



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

APPEAL NUMBER: EA/02307/2016

THE IMMIGRATION ACTS

**Heard at: Field House
On: 1 March 2018**

**Decision and Reasons Promulgated
On: 22 March 2018**

**Before
Deputy Upper Tribunal Judge Mailer**

**Between
MRS NDEYE SOPHIE DIAGNE
ANONYMITY DIRECTION NOT MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr A Reza, JKR Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Senegal, born on 16 March 1970. She appeals with permission against the decision of the First-tier Tribunal Judge dismissing her appeal against the decision of the respondent to refuse her application for a residence card under the Immigration (EEA) Regulations 2006.
2. On 6 October 2017 First-tier Tribunal Judge Pedro granted the appellant permission to appeal. It was arguable that the Judge misdirected himself in being guided by the decision of Kareem (Proxy Marriages – EU Law) [2014] UKUT 00024 which had been reversed by the Court of Appeal in Awuku [2017] EWCA Civ 178.

3. The Judge also found that he had no jurisdiction to entertain an appeal under Regulation 8 of the 2006 Regulations as he was bound by the decision in Sala (EFMs: Right of Appeal) [2016] UKUT 411.
4. In her Rule 24 response the respondent does not oppose the application for permission to appeal. The Tribunal was invited to set aside the decision.
5. Mr Reza also sought to rely on the recent decision of the Court of Appeal in Khan v SSHD [2017] EWCA Civ 1755 and submitted that the First tier Judge found that he was bound by the decision in Sala, and that he accordingly had no jurisdiction to entertain the appeal.
6. Mr Bramble accepted that in the circumstances the decision of the First-tier Tribunal cannot stand. Both parties agreed that it should be set aside and remitted to the First-tier Tribunal for a fresh decision to be made.

Assessment

7. The decision in Kareem is no longer good law. Further, following the decision in Khan, the First-tier Judge did have jurisdiction to determine the appeal based on the appellant's durable relationship under Regulation 8 of the Regulations.
8. In the circumstances the decision is set aside.
9. The parties submitted that the case should be remitted to the First-tier Tribunal for a fresh decision to be made. I find that this is an appropriate case to remit for re-hearing to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. It is set aside.

The case is remitted to the First-tier Tribunal (Birmingham) for a fresh determination to be made by another Judge.

Anonymity direction not made.

Signed

Date 20 March 2018

Deputy Upper Tribunal Judge Mailer