



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

Appeal Number: EA/00836/2016

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 17 August 2017

On 9 October 2017

Before

**THE HONOURABLE LORD BURNS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**KIKELOMO QUEEN AKINNUOYE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rene, Counsel, Dorcas Funmi & Co Solicitors

For the Respondent: Mr Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 22 May 1978. On 15 September 2015 she was issued with an EEA residence card as the extended family member of her brother who is an Irish national. She applied for a permanent residence card as a confirmation of the right to

reside in the United Kingdom. That was refused by a decision dated 13 January 2016 because it was not accepted that her sponsor had exercised his treaty rights in the UK for a continuous period of five years.

2. An appeal to the First-tier Tribunal was made against that decision. On 8 February 2017 the First-tier Tribunal Judge decided that in the light of the case of **Sala (EFMs: Right of Appeal) Albania [2016] UKUT 00411 (IAC)** the appellant did not have a right of appeal and the case was dismissed for want of jurisdiction.
3. That decision was then appealed to the Upper Tribunal. In the grounds it is stated that the case of **Sala** was not applicable to the appellant's case because the decision in that case related to the discretionary grant of a residence card. The appellant in this case appealed against the decision to refuse the grant of permanent residence and in those circumstances a right of appeal exists since no exercise of discretion is involved. This was confirmed by the respondent's own guidance: "Home Office Extended Family Members of EEA nationals - V3.0 - September 2016". In accordance with that document, the decision letter itself acknowledged that the appellant had a right of appeal.
4. In introducing this appeal before us, both parties accepted that the First-tier Tribunal Judge had erred in her decision that there was no jurisdiction. The case did not fall within the scope of the decision of **Sala** for the reasons set out in the grounds of appeal.
5. In the circumstances we allowed the appeal and we remit the case to the First-tier Tribunal in order that the decision on this appeal can be remade.

Signed

Date: 3 October 2017

Lord Burns
Sitting as a Judge of the Upper Tribunal