



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/06205/2016

THE IMMIGRATION ACTS

Heard at Field House
On 1 February 2018

Decision & Reasons Promulgated
On 8 February 2018

Before

UPPER TRIBUNAL JUDGE FINCH

Between

IFTIKHAR AHMAD RANA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:
For the Respondent:

Ms. S. Iqbal, Rana & Co. Solicitors
Mr. A. Miah, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant was born on 15 April 1978, is a national of Pakistan. On 20 October 2015 he applied for a residence card as an extended family member of an EEA national exercising a Treaty right in the United Kingdom. His application was refused on 10 May 2016 and the Appellant appealed.
2. His appeal came before First-tier Tribunal Judge Cameron on the papers on 23 August 2017. First-tier Tribunal Judge Cameron found that he had no jurisdiction to hear the appeal following the decision in *Sala (EFMs: Right of Appeal)* [2006] UKUT 00411 (IAC). The

Appellant appealed on 14 November 2017 and First-tier Tribunal Judge Ford granted him permission to appeal on 29 November 2017 on the basis that the grounds were arguable in the context of the Court of Appeal's judgment in *MK v Secretary of State for the Home Department* [2017] EWCA Civ 1755.

ERROR OF LAW HEARING

3. The Appellant's solicitor noted that she was still not in possession of the Home Office file but I informed her that there was now one on the file. The Home Office Presenting Officer applied for an adjournment pending permission being granted to appeal to the Supreme Court in *MK*.

ERROR OF LAW DECISION

4. I am aware that the Secretary of State for the Home Department has applied for permission in *MK* and that judgment is awaited in the case of *SM (Algeria)*, which was heard on 29 November 2017.
5. Paragraphs 3 off the order made by the Court of Appeal in *MK* stayed the part of the decision that found that the decision by the Upper Tribunal would be set aside and the appeal remitted to the First-tier Tribunal and paragraph 4 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.
6. 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 2008. I am bound by that decision as it was made by the Court of Appeal.
7. 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. This was not opposed by either party; The First-tier Tribunal will be able to address any subsequent decisions reached by the Supreme Court in the cases referred to by the Respondent.

8. Furthermore, I find that First-tier Tribunal Judge Cameron did err in law in his decision.

DECISION

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

Nadine Finch

Signed

Date 1 February 2018

Upper Tribunal Judge Finch