



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/18981/2015

THE IMMIGRATION ACTS

Heard at Field House
On 22 January 2018

Decision & Reasons Promulgated
On 23 January 2018

Before

UPPER TRIBUNAL JUDGE FINCH

Between

MUHAMMAD MIRAZUR RAHMAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. M. Islam of counsel, instructed by Chancery
Solicitors

For the Respondent: Mr. S. Kandola, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant was born on 1 November 1988, is a national of Bangladesh. On 5 January 2015 he applied for a residence card as the extended family member of Sunny Mostofa, an EEA national who was exercising a Treaty right in the United Kingdom. His application was refused on 29 April 2015 and he appealed.
2. In a decision promulgated on 4 February 2016 First-tier Tribunal Judge Samimi found that she had no jurisdiction to hear his appeal. He appealed and on 25 July 2016 First-tier Tribunal Judge Colyer granted him permission to appeal. Deputy Upper Tribunal Judge Hill GC found that the First-tier Tribunal did have jurisdiction and remitted the appeal to that Tribunal.
3. The appeal came before First-tier Tribunal Judge Lawrence on 5 May 2017 and in a decision, promulgated on 19 May 2017, he found that following *Sala (EFMs: Right of Appeal)* [2006] UKUT 00411 (IAC), the Appellant did not have a right of appeal. The Appellant appealed again and on 29 November 2017 First-tier Tribunal Judge Frankish granted him permission to appeal.

ERROR OF LAW HEARING

4. Both counsel for the Appellant and the Home Office Presenting Officer made very brief oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

ERROR OF LAW DECISION

5. In her Rule 24 Response, the Respondent requested the Upper Tribunal to adjourn any substantive hearing until a decision was reached on the renewed application to permission to the Supreme Court in the case of *MK v Secretary of State for the Home Department* [2017] EWCA Civ 1755 and judgment by the Supreme Court in the case of *SM (Algeria)*, which had been heard on 29 November 2017.
6. Paragraphs 3 and 4 of the order made by the Court of Appeal in *MK* stayed the decision that in *MK's* case the decision by the Upper Tribunal would be set aside and the appeal remitted to

the First-tier Tribunal and also stayed the costs order made in favour of the Appellant. However, it did not stay paragraph 1 of the order, which stated that the appeal was allowed or paragraph 2 of the order, which said that permission to appeal to the Supreme Court was refused.

7. Therefore, the substance of the decision stands, which was that *Sala* was wrongly decided and that extended family members refused a residence card are entitled to a right of appeal to the First-tier Tribunal under the Immigration (European Economic Area) Regulations. As a consequence, I am bound by that decision as it was made by the Court of Appeal.
8. As a consequence, I find that First-tier Tribunal Judge Lawrence did err in law in his decision.
9. As the substance of the appeal has not yet been re-considered by the First-tier Tribunal, I find that the appeal must be remitted to that Tribunal. It will also be able to address any subsequent decisions reached by the Supreme Court in the cases referred to by the Respondent.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) The appeal is remitted to a First-tier Tribunal Judge other than First-tier Tribunal Judges Lawrence, Samimi or Colyer for a *de novo* hearing.

Nadine Finch

Signed

Date 22 January 2018

Upper Tribunal Judge Finch