



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

Appeal Number: EA/01182/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 March 2018**

**Decision Promulgated  
On 17 April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**MR ASAD AFZAL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G. Sarkar, Counsel instructed by Adam Bernard Solicitors

For the Respondent: Ms A. Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal ("UT") from the decision of the First-tier Tribunal ("FtT") promulgated on 3 April 2017 dismissing his appeal against the decision by the SSHD to refuse to issue him with a residence card as confirmation of his right to reside in the United Kingdom as the unmarried partner of an EEA national exercising treaty rights here. The FtT did not make an anonymity order, and I do not consider that such an order is warranted for these proceedings in the UT.

### **Relevant Background**

2. The application was refused because the respondent was not satisfied that the appellant was in a durable relationship with his sponsor, or that the sponsor was exercising treaty rights as a worker.

### **The Decision of the First-tier Tribunal**

3. Judge Feeney dismissed the appeal on the ground that she had no jurisdiction to hear an appeal by a person claiming to be an extended family member, following **Sala (EFMs: Right of Appeal) [2016] UKUT 411 (IAC)**.

### **Discussion**

4. The law has been clarified since the appeal was heard in the First-tier Tribunal. In **Khan v SSHD [2017] EWCA Civ 1755** the Court of Appeal held that **Sala** was wrongly decided, and that the appellant had a right of appeal to the FtT against the decision to refuse to issue him with a residence card as an extended family member under Regulation 8.
5. The law always speaks, and so Judge Feeney was wrong in retrospect to hold that she had no jurisdiction, although at the time she had no choice but to follow the decision of the UT which was binding on her. The upshot is that the appellant has been deprived of a fair hearing in the FtT, and the representatives are in agreement that the appeal should be remitted to the FtT for a *de novo* hearing.
6. In his application for permission to appeal, the appellant relied on the fact that he was now a direct family member of the sponsor, as they had got married. So the issues at the fresh hearing will be (a) whether the appellant is a family member of an EEA national (direct or extended); and (b) whether the EEA national sponsor is exercising treaty rights.

### **Notice of Decision**

7. The decision of the FtT contained an error of law, such that it must be set aside in its entirety and remade.

### **Directions**

8. This appeal is remitted to the FtT at Taylor House for a *de novo* hearing (Judge Feeney incompatible).
9. The agreed time estimate is two hours

### **Anonymity**

No anonymity order is made.

Signed

Date 14 April 2018

Deputy Upper Tribunal Judge Monson