



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/04386/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14 July 2017**

**Decision & Reasons  
Promulgated  
On 24 July 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MRS FATOU BADJI**

(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, a Senior Home Office Presenting Officer

For the Respondent: Mrs Badji appeared in person

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal. I shall refer to the Secretary of State throughout as such and to Mrs Badji as the claimant to avoid confusion.
2. The claimant is a citizen of the Gambia whose date of birth is 10 December 1985. On 21 September 2015 the claimant applied to the Secretary of State for a residence card pursuant to the Immigration (European Economic Area) Regulations 2006 (as amended) as the spouse of Gourenne Guilet Stephane Herve Madou (the sponsor), a French citizen

exercising treaty rights in the United Kingdom. On 16 March 2016 the Secretary of State refused her application on the basis that it was not accepted either that the marriage was valid or that the claimant and the sponsor were in a durable relationship.

### **The appeal to the First-tier Tribunal**

3. The claimant appealed against that decision to the First-tier Tribunal. In a decision promulgated on 24 November 2016 First-tier Tribunal Judge Malone allowed the claimant's appeal, albeit to a limited extent. The First-tier Tribunal found that the claimant failed to demonstrate that she is the spouse of Mr Madou for the purpose of the EEA Regulations, so that her appeal under Regulation 7 of those Regulations failed. The judge then proceeded to consider whether or not the claimant had demonstrated that she has been in a durable relationship with Mr Madou for a period of two years. The judge found that she was satisfied that the claimant and Mr Madou were in a durable relationship in accordance with Regulation 8(5) of the EEA Regulations and allowed the appeal on that basis to the extent of the finding that they were in a durable relationship.
4. The Secretary of State applied for permission to appeal against that decision to the Upper Tribunal. On 24 May 2017 First-tier Tribunal Judge Osborne granted the Secretary of State permission to appeal.

### **The hearing before the Upper Tribunal**

5. The grounds of appeal assert that the judge erred in law by failing to have regard to the Upper Tribunal's decision in **Sala (EFMs: Right of Appeal) Albania [2016] UKUT 00411 (IAC)**<sup>1</sup> which established that there is 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. It is asserted that the judge should have dismissed the appeal for want of jurisdiction. In oral submissions Mr Whitwell indicated that the Secretary of State would honour the findings with regard to a durable relationship, notwithstanding that the First-tier Tribunal had no jurisdiction to consider that matter.
6. The claimant attended the hearing unrepresented. I explained the procedure and the legal arguments made by the Secretary of State. Although the claimant asked for clarification of a number of issues no legal arguments were advanced.

### **Discussion**

7. The First-tier Tribunal considered the matter on the papers. Having found, at paragraph 14, that the claimant had not satisfied him that she was the

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<sup>1</sup> A reference to the Court of Justice has been made pursuant to Article 267 TFEU in case **Banger (Unmarried Partner of British National) [2017] UKUT 125 (IAC)** including a question of the compatibility of National provisions which precludes an appeal to a court or tribunal against a decision refusing to issue a residence card to a person claiming to be an extended family member. However, the case of **Sala** remains binding on the First-tier Tribunal.

spouse of the sponsor for the purpose of the Regulations the judge ought to have concluded that he had no jurisdiction to consider an appeal against the Secretary of State's decision under Regulation 8.

8. The decision of the First-tier Tribunal on the durable relationship issue must be set aside because the Tribunal had no jurisdiction to entertain the claimant's appeal. As set out in **Sala** extended family members do not have an entitlement to a residence card and therefore the rights of appeal do not extend to appeals against a decision not to issue a residence card to extended family members falling within Regulation 8 of the EEA Regulations 2006.
9. The claimant had no right of appeal on that issue and therefore the First-tier Tribunal had no jurisdiction to hear the appeal against the refusal to issue a residence card pursuant to Regulation 8. The First-tier Tribunal erred in law in entertaining the appeal on the durable relationship issue. I set that part of the decision aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA'). The decision on the validity of the marriage stands.

### **Notice of Decision**

The appeal of the Secretary of State is allowed. The decision of the First-tier Tribunal is set aside in respect of the decision on the durable relationship. The decision of the First-tier Tribunal on the validity of the marriage stands.

No anonymity direction is made.

Signed P M Ramshaw

Date 23 July 2017

Deputy Upper Tribunal Judge Ramshaw