



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: IA/34572/2015**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 November 2017**

**Determination  
Promulgated  
On 19 December 2017**

**Before**

**UPPER TRIBUNAL JUDGE CONWAY**

**Between**

**MD OMAR HARUNI SARKER  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Balroop  
For the Respondent: Mr Nath

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh born in 1988. He appeals against a decision of the Secretary of State made on 17 November 2015 to refuse to issue a residence card as a confirmation of a right to reside in the UK. The decision was made under Regulation 7 of the Immigration (European Economic Area) Regulations 2006. It was considered that he had failed to provide evidence that he is dependent on his EEA national sponsor.
2. He appealed.
3. Following a hearing at Hatton Cross on 4 April 2017 Judge of the First-Tier RL Walker concluded that the appellant had no right of appeal.

4. In summary, he noted that the appellant's wife is a Bangladeshi citizen and that she is a family member of her father's household the father being a Portuguese national. The appellant's relationship to the EEA national is that of son-in-law and father-in-law.
5. As such the appellant cannot satisfy the requirements of being a family member of the EEA national under Regulation 7.
6. It was noted that the application was made on the basis that the appellant was an extended family member and that the respondent had been in error in referring to Regulation 7.
7. He concluded (at [23]):-

“There is no right of appeal against refusal of a Residence Card as an extended family member in accordance with the decision of ***Sala (EFMs - Right of Appeal) [2016]*** UKUT 411”.
8. The appellant sought permission to appeal which was refused. On reapplication to the Upper Tribunal permission was granted on 19 September 2017.
9. At the error of law hearing before me both parties agreed that the matter fell to be decided under Regulation 8. Both parties also agreed that in light of the decision in ***Khan v Secretary of State for the Home Department*** [2017] EWCA Civ 1755 the First-Tier Tribunal was wrong in law to conclude that it did not have jurisdiction to hear the appeal with the result that the decision be set aside. I agreed. As evidence is to be led it is appropriate that it be reheard in the First tier.

### **Notice of Decision**

The decision of the First-Tier Tribunal involved the making of an error on a point of law. It is set aside and in terms of s 12 (2)(b)(i) of Tribunals, Courts and Enforcement Act 2007 and of Practice Statement 7.2, remitted to the First-Tier Tribunal for a fresh hearing before a judge other than FtTJ Walker.

No anonymity order made.

Signed

Date

Upper Tribunal Judge Conway