



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

Appeal Number: EA035252015

THE IMMIGRATION ACTS

**Decided on the papers
On 30 June 2017**

**Decision & Reasons
Promulgated
On 3 July 2017**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MRS VIOLET IDEHEN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This is an appeal by a national of Nigeria who applied for a residence card as the extended family member of her EEA national (German) sponsor who is said to be her unmarried partner. The Appellant appeals against the Respondent's decision dated 19 November 2015 refusing to issue her with a residence card. Her appeal was allowed by First-tier Tribunal Judge Thorne in a decision promulgated on 3 October 2016 ("the Decision").
2. The Judge accepted that the evidence given by the Appellant and her partner was credible, it not being challenged by the Respondent who was not represented. He therefore allowed the appeal to the extent of

requiring the Respondent to exercise her discretion to grant a residence card in light of the Judge's findings.

3. The Respondent appealed the Decision on the sole basis that the Judge had no jurisdiction to decide the appeal following the case of Sala (EFMs: Right of Appeal) UKUT 00411 (IAC).
4. Permission to appeal was refused by First-tier Tribunal Judge Nightingale by a decision sent on 11 January 2017. The terms of the refusal so far as relevant are as follows:-

“[3] The grounds are correct in that there was no right of appeal to the First-tier Tribunal in light of the decision in Sala. However, there is also no onwards appeal from the First-tier Tribunal by reason of the Upper Tribunal decision in Sala. This application must, therefore, be refused for want of jurisdiction.”

5. 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. Judge Nightingale was correct to observe that the case of Sala means that there was no valid appeal before the First-tier Tribunal but wrong to conclude that as a result the Decision discloses no arguable error of law. There is an arguable error of law precisely because the Judge made the Decision which he had no jurisdiction to make. Accordingly, I granted permission by decision dated 23 February 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. The Judge does not refer to Sala which had been promulgated nearly two months prior to the Decision. The refusal of permission to appeal on the basis that if the First-tier Tribunal did not have jurisdiction to decide the appeal then the First-tier does not have jurisdiction to set aside the Decision is wrong in law. 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.”

6. I have not received a response from either party.

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.

Decision

The decision of First-tier Tribunal Judge Thorne 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 Thorne promulgated on 3 October 2016 and substitute a decision that there was and is no valid appeal in this case.

Signed 

Dated: 30 June 2017

Upper Tribunal Judge Smith