



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01857/2016
EA/01858/2016
EA/01859/2016
EA/01860/2016

THE IMMIGRATION ACTS

Heard at Field House
On 21st December 2017

Decision & Reasons Promulgated
On 3rd May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

MR. NAIMAT ELAHI RANA
MRS SHAMA NAIMAT
MR AQEEL RANA
MR SHARJEEL RANA
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. M Ilahi, Counsel, instructed by Law Lane Solicitors
For the Respondent: Mr. I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. Mr Naimat Rana is the husband of Mrs Shama Rana. Aqeel Rana and Sharjeel Rana are their two sons, now aged 17 and 15. They applied for an EEA family permit to join Angela Cojacariu in the UK as dependant family members. It is said that Angela Cojocariu is married to Adeel Rana, the son of Mr Naimat Rana and Mrs

Shama Rana. Their applications were refused by the Entry Clearance Officer on 13th January 2016.

2. They appealed the decision to refuse entry clearance to the First-tier Tribunal (“FtT”). On 19th September 2016, the Upper Tribunal published its decision in **Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC)**. The Upper Tribunal held that there is 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. In light of that decision, on 18th March 2017, the Resident Judge at Taylor House, Mr D G Zucker issued directions to the appellant’s and their representatives. Those directions provided the appellant with notice that the Tribunal was minded to place the appeal before a Judge of the FtT, with a view to determining the matter on the papers, for want of jurisdiction. The appellants were given 5 working days after the date of the directions, to set out their reasons why the Tribunal should not proceed as proposed.
3. The matter came before FtT Judge Mitchell on 5th May 2017. The appeals were dismissed for want of jurisdiction for the reasons set out in his decision promulgated on 12th May 2017. At paragraph [6] of his decision, the FtT Judge records that there has been no response from the appellants or their representatives to the directions issued by the Tribunal on 18th March 2017. The appeal before me, is an appeal against the decision of FtT Judge Mitchell promulgated on 12th May 2017.
4. In the grounds of appeal, the appellants acknowledge that they received the directions dated 18th of March 2017. They claim that on 22nd March 2017, a response was sent to the Tribunal as directed, inviting the Tribunal to stay the consideration of the appeal pending a decision from the Court of Appeal in which the Court of Appeal was considering whether **Sala** was correctly decided.
5. Permission to appeal was granted by FtT Judge Lever on 8th November 2017.

6. Before me, Mr Jarvis submitted that the Court of Appeal in **Khan**, directed a stay of its decision that the decision of the Upper Tribunal that there was no valid appeal is set aside, pending the determination of a renewed application for permission to appeal to the Supreme Court. He submits that a renewed application for permission is before the Supreme Court. Mr Jarvis submits that as there remains an issue as to whether the decision in **Sala** was correctly decided, the most appropriate course for me to adopt is that I should adjourn or stay the hearing of the appeal before me, pending any decision of the Supreme Court.
7. Mr Ilahi opposes the application for a stay and submits that the law as it stands is that set out in the judgment of the Court of Appeal in **Khan**. He submits that the underlying decision of the respondent that is the subject of this appeal already dates back to January 2016, and that the appellants cannot be expected to wait indefinitely for the matter to be determined.
8. I refuse the application by the respondent for an adjournment or a stay. Permission to appeal to the Supreme Court was refused by the Court of Appeal. Although the Court of Appeal in **Khan**, directed a stay of its decision, pending the determination of a renewed application for permission to appeal to the Supreme Court, the appeal before me cannot be permitted to drift on indefinitely.
9. It is to be noted that the Court of Appeal in **Khan v SSHD [2017] EWCA Civ 1755**, has found that **Sala** was wrongly decided by the Upper Tribunal. Plainly the Judge of the FfT could not have been aware of the decision in **Khan**, and applied the law as it was thought to be at the time he considered the matter, and dismissed the appeal for want of jurisdiction.
10. However, in light of the decision of the Court of Appeal in **Khan**, I am satisfied that the FfT erred in law in concluding that the FfT had no jurisdiction to consider the appeal. The decision of the FfT Judge is therefore set aside.

11. As to the disposal of the appeal, it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. The effect of the error has been to deprive the appellants of an opportunity for their case to be put to, and considered by the FtT.

Notice of Decision

12. The decision of the FtT involved the making of an error of law such that it is set aside.
13. The appeal is remitted to the First-tier Tribunal for hearing.
14. No anonymity direction is made.

Signed _____ Date 21st December 2017

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

As the appeal was dismissed by the First-tier Tribunal, there was no fee award. I have remitted the appeal back to the First-tier Tribunal. No fee award is made by the Upper Tribunal. This is to be considered by the First-tier Tribunal.

Signed _____ Date 21st December 2017

Deputy Upper Tribunal Judge Mandalia