



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/00020/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 13 February 2018**

**Decision & Reasons
Promulgated
On 20 March 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR EMTIAJ UDDIN AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mrs I Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Bangladesh, has permission to challenge the decision of Judge Kelly of the First-tier Tribunal (FtT) concluding that he had no jurisdiction in respect of the appeal brought by the appellant against the decision of the respondent dated 20 August 2015 to refuse to issue him a residence card as an extended family matter of his sponsor uncle who was stated to be a national of Italy and therefore an EEA national.
2. There was no appearance by or on behalf of the appellant. No explanation has been forthcoming for this failure. In all the circumstances I decided to

proceed with the hearing in the absence of one of the parties. I heard brief submissions from Mrs Isherwood.

3. The grounds of appeal were twofold. First it was argued that the judge was wrong to follow the case of **Sala**. Secondly it was contended that the judge should have allowed the appeal because the appellant had “provided sufficient evidence” of his dependency on his uncle.
4. The judge’s decision is plainly wrong in law. That is no particular fault of the judge because he based his decision as to want of jurisdiction on the reported case of the Upper Tribunal of **Sala [2016] UKUT 411 IAC**). However **Sala** was overturned by the Court of Appeal in **Khan [2017] EWCA Civ 1755**. Hence the FtT judge erred in law and his decision is accordingly set aside. I turn then to re-make the decision.
5. As noted earlier, the appellant’s grounds of appeal argue that the judge should have allowed the appeal because the appellant had produced evidence of his dependency.
6. I am unable to agree that the appellant’s appeal should be allowed. In her reasons for refusal the respondent considered the evidence produced by the appellant and found it deficient in three respects:
 - (i) it did not establish that he was related as claimed to his sponsor;
 - (ii) it did not establish prior dependency; and
 - (iii) it did not establish dependency since the appellant’s arrival in the UK.
7. I make two observations on the respondent’s assessment. First, the respondent was fully entitled to find shortcomings in the evidence produced by the appellant. He had not provided his own birth certificate; the money transfers he provided to prove prior dependency did not relate to him but to his father; the documents he produced to show dependency since arrival in the UK related to two addresses, making it uncertain that he was either residing with or dependent on his uncle.
8. Second, the appellant has been afforded an opportunity in the form of a further hearing before me to produce further evidence or seek to provide a satisfactory explanation of the shortcomings identified by the respondent. The appellant has not taken this opportunity. In the absence of any evident perversity in the decision of the respondent, my conclusion can only be that the appellant has failed to discharge the onus of proof on him to show that he was related as claimed or that he was a dependent of his uncle within the meaning of Regulation 8 of the Immigration (European Economic Area) Regulations 2006.
9. For the above reasons:

The decision of the FtT judge is set aside for material error of law.

The decision I re-make is to dismiss the appellant's appeal.

No anonymity direction is made.

Signed

Date: 16 March 2018

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected.

Dr H H Storey
Judge of the Upper Tribunal