



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

Appeal Number: EA/03850/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent

On 29 November 2017

**Decision & Reasons
Promulgated**

On 10 January 2018

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

ALIE SUMAREH

(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

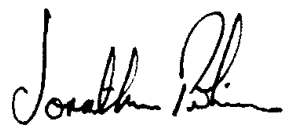
1. The appellant appeals a decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State refusing him a residence card as the spouse or alternatively family member of an EEA national working in the United Kingdom.
2. There are two problems in the First-tier Tribunal's decision. Firstly, and understandably, the First-tier Tribunal ruled that it had no jurisdiction to hear an appeal against a refusal based on the appellant's claim to be an extended family member because the First-tier Tribunal considered itself bound by the decision of the Upper Tribunal in **Sala** which we now know was wrongly

decided. It follows therefore that the appellant is entitled to have his appeal based on his claim to be a family member determined. It has not been considered before and the appropriate place for this is in the First-tier Tribunal.

3. The second problem is that the First-tier Tribunal ruled that the appellant was not free to marry because, at the relevant time, he was married to someone else. The difficulty with this is that the judge did not necessarily understand correctly the significance of different dates on the Register of Divorces which was provided. This shows the date of divorce to be 11 January 2013. If in fact the divorce was effective on that date then the appellant was free to marry. He says that is the case. The divorce was not registered until 19 November 2013. If the divorce had no effect until *that* date then the appellant was not free to marry. The difficulty is that the judge has assumed that the divorce had no legal effect until 19 November 2013 but did not take the point with the appellant who has explained to me this morning his very clear belief that a Muslim divorce, even a Muslim divorce by proxy as is said to have occurred here, is effective when it happens, in this case 11 January 2013, and the date of registration is not significant. I make no finding on whether this is right, I simply record this was the effect of his evidence and if this had been asked of the witness the judge would have had to have ruled upon it.
4. It follows that I set aside the decision of the First-tier Tribunal and order that the case be determined again in the First-tier Tribunal.
5. I have explained to the appellant that he may be able to assist the Tribunal if he is able to produce evidence of the effective date of his divorce but that might be something that is difficult for a litigant in person to achieve. I have also asked Mr McVeety if he is able to assist, although I have reminded myself and record here that the burden of proof is on the appellant and I certainly would not criticise the Secretary of State if she is not able to come up with an answer. Nevertheless, I hope she will be able to make basic enquiries because it may be that the answer to this conundrum is apparent and readily available if the appropriate expert can be contacted. Be that as it may, it remains for the appellant to show that his divorce was effective on 11 January and if he is able to establish that then his case has to be decided properly on its merits both as a spouse and as an extended family member and these things have not been done.

Decision

6. I therefore allow the appeal and order the case to be heard again in the First-tier Tribunal.



Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 9 January 2018

