



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number EA/02389/2016  
EA/02391/2016  
EA/02393/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14<sup>th</sup> February 2018

Decision and Reasons Promulgated  
On 11<sup>th</sup> May 2018

Before

**DEPUTY UPPER TRIBUNAL JUDGE PARKES**

Between

**MD AFZALUR RAHMAN  
MAHMUDA FAHMIN  
MOHAMMED IBTEHAZ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Aslam (Counsel, instructed by PGA Solicitors LLP (Mile End Road))  
For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is the appeal of the Appellants. They had applied for residence cards as the extended family members (EFMs) of an EEA national exercising treaty rights in the UK. That application was made under the EEA Regulations 2006. The appeal was first heard by Judge Saffer at Bradford on the 13<sup>th</sup> of June 2017. He applied the case of Sala (EFMs: right of appeal) [2016] UKUT 411 (IAC) to the effect that in such cases as these there was no right of appeal. He found that there was no jurisdiction to hear the appeals and accordingly the cases were dismissed for want of jurisdiction.

2. The Judge added correctly that the Appellants were erroneously relying on article 8. That has been pursued in the grounds of application to the Upper Tribunal but ignores the decision in Amertymour and others (EEA appeals, human rights) [2015] UKUT 466 (IAC). This case is solely concerned with the position with the position under the EEA Regulations 2006.
3. If the Appellants meet the regulations then the Appellants will succeed. If the Appellants do not meet the requirements of the regulations then by paragraph 5 of the Immigration Rules the Immigration Rules will then apply. In this case in the Refusal Letter there was a requirement for the Appellants to make a paid application for human rights to be considered and that is in accordance with paragraph 400 of the Immigration Rules. That needs to be borne in mind when this case come back before the First-tier Tribunal.
4. The case of Sala was overturned in the case of Khan [2017] EWCA Civ 1755. In that case the Court of Appeal held that the reasoning in Sala was erroneous and that in EFM cases there is a right of appeal. In the circumstances I set aside the decision of Judge Saffer who innocently erred in finding that there was no right of appeal. In remitting this case to the First-tier Tribunal I note that no findings were made on the merits of the appeal and there is no reason that the case cannot be listed before Judge Saffer is he is available.
5. I apologise for the delay in the promulgation of this decision which is the result of a technical issue with my computer failing to save the original version of the decision.

## CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

These appeals are remitted to the First-tier Tribunal for re-hearing on all issues arising under the EEA Regulations 2006. The case can be heard by any Judge.

## Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

## Fee Award

I no fee award which remains for the First-tier Tribunal at the conclusion of the remitted appeal.

Signed:

  
Deputy Judge of the Upper Tribunal (IAC)

Dated: 8 May 2018