



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/01609/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 16th March 2018

Promulgated

On 09th April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR MD SHAHED AHMED CHOUDHURY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hosein

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 20th August 1979. The Appellant applied for a residence card as the extended family member of an EEA national. That application was refused by the Secretary of State on 23rd January 2016. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Mitchell sitting at Taylor House on 5th May 2016. Judge Mitchell following the Upper Tribunal guidance in *Sala (EFMs: right of appeal) [2016] UKUT 00411 (IAC)* held that there was no statutory right of appeal against the decision of the Secretary of State not to grant a residence card to a person claiming to be an extended family member.

Following that decision Judge Mitchell felt he had no alternative but to dismiss the appeal for want of jurisdiction.

2. Grounds of Appeal were lodged to the Tribunal on 18th July 2017. On 20th December 2017 Judge of the First-tier Tribunal Foudy granted permission to appeal reminding herself that the decision in *Sala* had been overturned by the Court of Appeal in October 2017.
3. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed legal representative Mr Hosein. The Respondent appears by her Home Office Presenting Officer Mr Tarlow.
4. I am considerably assisted by the approach of Mr Tarlow in this matter who acknowledges that following the decision of the Court of Appeal that there is jurisdiction for an appeal to be heard in this matter. He thus accepts that there has to be inevitably a material error of law in the decision of the First-tier Tribunal Judge. That is not a criticism of the judge. He was merely following the law as it stood at that time.
5. In such circumstances bearing in mind that there has been no actual hearing of the issues in this matter no application is made for me to proceed on finding a material error of law to rehear the matter. I am asked to remit the matter back to the First-tier Tribunal. This I do along with giving appropriate directions.

Decision and Directions

6. The decision of the First-tier Tribunal Judge contains a material error of law and is set aside. Directions are given hereinafter for the rehearing of this matter.
 - (1) On the finding that there was a material error of law in the decision of the First-tier Tribunal Judge in that the Tribunal is seized with jurisdiction to hear the appeal the decision of the First-tier Tribunal is set aside and the matter is remitted back to the First-tier Tribunal for rehearing.
 - (2) That the appeal be heard at Taylor House on the first available date 28 days hence with an ELH of two hours. The appeal is to be before any Judge of the First-tier Tribunal other than Immigration Judge Mitchell.
 - (3) That there be leave to either party to file and/or serve an up-to-date bundle of both subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.

- (4) That the Appellant's legal representative has indicated that no interpreter is required. In the event that an interpreter is required then the Appellant's legal representatives must notify the Tribunal service within seven days of receipt of these directions.

No anonymity direction is made.

Signed

Date 06 April 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 06 April 2018

Deputy Upper Tribunal Judge D N Harris