



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

Appeal Number: EA/00227/2016

**THE IMMIGRATION ACTS**

**Heard at the Royal Courts of Justice  
On 27 June 2017**

**Oral Decision & Reasons  
Promulgated  
On 17 July 2017**

**Before**

**UPPER TRIBUNAL JUDGE JORDAN**

**Between**

**MR MD MOZAMMIL HUSSAIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms F. Shaw instructed by Hamlet Solicitors LLP  
For the Respondent: Ms K. Pal, Home Office Presenting Officer

**ERROR OF LAW DECISION**

1. The appellant appealed against the determination of First-tier Tribunal Judge Shepherd promulgated on 18 April 2017 in which she made a finding that the appeal should be dismissed for want of jurisdiction. She did so on

the basis that the case fell within the decision of *Sala (EFMs: Right of appeal)* [2016] UKUT 411.

2. It is accepted that this ruling has no relevance to the circumstances of the present case.
3. The applicant had made an application in 2015 for a derivative residence card based on the relationship that he had with his grandmother and on the basis that he was her principal carer in the United Kingdom. A decision was made on 23 December 2015 refusing to issue a derivative residence card. These provisions arise under the general umbrella of the principles outlined in the case of *Zambrano*. It is accepted that in the case of a derivative residence card the principles of *Sala* do not apply and accordingly the judge was wrong in saying that there was no jurisdiction. There is jurisdiction in a case such as this and it was for the judge to determine whether or not the appellant was entitled to a derivative residence card in accordance with the provisions of Regulation 15A of the 2006 EEA Regulations.
4. In those circumstances the sensible course agreed by the parties is for me to find that there was an error of law and to remit the case to the First-tier Tribunal for determination of the appeal against the refusal of the derivative residence card.

I direct that the appeal is remitted for hearing afresh before the First-tier Tribunal and

(i) The witness statements provided in support of the appellant's claim should be filed and served within 28 days from the date of this hearing.

(ii) Up-to-date medical evidence should be filed and served within 42 days from the date of this hearing.

(iii) An interpreter in Sylheti is required.

I suggest that the hearing should take place at Taylor House with a suggested hearing date marked as First Available Date after 49 days.

Date: 13 July 2017

ANDREW JORDAN  
JUDGE OF THE UPPER TRIBUNAL