



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/01814/2016

**THE IMMIGRATION ACTS**

Heard at: UT(IAC) Birmingham  
On: 03 September 2018

Decision & Reasons Promulgated  
On: 10 September 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

FATOU SYLLA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In Person

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Guinea born on 15 December 1986, appealed against the respondent's decision to refuse to issue her with a residence card under the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations") as the extended family member (partner) of an EEA national.
2. In a decision promulgated on 13 January 2017, Designated First-tier Tribunal Judge McCarthy dismissed the appeal for want of jurisdiction on the basis that the appellant did not have a right of appeal for the reasons given in the case of Sala (EFMs: Right of Appeal) [2016] UKUT 00411. The appellant sought permission to appeal against that decision and on

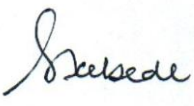
7 December 2017 permission was granted in the Upper Tribunal in light of the judgment in Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755, overturning Sala.

3. In granting permission the Upper Tribunal indicated that it was minded to find an error of law, set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal. Neither party raised any objection to that course, but for some reason the appeal was listed for hearing.

4. Following the agreement of the parties I set aside the decision of Judge McCarthy and have remitted the case to the First-tier Tribunal.

### **DECISION**

5. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge McCarthy.

Signed   
Upper Tribunal Judge Kebede

Dated: 5 September 2018