



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/03988/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 1 December 2017

**Decision & Reasons
Promulgated**

On 19 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MR RAHUL SHRIVASTAVA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bridock, Counsel, instructed by Visa Legal

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of India born on 1 December 1985.
2. On 19 July 2012 he was granted a residence card as the extended family member of a Portuguese national on the basis of being in a durable relationship with her.
3. On 8 December 2015 the appellant's family permit residence card was revoked and he was refused admission to the UK under Regulation 19 of the Immigration (European Economic Area) Regulations 2006 on the ground that he was not in a durable relationship with his claimed partner.

4. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge Fowell. The judge dismissed the appeal, on the basis that although the appellant was in a durable relationship with his partner the First -tier Tribunal did not have jurisdiction to hear the appeal.
5. The reason the judge did not consider there to be jurisdiction was that he purported to follow the Upper Tribunal decision in *Sala (EFMs: Right of Appeal: Albania)* [2016]. However, the Court of Appeal has subsequently found, in a decision promulgated after Judge Fowell's decision, that *Sala* was wrongly decided: see *Khan v Secretary of State for the Home Department* [2017] EWCA Civ 1755.
6. Before me, Mr Jarvis, on behalf of the Secretary of State, accepted that the First-tier Tribunal had jurisdiction and that it was an error of law to find otherwise.
7. Both parties were in agreement that the decision should be remade based on the factual findings of Judge Fowell, which were not in dispute.
8. At paragraph 22 of his decision, Judge Fowell found that the appellant and his partner were in a genuine and durable relationship which has continued over a period of years. This being the case, there was no lawful basis to revoke the appellant's family permit residence card and refuse him admission to the UK under the Immigration (European Economic Area) Regulations 2006.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside.

I remake the decision by allowing the appellant's appeal.

No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 19 December 2017