



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

Appeal Number: EA/08616/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19 March 2018**

**Decision & Reasons
Promulgated
On 21 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR SEBATHEEPAN SEBARATNAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. S. Jegarajah, counsel instructed by Greater London Solicitors

For the Respondent: Ms. Z. Ahmad, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Sri Lanka, born on 7.12.87. He appealed against a decision of the Respondent dated 20 June 2016 refusing to grant him a residence card as an extended family member of an EEA national exercising treaty rights in the UK.

2. The appeal came before Judge of the First-tier Tribunal Shaerf for hearing on 3 August 2017 and in a decision dated 6 September 2017 the appeal was dismissed on the basis of a want of jurisdiction in light of the decision of the Upper Tribunal in Sala (EFMs Right of Appeal) [2016] UKUT 00411 (IAC) in which it was held that there was no statutory right of appeal against the decision of the Secretary of State not to grant a residence card to a person claiming to be an extended family member. It was further dismissed on the basis of the judgment in Amirteymour [2015] EWCA Civ 1233.
3. An application for permission to appeal was made in time on 20 September on the basis that the judge erred materially in law in finding that he did not have jurisdiction and should have stayed the appeal pending the outcome in the Court of Appeal of the decision in *Sala*.
4. Permission to appeal was granted to the Upper Tribunal in a decision dated 20 December 2017 by First-tier Tribunal Judge Frankish on the basis that, given Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755 overturns Sala, it follows that an arguable error of law may have arisen and that time should be extended.
5. At the hearing before me, Ms Ahmad helpfully accepted that the judge had erred materially in law in finding a want of jurisdiction. In light of Ms Ahmad's helpful concession it was not necessary for me to hear from Ms Jegarajah.

Notice of Decision

I find that the decision of the First-tier Tribunal contained material errors of law in particular in refusing to hear the appeal for want of jurisdiction. That decision is therefore overturned and the appeal is remitted for a hearing de novo before the First-tier Tribunal.

No anonymity direction is made.

Signed: Rebecca Chapman

Date: 19 March 2018

Deputy Upper Tribunal Judge Chapman