



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

Appeal Number: IA/00973/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19th of February 2018**

**Decision & Reasons Promulgated
On 21st February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR FAHAD ALI
(Anonymity order not made)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: The Appellant appeared in person

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

- 1.** The Appellant is a citizen of Pakistan born on 24th of April 1989. He appeals against a decision of Judge of the First-tier Tribunal Green sitting at Taylor House on 2nd of June 2017 which was to dismiss the Appellant's appeal against a decision of the Respondent dated 19th of January 2016. That decision was to refuse to grant the Appellant a residence card as an extended family member of an EEA national Sponsor.
- 2.** The application was refused by the Respondent pursuant to Regulation 8 (extended family members) of the 2006 EEA Regulations. The Respondent

indicated that she was not satisfied that the Appellant was dependent and/or residing with his EEA Sponsor.

3. On appeal the Judge held that there was no right of appeal against the Respondent's decision following the Upper Tribunal authority of **Sala [2016] UKUT 411**. That decision held that where an applicant was making an application for a residence card under Regulation 8 of the EEA Regulations 2006 as an extended family member the Regulations did not give a right of appeal because there was no entitlement to a residence card by an applicant under Regulation 8, it was a discretionary provision.
4. Subsequently that decision was overturned by the Court of Appeal in the case of **MK (Pakistan) [2017] EWCA Civ 1755**. The Court of Appeal found that on their true construction the 2006 Regulations did provide for a right of appeal for those claiming under Regulation 8. Although the judgement in **MK** was handed down on 9th of November 2017 some five months after the First-tier Tribunal hearing in this case because the decision was to find that the 2006 Regulations had always provided for a right of appeal the First-tier decision in this case was retrospectively invalidated.
5. The Appellant appealed the dismissal of his appeal for want of jurisdiction and permission to appeal was granted by Judge of the First-tier Tribunal Parkes on 13th of December 2017 on the basis of the clarification of the meaning of the 2006 Regulations in **MK**.
6. When the matter came before me to determine whether there was a material error of law in the determination, I indicated that I considered there was because as a result of the decision in **MK** the Judge's decision could not stand. Neither party disputed that.
7. Both parties agreed that the correct course of action was to remit this appeal back to the First-tier Tribunal with no findings preserved for the matter to be re-determined. I therefore set aside the decision of the First-tier Tribunal on the grounds of a material error of law and I remit the case back to the First-tier Tribunal to be reheard with no findings preserved. Any further evidence the Appellant wishes to adduce to support the claim for dependency and/or residence should be filed and served at least 21 days before the First-tier rehearing.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside. I remit the appeal back to the First-tier Tribunal, Taylor House to be reheard by any Judge other than Judge Green.

Appellant's appeal allowed to the extent stated

I make no anonymity order as there is no public policy reason for so doing.

Signed this 19th of February 2018

Judge Woodcraft

Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

I set aside the decision not to make a fee award in this case. That issue will also have to be re-determined by the First-tier.

Signed this 19th of February 2018

Judge Woodcraft
Deputy Upper Tribunal Judge