



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

Appeal Number: EA/04103/2015

THE IMMIGRATION ACTS

**Heard at Birmingham
On 9 August 2017**

**Decision & Reasons Promulgated
On 16 August 2017**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TARIK OKUR

Respondent

Representation:

For the Appellant: Mr D. Mills, Senior Home Office Presenting Officer
For the Respondent: Ms V. Brankovic, Counsel instructed by Panacea Solicitors

DECISION AND REASONS

1. The appellant in these proceedings is the Secretary of State. However, for convenience I refer to the parties as they were before the First-tier Tribunal ("FtT").
2. The appellant is a citizen of Turkey, born in 1979. On 18 May 2015 he made an application for a residence card on the basis of his relationship with a Swedish national.

3. The facts of his case are rather unusual in that he was married to his partner in July 2009 but they divorced in November 2011. Nevertheless, it appears that he and his partner continued living together and continued their relationship, albeit that they were no longer married. They have a daughter born in May 2016.
4. The respondent refused the application because she was not satisfied that the appellant qualified for a residence card on the basis of a retained right of residence as a former spouse, that he had been exercising Treaty rights, or that he and his partner were in a durable relationship.
5. The appellant's appeal against the respondent's decision came before a First-tier Tribunal Judge ("Ftj") at a hearing on 1 March 2017. She allowed the appeal with reference to the Immigration (European Economic Area) Regulations 2006 (as amended) ("the EEA Regulations"), having found that the appellant and his partner were in a genuine relationship, i.e. a durable relationship within the EEA Regulations.
6. At [31] she said that because they are in a durable relationship and because the appellant previously had a residence card, "he is a family member for the purposes of Regulation 7 of the 2006 Regulations".
7. The grounds of appeal upon which permission was granted rely on the decision in *Sala (EFMs: Right of Appeal)* [2016] UKUT 00411 (IAC), to the effect that the appellant had no right of appeal against the decision in terms of his being an extended family member (durable relationship) and that the fact that he previously had a residence card does not mean that he is a family member within reg 7.
8. In submissions, Mr Mills conceded that in fact, on the basis of reg 7, the Ftj was entitled to conclude as she did and thus to allow the appeal, accepting that the *Sala* point did not apply in this case. It was accepted therefore, that there was no error of law in the Ftj's decision. In the circumstances, Ms Brankovic had no submissions to make.
9. I agree with the view taken by Mr Mills. Reg 7(3) provides as follows:

“(3) Subject to paragraph (4), a person who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card shall be treated as the family member of the relevant EEA national for as long as he continues to satisfy the conditions in regulation 8(2), (3), (4) or (5) in relation to that EEA national and the permit, certificate or card has not ceased to be valid or been revoked.”
10. The Ftj decided that the appellant is an extended family member. He had (previously) been issued with a family permit (or residence card) according to his application, a matter not disputed on behalf of the respondent. The conditions in reg 8(5) continue to apply (durable relationship), according to the Ftj's findings, which are not challenged as to the facts.

11. Reg 7 provides that the appellant in these circumstances is to be 'treated' as a family member. Accordingly, the restriction on the right of appeal explained in *Sala* does not apply. There was thus no error of law on the part of the Ftj in allowing the appeal.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to allow the appeal therefore stands.

Upper Tribunal Judge Kopieczek

9/08/17