



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

Appeal Number: IA/33980/2015
IA/33984/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 10 January 2018**

**Determination & Reasons
Promulgated
On 31 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

MRS NIRMANI UDESHIKA HEWA KODIKARAGE

First Appellant

MR RAVI PRABATH GODIGAMUWAGE

Second Appellant

(ANONYMITY DIRECTION NOT MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karim, Counsel for PGA Solicitors, London

For the Respondent: Ms Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant is the wife of the second appellant. They are citizens of Sri Lanka born on 14 September 1986 and 30 September 1981 respectively. They appealed against the decision of the respondent dated 27 October 2015 refusing to grant them residence cards as the extended

family members of EEA nationals. Their applications were made in accordance with Regulation 8 of the Immigration (EEA) Regulations 2006 but the respondent's view was that there were insufficient grounds to issue residence cards.

2. Their appeals were heard by Judge of the First-Tier Tribunal Wellesley-Cole on 21 December 2016 and dismissed for want of jurisdiction in a decision promulgated on 16 March 2017. This dismissal was based on the case of **Sala [2016]** UKUT 00411 (IAC).
3. The **Sala** decision has been found to be wrong and permission to appeal was granted by Judge of the First-Tier Tribunal Alis on 20 October 2017. This states that **Sala** was overturned by the Court of Appeal and there is therefore an arguable error of law in the Judge's decision.
4. A Rule 24 response has been lodged which states that the respondent is currently considering the recent Court of Appeal decision in **Khan v SSHD [2017]** EWCA Civ 1755 and so is not presently in a position to formally respond to the merits of the grounds of appeal.

The Hearing

5. Mr Karim submitted that this claim should be remitted to the First-Tier Tribunal as it requires to be dealt with under Article 10(2) (e) of ECHR.
6. He submitted that the appellants have permanent residence cards in Italy and I was referred to the decision of Judge of the First-Tier Tribunal Lucas relating to the first appellant, (Appeal Number IA/21074/2014). The hearing took place on 4 March 2015 and the decision was promulgated on 25 March 2015. At paragraph 3 of this decision Judge Lucas states that a number of important issues arose during the course of the preliminary discussions relating to the status of the appeal. It had emerged at the hearing that the appellant and her partner (the two appellants in this claim) had been granted permanent residence in Italy. Both produced their passports together with ID documents showing this. In addition the first appellant had pointed out that she had been present in the United Kingdom for almost seven years and had a son who was six years of age at the date of that hearing.
7. At paragraph 4 Judge Lucas refers to the respondent's response in which the Presenting Officer pointed out that he had been unaware of the factual background underlying this appeal, particularly that the appellant had permanent residence within an EEA country and because of this he doubted whether she required a residence card to enter the UK in these circumstances. The representative for the appellant did not find this to be the case and maintained that the appellant required a residence card to remain within the UK.

8. Judge Lucas goes on to state that the respondent has not considered the status of the appellant with regard to her permanent residency within Italy, an EEA State.
9. Counsel at the hearing before me submitted that these claims should be allowed outright.
10. The Presenting Officer submitted that she had a lack of papers in this case. I adjourned the case for 15 minutes so that she could confirm the Article 10 point which is not mentioned in the refusal letter.
11. The Presenting Officer was unable to get instructions from her superiors about the Article 10 point. Counsel submitted that for the appellants' status in the United Kingdom to be recognised, residence cards issued in the UK are required and if the appellants have residence cards in another EU State they should be issued automatically in the United Kingdom.

Decision

12. There was no error of law in Judge Wellesley-Cole's decision, as *Sala* was good law at the date of the First-tier hearing but as *Sala* has now been overturned these appeals require to be reheard.
13. I direct that these appeals are remitted to the First-Tier Tribunal for rehearing but not before First-tier Tribunal Judge Wellesley-Cole, taking into account all issues including the Article 10 issue raised by Counsel at this hearing.
14. The First-tier Tribunal's decision promulgated on 25 March 2015 must be set aside.
15. Anonymity has not been directed.

Signed

Date 30 January 2018

Deputy Upper Tribunal Judge Murray