



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: EA/03450/2015

THE IMMIGRATION ACTS

**Heard on the papers at Field House
On 27 March 2018**

**Decision & Reasons Promulgated
On 3 April 2018**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

OSANDA DARSHANA SANDURUWARAN SILVA NILENTHI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant was born on 31 July 1986, is a national of Sri Lanka. On 7 February 2017 First-tier Tribunal Judge Herbert dismissed his appeal against the decision by the Respondent to refuse him a residence card as an extended family member of an EEA national exercising a Treaty right in the United Kingdom.
2. He appealed and Upper Tribunal Judge Bruce granted him permission to appeal on 1 March 2018. She also stated that she assumed that the appeal would not be opposed by the Respondent and stated that, if the Respondent did wish to oppose the appeal, she must do so in writing no later than 22 March 2018. She added that if the Respondent did not do so the Upper Tribunal would dispose of the matter by finding an error of law and remitting the appeal to the First-tier Tribunal.

ERROR OF LAW DECISION

3. I allow the Appellant's appeal on the basis that *Sala (EFMs: Right of Appeal)* [2006] UKUT 00411 (IAC) was wrongly decided and, therefore, First-tier Tribunal Judge Herbert erred in law when he found that he had no jurisdiction to hear the appeal.
4. As the substance of this appeal has not yet been considered by the First-tier Tribunal, I find that the appeal should be remitted to that Tribunal.

DECISION

- (1) The Appellant's appeal is allowed and First-tier Tribunal Judge Herbert's decision is set aside.
- (2) The appeal is remitted to a First-tier Tribunal Judge other than First-tier Tribunal Judge Herbert for a *de novo* hearing.

Nadine Finch

Signed

Date 27 March 2018

Upper Tribunal Judge Finch