



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: EA/03554/2015

EA/03556/2015

EA/03558/2015

THE IMMIGRATION ACT

Heard at Field House

**Decision & Reasons
Promulgated**

On 30th January 2018

On 6th February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mokaddes [H]

Lira [S]

& [A S]

(No anonymity direction made)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellants: No attendance

For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

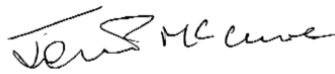
1. The appellants, dates of birth [] 1984, [] 1985 and [] 2013 are all citizens of Bangladesh. Having considered all the circumstances, I do not consider it necessary to make an anonymity direction.
2. There was no attendance by anyone on behalf of the appellant. A letter was received from the appellants, which asked that the matter be adjourned by reason of the fact that the first named appellant was ill and unfit to attend the Tribunal.
3. The appellants are husband, wife and child of a single family unit. The appellants were applying for residence cards as extended family members of an EEA national who was exercising treaty rights in the United Kingdom. The appeal was dealt with by First-tier Tribunal Judge Ferguson, who dismissed the appeal by determination dated 12 May 2017. The appellants are seeking to appeal against that decision. In the first instance I have to determine whether or not there was an error of law in the decision.
4. The respondent's representative asked that the appeal be adjourned pending further consideration of the issues raised in this and other cases of a similar kind by the Supreme Court. I refuse the applications to adjourn as I felt that on the face of the decision for the reasons set out below there were clear errors of law.
5. The appellants had made applications for EEA residence cards as extended family members of an EEA national, who was exercising treaty rights in the United Kingdom. I note that the applications had to be considered under the Immigration (EEA) Regulations 2006. The applications were refused by the respondent by decisions dated 25 November 2015. The appellants sought to appeal against the decisions.
6. The appeals came before Judge Ferguson on the 10th May 2017. The judge dismissed the appeals for want of jurisdiction in accordance with the law as stated in the case of Sala (EFMs: Rights of Appeal) [2016] UKUT 00411.
7. The case of Sala has been overruled in the case of Khan [2017] EWCA Civ 1755. The First-tier Tribunal Judge in following the case of Sala cannot be criticised as he was following the guidance set down by the Upper Tribunal. However given the statement of the law set down in Khan by the Court of Appeal the decision of the judge was legally flawed.
8. For the reasons set out there is an error of law in the decision of the First-tier Tribunal. I set the decision aside.

9. As no findings of fact had been made on the issues in the case the only course is for this matter to be remitted to the First-tier Tribunal to be heard afresh.

Notice of Decision

10. I set aside the original decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal for hearing afresh. The cases to be remitted to be heard afresh at Taylor House.
11. I do not make an anonymity direction.

Signed



Deputy Upper Tribunal Judge McClure

Dated 30th January 2018