressed some doubt whether the sponsor remained a qualified person since he has not worked since about April 2015.

3. The Appellant sought permission to appeal the Decision on the basis that the Decision was “unjustified, arbitrary, wrongful and flawed”. It was said that the Decision was based on unsupported assertions, that the Judge failed to appreciate the evidence showing that the Appellant was entitled to a residence card and that the Judge “ought to have exercised her [sic] discretion differently and in favour of the Appellant”. It was asserted that the Judge had simply “rubber-stamped” the Respondent’s decision.
4. Permission to appeal was refused by First-tier Tribunal Judge Andrew by a decision said to be dated 5 January 2016 but which clearly should be 5 January 2017 as it was sent on 13 January 2017. The terms of the refusal so far as relevant are as follows:-

“[2] The Grounds are nothing more than a disagreement with the findings of the Judge, findings open to the Judge on the evidence before him. Even if I were wrong about this in view of the guidance in Sala the Judge had no jurisdiction to consider the appeal.”
5. Permission to appeal was sought from this Tribunal by application received on 23 January 2017. The grounds in support of that application are those before the First-tier Tribunal and, in particular, those did not seek to grapple with the question of jurisdiction which was squarely raised in Judge Andrew’s refusal of permission.
6. I took the view however that, because the Judge had no jurisdiction to make the Decision, this amounted to an arguable error of law. If a Judge lacks jurisdiction to make a decision, then the decision is wrong in law and should not be allowed to stand. Accordingly, I granted permission by decision dated 17 February 2017 in the following terms (so far as relevant):-

“[2] This is an appeal which is affected by the Upper Tribunal decision in Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC). In that case, the Upper Tribunal decided that there is no right of appeal in extended family member cases such as this. As such, there is an arguable error of law disclosed by the Decision because the Tribunal had no jurisdiction to hear and decide this appeal. The Judge does not refer to Sala which had been promulgated only a few days prior to the Decision.”
7. I then gave directions as follows:-

“Unless either party files and serves objections in writing to be received within 14 days from the date when this decision is sent, I propose to find an error of law in the Decision on the basis that the Judge lacked jurisdiction to make it. I then propose to set aside the Decision and re-make it dismissing the appeal.”
8. By letter dated 27 February 2017 I received the following response from the Respondent (again so far as relevant):-

“[2] The Respondent is in agreement with the proposed course of action outlined by Upper Tribunal Judge Smith in the grant of permission.

[3] In the alternative if in the interim there is a decision that renders **Sala** to be longer [sic] good law the respondent will submit *inter alia* that the judge of the First-tier Tribunal directed himself appropriately and the grounds amount to a disagreement.

[4] The respondent does not request an oral hearing.”

9. There has been no response from the Appellant to my decision and directions. As indicated in my grant of permission, the Judge made the Decision after the decision in Sala was promulgated. The decision in that case was promulgated on 19 August 2016. I do not need to go into the substance of that decision in detail because neither party challenges the decision on the basis that it was wrongly decided. In short, the Upper Tribunal (Mr CMG Ockelton, Vice President and UTJ Grubb) concluded that in a case such as this involving the refusal to issue a first residence permit to an extended family member there is no right of appeal against that refusal. In that case, the Tribunal found for that reason that there was an error of law because there was no right of appeal before the First-tier Tribunal. The Tribunal therefore set aside the First-tier Tribunal’s decision and substituted its own decision finding that there was no valid appeal.
10. As I indicate, neither party challenges the correctness of the decision in Sala in this appeal. For the same reasons as given in Sala, I find that the Judge had no jurisdiction to make the Decision. I therefore set aside the Decision for that reason. Since there is no right of appeal to the Tribunal, I have no jurisdiction to decide the appeal.
11. In case Sala falls to be reconsidered at some stage by the Court of Appeal and is overturned, I indicate that, were it not for the jurisdiction issue, I would have decided the merits of the permission application as did Judge Andrews by refusing it for the reasons she gave with which I wholeheartedly concur.
12. However, I do not have jurisdiction to deal with the merits of the appeal since there is no valid appeal. For the reasons I have given, I find that the Decision discloses an error of law on the basis that the Judge lacked jurisdiction to hear and decide the appeal. I therefore set the Decision aside and substitute my decision that there was no valid appeal before the First-tier Tribunal.

### **Decision**

**The Decision of First-tier Tribunal Judge Scott promulgated on 6 September 2016 discloses an error of law because the Judge did not have jurisdiction to make the Decision as there was no valid appeal before him. I therefore set aside the Decision. Since there was and is no valid appeal before this Tribunal, I re-make the decision by finding that there is no valid appeal.**

Signed 

Dated: 12 May 2017

Upper Tribunal Judge Smith