



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

**Appeal Number: EA/00182/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 January 2018**

**Decision & Reasons Promulgated  
On 24 January 2018**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**MONICA MATHUR**

**Appellant**

**and**

**ENTRY CLEARANCE OFFICER**

**Respondent**

**Representation:**

For the Appellant:

Mr. M. Symes of counsel, instructed by Global Immigration  
Solutions

For the Respondent:

Mr. S. Kandola, Home Office Presenting Officer

**DECISION AND REASONS**

## **BACKGROUND TO THE APPEAL**

1. The Appellant was born on 20 February 1972, is a national of India. On 18 May 2015 she applied for a family permit as the dependent of her sister in law, Jan Majcherova, who is an EEA national exercising a Treaty right in the United Kingdom. Her application was refused on 26 May 2015 and she appealed on 17 June 2015.
2. Her appeal came before First-tier Tribunal Judges Scott-Baker and Allen on 15 February 2017 but in a decision promulgated on 3 April 2017 they found that they had no jurisdiction to hear her appeal following the decision in *Sala (EFMs: Right of Appeal)* [2006] UKUT 00411 (IAC). The Appellant appealed on 13 April 2017 and First-tier Tribunal Judge Andrew granted her permission to appeal on 13 October 2017 on the basis that in the light of recent case law there was an arguable error of law and that further consideration should be given as to whether there is a valid appeal.

## **ERROR OF LAW HEARING**

3. The Appellant's appeal was originally listed with that of her mother and her father but her mother has now been granted a family permit and her father has sadly died. Therefore, it was only her current Appellant's case that was before me. Both counsel for the Appellant and the Home Office Presenting Officer made very short oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

## **ERROR OF LAW DECISION**

4. The Home Office Presenting Officer requested the Upper Tribunal to stay the appeal until a decision was reached on the Respondent's renewed application for permission to the Supreme Court in the case of *MK v Secretary of State for the Home Department* [2017] EWCA Civ 1755 and the judgment by the Supreme Court in the case of *SM (Algeria)*, which had been heard on 29 November 2017.
5. Paragraphs 3 and 4 of the order made by the Court of Appeal in *MK* stayed the decision that in *MK's* case the decision by the Upper Tribunal would be set aside and the appeal remitted to

the First-tier Tribunal and also stayed the costs order made in favour of the Appellant. However, it did not stay paragraph 1 of the order, which stated that the appeal was allowed or paragraph 2 of the order, which said that permission to appeal to the Supreme Court was refused.

6. Therefore, the substance of the decision in *MK* stands, which was that *Sala* was wrongly decided and that extended family members refused a residence card are entitled to a right of appeal to the First-tier Tribunal under the Immigration (European Economic Area) Regulations. As a consequence, I am bound by that decision as it was made by the Court of Appeal.
7. As a consequence, I find that First-tier Tribunal Judges Scott-Baker and Allen did err in law in their decision.
8. As the substance of the appeal has not yet been re-considered by the First-tier Tribunal, I find that the appeal must be remitted to that Tribunal. It will also be able to address any subsequent decisions reached by the Supreme Court in the cases referred to by the Respondent.

## **DECISION**

- (1) The Appellant's appeal is allowed.
- (2) The appeal is remitted to a First-tier Tribunal Judge other than First-tier Tribunal Judges Scott-Baker and Allen for a *de novo* hearing.

**Nadine Finch**

Signed  
Upper Tribunal Judge Finch

Date 22 January 2018