



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/19438/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester
On 23 May 2017**

**Decision Promulgated
On 24 May 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

DANYAL SHARIF

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: None

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In a decision dated 19 January 2016, the First-tier Tribunal ('FTT') allowed Mr Sharif's appeal against the SSHD's decision dated 15 May 2015 to refuse his application for a residence card as confirmation of his right to reside in the UK as an extended family member ('EFM') of an EEA national under the Immigration (European Economic Area) Regulations 2006 (as amended) ('the 2006 Regulations'). The FTT found the parties to be in a durable relationship.
2. In a decision dated 8 November 2016, Upper Tribunal ('UT') Judge Chalkley allowed the SSHD's appeal against

the First-tier Tribunal's decision. He concluded that the FTT failed to provide adequate reasons for the positive factual findings reached. In particular, Judge Chalkley was concerned that the SSHD raised specific credibility issues in her decision letter but the FTT did not engage with these. The matter was then adjourned to be remade in the Upper Tribunal.

Issues arising

3. In a decision dated 13 June 2016 FTT Judge JM Holmes granted the SSHD permission to appeal on two grounds:
 - (i) the FTT should not have allowed the appeal outright. Regulation 17(4) of 2006 Regulations provides discretion to the SSHD to issue a residence card to an EFM. In Mr Sharif's case the SSHD has not yet considered the exercise of such discretion.
 - (ii) The findings of fact relevant to the conclusion that the parties are in a durable relationship has been inadequately reasoned.
4. As set out above, the UT found there to be an error of law in relation to (ii) above and as such did not address (i).
5. It appears that the representatives before the UT failed to bring an important case to attention of UT Judge Chalkley - Sala (EFMs: Right of Appeal) [2016] UKUT 411 (IAC), 19 August 2016. The headnote of Sala states: *"There is 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."*
6. Mr Sharif applied for a residence card as the EFM of an EEA national with whom he claimed to have a durable relationship. As such, for the purposes of any appeal against the decision, he was an EFM under reg 8(5) of the 2006 Regulations. In these circumstances, Mr McVeety accepted that the FTT did not have jurisdiction to consider the appeal. Indeed, Mr McVeety raised the point at a previous hearing before the UT on 7 February 2017. On that occasion UT Judge Reeds granted Mr Sharif an adjournment to address Sala. There has been no appearance before me by Mr Sharif or his representatives, and Sala has not been addressed.

7. Although this matter was not raised before UT Judge Chalkley, the Sala point entirely relates to the jurisdiction of the FTT, and indeed the UT.

Disposal

8. Mr Sharif has no right of appeal. The FTT had no jurisdiction to hear the appeal. It erred in law in doing so.
9. I set aside the decision to allow the appeal and substitute a decision that there was not a valid appeal before the FTT.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:

23 May 2017