



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

Appeal Numbers: EA/01449/2016  
EA/01456/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
Oral determination  
hearing  
On 26 February 2018**

**given following**

**Decision & Reasons  
Promulgated**

**On 16<sup>th</sup> March 2018**

**Before**

**UPPER TRIBUNAL JUDGE CRAIG**

**Between**

**ANNABEL [N]  
[O N]  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr E L Anyene, Counsel, instructed by JDS Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are nationals of Nigeria. The first appellant was born on 4 March 1975 and the second appellant, her son was born on 8 January 2005. They lodged notices of appeal against the respondent's decisions dated 6 January 2016 to refuse their applications for permanent residence cards as the extended family members of an EEA national exercising community treaty rights in the United Kingdom. The basis of the application appears to have been that they having been granted temporary residence cards although they were no longer living with the EEA national they were nonetheless entitled to permanent residence

because the reason why they ceased living with the EEA national was as a result of domestic violence.

2. The appeals were heard before First-tier Tribunal Judge Kelly but in a decision on the papers made at Bradford on 15 June 2017 (which decision was promulgated on 20 June 2017) Judge Kelly in a very short decision rejected the appeals “for want of jurisdiction”; he did so adopting the reasoning of the Upper Tribunal in *Sala (EFMs: right of appeal)* [2016] UKUT 00411 in which this Tribunal had held that there was no right of appeal in cases where an applicant was challenging a decision refusing to grant a residence card.
3. This decision has subsequently been overturned by the Court of Appeal in *Khan v SSHD* [2017] EWCA Civ 1755 in which the Court of Appeal concluded that the decision in *Sala* was incorrect and that there is a statutory right of appeal in such circumstances. It follows that the First-tier Tribunal’s decision in this case contains a material error of law and that the decision must now be re-made.
4. In normal circumstances, the appropriate course would be to remit the appeal back to the First-tier Tribunal for reconsideration but in this case, for reasons which I will now give it is not necessary to do so but I can remake the decision myself.
5. Since the decision of the First-tier Tribunal the first appellant Ms [N] was convicted after a trial at the Inner London Crown Court of dishonestly making false representations, which she knew to be false, for which she was sentenced to concurrent terms of eighteen months’ imprisonment. I have been provided with copies of both the indictment and the sentencing remarks of the judge. The offences of which she was convicted were that she had “dishonestly made a false representation”, in both cases that “she represented that she was a homeless wife or partner of Mr Charles [D] a European Economic Area national entitled to accommodation or assistance under Part VII of the Housing Act 1996, which she knew to be false in a material particular, in that her partner/husband was not in fact a European Economic Area national, and therefore they were not entitled” to either accommodation or assistance.
6. As noted, the appellant was convicted of these offences, and in the course of his sentencing remarks, Judge Wright stated as follows:

“My findings are as follows.

Firstly, you came to the UK some time before your son was born in November 2005.

  - 2, You have never had any legitimate status to remain in the UK.
  - 3, The relationship you claim to have with Charles [D] an EEA national never happened. You were never in a relationship with an EEA national at any time.

- 4, Your EEA residence permit, which was issued on 18 January 2011 which expired on 18 January 2016 was issued on the basis of a false representation made by you.
  - 5, There has never been any basis on which that residence permit will be renewed, because you have never been in a relationship with an EEA national.
  - 6, The man, Charles [D] was always your husband [MN], as he admitted on 26 April 2017.
  - 7, Your husband, or ex-husband, with whom you have been living for most of the time you have been in the UK, has also never had any status to remain in the UK.
  - 8, Both you and your husband have made repeated false applications for legitimate status to remain in the UK.
  - 9, Your son, [ON] [the second appellant], may be able to make an application to remain in the UK because his application can only be considered on the basis of the known facts about his parents ... and their lack of legitimate status to live in the UK since his birth.
  - 10, You live with your husband, or your ex-husband and you share care of [ON] between you ...".
7. Having sought instructions and seen a copy of the indictment, from which it is clear that the judge's findings was specifically those which he was entitled to make on the indictment and which followed the verdicts of the jury, on behalf of the appellant, Mr Anyene very properly accepts that there is no basis upon which the appellants' appeals against the refusal of a permanent residence card could possibly succeed. Clearly, in light of the finding made after a trial (and to the criminal standard of proof) that the first appellant had never been entitled to a residence card, she could not possibly be entitled to a permanent residence card, and neither could her son. In these circumstances, although I have to set aside the decision of the First-tier Tribunal as containing a material error of law (because as a matter of procedure the judge was wrong to find as he did that he had no jurisdiction to entertain the appeal), I am able to remake the decision myself, dismissing the appeal for the reasons I have stated.

### **Notice of Decision**

**I set aside the decision of First-tier Tribunal Judge Kelly as containing a material error of law (that he lacked jurisdiction to entertain the appeal) and remake the decision as follows:**

**The appellants' appeals are dismissed.**

No anonymity direction is made.

Signed:

A handwritten signature in black ink that reads "Ken Craig". The signature is written in a cursive style with a large, looped 'C' at the end.

Upper Tribunal Judge Craig

Date: 14 March 2018