



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: EA/04421/2016**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30<sup>th</sup> January 2018**

**Decision & Reasons  
Promulgated  
On 5<sup>th</sup> February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**MISS SABINA BEGUM  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr Rahman counsel instructed by Shah Jalal Solicitors  
For the Respondent: Mr Bramble Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Miss Sabina Begum date of birth 22 January 1988, is a citizen of Bangladesh. Having considered all the circumstances, I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge James promulgated on the 23<sup>rd</sup> October 2017.
3. The appellant had made an application for an EEA residence card as an extended family member of an EEA national, who was exercising treaty

rights in the United Kingdom. I note that the application had to be considered under the Immigration (EEA) Regulations 2006. The application was refused by the respondent by decision dated 18 December 2015. The appellant sought to appeal against the decision.

4. The appeal came before Judge James on the 22<sup>nd</sup> September 2017. After an “oral” hearing the judge determined to dismiss the appeal. In dismissing the appeal the judge gave a number of grounds:-
  - i) The judge dismissed the appeal in accordance with the law as stated in the case of Sala (EFMs: Rights of Appeal) [2016] UKUT 00411 determining that the First-tier Tribunal did not have jurisdiction to hear an appeal in respect of an extended family member.
  - ii) Secondly even after hearing the evidence the judge found in paragraph 10 that the documentary evidence submitted did not establish a relationship between the appellant and her EEA sponsor. Accordingly the appellant was not an extended family member in any event and was therefore not entitled to an EEA residence card.
  - iii) Finally it was noted that the EEA sponsor had been refused his application for a registration certificate on the same day. It had been determined that the EEA sponsor was not exercising treaty rights and as the sponsor was not exercising treaty rights the appellant could not be dependent upon the EEA sponsor.
5. The respondent’s representative requested that the appeal be adjourned pending further consideration of the issues raised in this and other similar cases based on the issues in the Sala case by the Supreme Court. I refused the application by the respondent.
6. With regard to the first issue raised the case of Sala has been overruled in the case of Khan [2017] EWCA Civ 1755. The First-tier Tribunal Judge in following the case of Sala cannot be criticised as he was following the guidance set down by the Upper Tribunal. In that respect therefore in light of the case law the approach of the judge in dismissing the appeal for want of jurisdiction was legally flawed.
7. However the grounds of appeal originally submitted did not challenge the 2 remaining grounds for dismissing the appeal. The grounds of appeal in paragraphs 1 to 9 deal only with the issue with regard to the decision in Sala and make no challenge to the remaining findings made by the judge.
8. At the hearing before me further grounds of appeal had been submitted together with a bundle of documents in support of the claims that the appellant was a dependent of and related to her EEA sponsor. The appellant’s representative sought leave to amend the grounds of appeal to challenge the other 2 grounds upon which the appeal had been refused.
9. In that respect consideration had to be given to how the appeal had been conducted in the First-tier Tribunal. It appears at the commencement of the hearing the issue of jurisdiction had been raised by the judge and whilst both the appellant and the sponsor were in attendance no evidence was taken to deal with the other issues raised in the refusal letter. Had an opportunity been given to give oral evidence it may be that those issues would have been dealt with. To that extent it could not be said that the

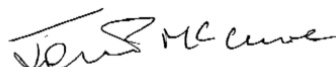
appellant had had an opportunity to present her case and therefore had not had a fair trial.

10. I permitted the appellant's representative to amend the grounds of appeal.
11. In the light of that and in light of the case of Khan the decision of the First-tier Tribunal contains material errors of law. The only courses for this matter to be heard afresh in the First-Tier Tribunal. I do not preserve any of the findings of fact.

**Notice of Decision**

12. I allow the appeal of the appellant and set the decision aside.
13. In the light of the matters set out the appropriate courses for this matter to be remitted to the First-tier Tribunal for hearing afresh.
14. I do not make an anonymity direction.

Signed

A handwritten signature in black ink, appearing to read 'James McClure', written in a cursive style.

Deputy Upper Tribunal Judge McClure

Dated: 30 January 2018