



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

Appeal Number: IA/16093/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 25 April 2017**

**Decision & Reasons Promulgated
On 8 June 2017**

Before

**Mr H J E LATTER
DEPUTY UPPER TRIBUNAL JUDGE**

Between

**UMAIR RAFIQUE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Uddin, solicitor.

For the Respondent: Mr D Clarke, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal (Judge Walker) dismissing his appeal against the respondent's decision made on 13 April 2015 refusing his application for a residence

card as confirmation of a right to reside in the UK as an extended family member of an EEA national exercising treaty rights.

Background

2. The appellant is a citizen of Pakistan born on 17 August 1989. He entered the UK on 6 October 2012 with entry clearance as a student valid until 13 September 2016. However, on 2 June 2013 his leave was curtailed to expire on 2 July 2013. On 16 December 2014 he applied for a residence card as an extended family member but his application was refused on 13 April 2015 as the respondent was not satisfied that he was related to his sponsor as claimed or that he had been dependent on him either before or since entering the UK.
3. The appellant appealed against this decision and his appeal was heard by the First-tier Tribunal on 26 July 2016. In a decision issued on 8 August 2016 the judge found that the appellant had failed to show that he and his EEA sponsor were cousins as claimed, that he was dependent on the sponsor or that they had been members of the same household. As he could not meet the requirements of reg. 8 of the Immigration (EEA) Regulations 2006 ("the Regulations"), his appeal was dismissed.
4. He applied for permission to appeal from the First-tier Tribunal but this was refused on the basis that the Tribunal had no jurisdiction to deal with the matter and the application was therefore not admitted.
5. The application was renewed to the Upper Tribunal and granted for the following reasons:

"The appellant is appealing against a decision of First-tier Tribunal Judge Walker to dismiss his appeal against the decision by the respondent to refuse to issue him with a residence card as the extended family member of an EEA national.

The appellant's ground submit that the First-tier Tribunal Judge misdirected himself or failed to consider relevant evidence.

However, in the light of Sala (EFMs, Rights of Appeal) [2016] UKUT 00411 (IAC) the First-tier Tribunal Judge had no jurisdiction to hear the appellant's appeal.

As a consequence, First-tier Tribunal Judge Walker's decision did contain an arguable error of law and permission is granted to this limited extent."

Submissions

6. At the hearing before me, Mr Uddin pointed out that this appeal had been dismissed in a decision issued on 8 August 2016 before the issue of the Upper Tribunal decision in Sala on 19 August 2016. He submitted that the decision in Sala should not be applied retrospectively and that, accordingly, when the appeal was heard, the First-tier Tribunal did have

jurisdiction. Mr Clarke, however, submitted that the decision did have retrospective effect and had made a clear finding that there was no statutory right of appeal under the Regulations against a decision not to grant a residence card to any person claiming to be an extended family member.

The Error of Law

7. I am not satisfied that there is any substance in Mr Uddin's submission. The decision in Sala does have a retrospective effect. A decision by a superior court declares what the law is and has been and does not simply have prospective effect. It follows that the judge erred in law by proceeding on the basis that he had jurisdiction when there was no right of appeal for the reasons given in Sala. Whilst the judge cannot be faulted in any way as his decision pre-dated Sala, nonetheless, he erred in law. There was, however, jurisdiction to grant permission to appeal as a court or tribunal always has jurisdiction to consider the issue of jurisdiction.
8. As the First-tier Tribunal had no jurisdiction to hear the appeal, the decision must be set aside and replaced by a finding that there was no valid appeal.

Decision

9. The decision of the First-tier Tribunal is set aside. There was no valid appeal before the First-tier Tribunal.

Signed H J E Latter

Date: 7 June 2017

Deputy Upper Tribunal Judge Latter