



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

Appeal Number: EA/02604/2015

THE IMMIGRATION ACTS

**Decided on the papers
On 15 May 2017**

**Decision & Reasons Promulgated
On 17 May 2017**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MISS ANGELIQUE ANDRADA ANGELES

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This is an appeal by a national of the Philippines who applied for a residence card as the extended family member of her EEA (Romanian) national sponsor who is said to be her unmarried partner. The Appellant appeals against the Respondent's decision dated 31 October 2015 refusing to issue her with a residence card. Her appeal was dismissed by First-tier Tribunal Judge Phull in a decision promulgated on 23 August 2016 ("the Decision").
2. The Judge did not accept that the Appellant had been in a durable relationship and living with her partner since February 2015 as she claimed. Her partner did not attend the hearing to give evidence. The Appellant also claimed that she and her sponsor shared accommodation with friends but those friends did not provide any evidence in support of the Appellant's claim.
3. The Appellant sought permission to appeal the Decision on the basis that the Decision was "wrong and not in accordance with the law". It is

asserted that the decision was unfair, failed to provide adequate reasons and that the Appellant's evidence was consistent and should have been accepted. It was also asserted that the Judge had decided the appeal using the wrong standard of proof.

4. Permission to appeal was refused by First-tier Tribunal Judge E M Simpson by a decision sent on 14 March 2017. The terms of the refusal so far as relevant are as follows:-

“[2] Permission to appeal is refused because:

- (i) There was variously asserted that the Judge failed to consider the Appellant's “case fully”, that the Decision was brief and lacking detail, there had been furnished a sufficiency of evidence, and that the correct standard of proof, the balance of probabilities, had not been applied;
- (ii) On careful reading of the Decision there was not disclosed basis to the asserted grounds, more particularly, the standard of proof ground was not particularised;
- (iii) Albeit a short Decision, nevertheless the Judge was shown to weigh the evidence before them and concluded, after an adequacy of reasoning, that it was found wanting, more especially, with reference to a lack of material supporting oral and documentary evidence concerning the claimed relationship, including against a background of the parties having not been interviewed, the Appellant's partner having not been in attendance at the hearing nor any of their flatmates;
- (iv) The burden of proof had been on the Appellant and simply she was found to fail to discharge that burden.”

5. Permission to appeal was sought from this Tribunal by application received on 23 January 2017. The grounds in support of that application are those before the First-tier Tribunal and those did not seek to grapple with Judge Simpson's reasons for refusing permission.

6. I granted permission in this case 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 28 March 2017 in the following terms (so far as relevant):-

“[2] 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. In this case, Sala had been promulgated although not reported prior to the Decision which may explain why the Judge did not refer to it. Sala is not mentioned in the refusal of permission to appeal. Although the First-tier Tribunal (and indeed the Upper Tribunal) did not have jurisdiction

to substantively decide the appeal, it retains jurisdiction to decide whether the appeal is a valid one...”

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 as invalid.”

7. By letter dated 13 April 2017 I received the following response from the Respondent (again so far as relevant):-

“[2] The Respondent does not oppose the Direction proposed by Upper Tribunal Judge Smith dated 28th March 2017 and invite the Tribunal to re-make the Decision dismissing the appeal as invalid.”

8. There has been no response from the Appellant to my decision and directions. 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.
9. 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.

Decision

The decision of First-tier Tribunal Judge Phull 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 Phull and substitute a decision that there was and is no valid appeal in this case.

Signed



Dated: 15 May 2017

Upper Tribunal Judge Smith