



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

Appeal Number: EA/02759/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd March 2018**

**Decision & Reasons
Promulgated
On 26th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**MR ISSIFU SEIDU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Ofei-Kwatia, Counsel instructed by BWF Solicitors
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Ghana whose date of birth is recorded as 4th August 1985. He made application for a residence card pursuant to the EEA Regulations 2006 on the basis of being an extended family member. On 23rd February 2016 the Respondent refused the application and the

Appellant appealed. On 31st January 2017 Designated Judge of the First-tier Tribunal McCarthy sitting at Birmingham dismissed the appeal on the basis of the guidance in the case of **Sala [2016] UKUT 00411** in which the Upper Tribunal had held that there was no basis upon which an application of this sort could succeed before the Tribunal. Subsequently, the Court of Appeal in the case of **Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755** gave judgment to the effect that the reasoning in the case of **Sala** was wrong. Permission to appeal to the Upper Tribunal was granted on that basis by Designated Judge of the First-tier Tribunal Woodcraft on 24th January 2018.

2. Ms Ahmad for the Secretary of State accepts that she cannot resist this appeal. She is right to take that position. Accordingly I find that there was a material error of law. I have to decide whether to remake or remit the decision. As there has been nothing material done by the Tribunal other than to have regard to the guidance in the case of **Sala** it is entirely appropriate for the matter to be remitted to resolve on the merits with findings of fact needing to be made with respect to the nature of the relationship contended for. In those circumstances the matter will be remitted to Birmingham First-tier Tribunal to be heard *de novo*.

Notice of Decision

3. The decision of the First-tier Tribunal contained a material error of law and is set aside to be remade in the First-tier Tribunal.

No anonymity direction is made.

Signed

Date: 23 April 2018



Deputy Upper Tribunal Judge Zucker