



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/03166/2015**

Appeal Number:

THE IMMIGRATION ACTS

Decided on the papers

On 7 August 2017

**Decision & Reasons
Promulgated**

On 8 August 2017

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR ZEESHAN ALI

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

DECISION AND REASONS

1. This is an appeal by a national of Pakistan who applied for a residence permit as the extended family member of the EEA national (Swiss) wife of his sponsor who is said to be his uncle. The Appellant claims to be able to demonstrate a prior and current dependency on his uncle and the EEA national wife. The Appellant appeals against the Respondent's decision dated 17 November 2015 refusing to issue him with a residence card. His appeal was dismissed by First-tier Tribunal Judge Lucas in a decision promulgated on 24 November 2016 ("the Decision").
2. Neither the Appellant nor the Respondent attended or were represented at the hearing. The Judge found, based on the documentary evidence before him that the Appellant had failed to make out his case. Unfortunately, the Judge failed to recognise that he had no jurisdiction to decide the appeal following the case of Sala (EFMs: Right of Appeal) UKUT 00411 (IAC). The

Appellant's grounds seeking permission to appeal do not address this issue.

3. Permission to appeal was refused by First-tier Tribunal Judge Foudy by a decision sent on 30 May 2017. She too failed to consider the jurisdiction issue following Sala.
4. On application to this Tribunal, I granted permission on the basis that the Judge had no jurisdiction to make the Decision and this amounts to an arguable error of law. If a Judge lacks jurisdiction to make a decision, then the decision is wrong in law and should not be allowed to stand. Accordingly, I granted permission by decision dated 4 July 2017 in the following terms (so far as relevant):-

"[3] In relation to the challenge to the substance of the Decision, this is an appeal which is affected by the Upper Tribunal decision in Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC). In that case, the Upper Tribunal decided that there is no right of appeal in extended family member cases such as this. As such, there is an arguable error of law disclosed by the Decision because the Tribunal had no jurisdiction to hear and decide this appeal. The Judge does not refer to Sala which had been promulgated prior to the Decision. The refusal of permission to appeal similarly fails to recognise the relevance of that decision in this case. Although the First-tier Tribunal (and indeed the Upper Tribunal) did not and does not have jurisdiction to substantively decide the appeal, it retains jurisdiction to decide whether the appeal is a valid one. Since, as Sala decides, there is no valid appeal in cases such as this, I grant permission on the basis that the First-tier Tribunal did not have jurisdiction to make the Decision. This amounts to an arguable error of law although not for the reasons argued in the grounds."

I then gave directions as follows:-

"Unless either party files and serves objections in writing to be received within 14 days from the date when this decision is sent, I propose to find an error of law in the Decision on the basis that the Judge lacked jurisdiction to make it. I then propose to set aside the Decision and re-make it dismissing the appeal."

5. The Appellant has submitted written objections dated 18 July 2017. Those in large part repeat the original grounds of appeal. In relation to Sala, the objections note at [14] that the Tribunal in that case questioned whether a person in the Appellant's situation has a right of appeal (in fact the Tribunal determined that he did not) and at [15] pointed out that if there is no right of appeal, then an Appellant should be able to judicially review the decision which is correct but has no bearing on the correctness of Sala. The Appellant appears to recognise at [30] and [32] of the objections that both Judge Lucas and Judge Foudy made an error of law by failing to have regard to Sala. However, inexplicably the objections suggest that I should re-determine the appeal without explaining how I have the jurisdiction to do so. The objections make no submission that Sala is wrongly decided. Based on the correctness of that decision, therefore, I have no jurisdiction to decide the substance of the appeal.

6. The Respondent has also filed a Rule 24 reply agreeing with the course which I proposed based on the lack of jurisdiction following Sala.
7. As indicated in my grant of permission, the Judge made the Decision after the decision in Sala was promulgated. The decision in that case was promulgated on 19 August 2016. I do not need to go into the substance of that decision in detail because neither party challenges the decision on the basis that it was wrongly decided. In short, the Upper Tribunal (Mr CMG Ockelton, Vice President and UTJ Grubb) concluded that in a case such as this involving the refusal to issue a first residence permit to an extended family member there is no right of appeal against that refusal. In that case, the Tribunal found for that reason that there was an error of law because there was no right of appeal before the First-tier Tribunal. The Tribunal therefore set aside the First-tier Tribunal's decision and substituted its own decision finding that there was no valid appeal.
8. As I indicate, neither party challenges the correctness of the decision in Sala in this appeal. For the same reasons as given in Sala, I find that the Judge had no jurisdiction to make the Decision. I therefore set aside the Decision for that reason. Since there is no right of appeal to the Tribunal, I have no jurisdiction to decide the appeal. I therefore substitute my own decision finding that there was and is no valid appeal. I make it clear that the only basis for my grant of permission and for setting aside the Decision is the lack of jurisdiction. I have reached no view on the merits of the grounds relating to the substance of the appeal. I do note though that if the Appellant wishes the Respondent to consider his entitlement to a residence permit based on further documentation submitted only in the course of the appeal, it is of course open to him to make a further application for a residence permit.

Decision

The decision of First-tier Tribunal Judge Lucas discloses an error of law because he made the decision when he had no jurisdiction to consider the appeal as the appeal was not valid. I therefore set aside the decision of First-tier Tribunal Judge Lucas promulgated on 24 November 2016 and substitute a decision that there was and is no valid appeal in this case.

Signed



Dated: 7 August 2017

Upper Tribunal Judge Smith