



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/02979/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
Reasons Promulgated
On 26th March 2018
2018**

**Decision &
On 9th April**

Before

DEPUTY JUDGE FARRELLY OF THE UPPER TRIBUNAL

Between

**MISS STELLA ATIENO OKOTH
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr.E.Ikuazom of Ernst Law Solicitors
For the respondent: Mr.E.Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant is a national of Kenya who, on 14 December 2015, applied for a residence card as confirmation of her right to reside in the United Kingdom further to European Treaty provisions.
2. The application made was on the basis she was an extended family member of a Polish national, Mr Dominik Marcelli Cyngier. In her application she said that they began to cohabit in 2014.

3. It was considered under the Immigration (European Economic Area) Regulations 2006. The respondent was not satisfied she had demonstrated by supporting evidence that they were in a durable relationship. In order to maintain parity with domestic provisions evidence to show they were together for at least two years would be expected.
4. Her appeal was heard before First-tier Tribunal Judge Saffer at Bradford on 7 July 2017. In a decision promulgated on 24 July 2017 the judge found there was no jurisdiction to hear the appeal. This was on the basis of the guidance given in the Upper Tribunal decision of Sala (EFM's: right of appeal) [2016] UKUT 00411.
5. Permission to appeal to the Upper Tribunal has been granted in light of the Court of Appeal decision of Khan -v- SSHD [2017] EWCA Civ 1755 which held that the decision in Sala was wrong.
6. At the hearing, Mr.Tufan, Home Office Presenting Officer acknowledged that the decision of First-tier Tribunal Judge Saffer declining jurisdiction materially erred in law as it is now understood. He helpfully provided me with a copy of the decision of SM (Algeria) -v-ECO [2018] UKSC 9 where the Supreme Court reaffirmed Khan -v- SSHD.
7. Given that an error of law has been accepted the disposal of the appeal requires a fresh hearing before the First-tier Tribunal. Given the factual issues which will have to be decided a remittal is called for.

Decision

The decision of First-tier Tribunal Judge Saffer materially errs in law and is set aside. There are no material facts to preserve. The matter is remitted for de novo hearing before the First tier Tribunal.

Francis J Farrelly

Deputy Upper Tribunal Judge
2018

Date: 6 April