



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

Appeal Number: EA/02162/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 15 February 2018**

**Decision & Reasons
Promulgated
On 27 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR IBRAHIMA DAHABA MANE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chukwudum

For the Respondent: Mr Naith, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Senegal. He was born on 8 March 1983.
2. He appealed against the respondent's decision dated 21 December 2015 to revoke the appellant's residence card.

3. In a decision promulgated on 17 February 2017, Designated Judge McCarthy (the judge) dismissed the appeal for want of jurisdiction.
4. The judge recited the immigration history. The appellant applied for a residence card as the spouse of an EEA national in April 2012, which application was refused. There was no appeal against that decision, however, the appellant applied again on the basis that he was in a durable relationship with an EEA national. It was on that basis that he was granted a residence card on 14 January 2014 but the respondent revoked that residence card on 8 February 2016 on the grounds that the appellant was no longer in a durable relationship. The appellant had no evidence to show that he was in such a relationship and admitted to the judge that he did not live with his named partner and that they had relationship difficulties.
5. The judge found that there was no evidence on those facts that the appellant was at the date of the EEA decision or currently in a durable relationship such that he no longer benefited from Regulation 7(3) of the 2006 EEA Regulations and as such, he did not have an entitlement to a residence card. For the reasons given by the Upper Tribunal in **Sala [2016] UKUT 00411**, the judge said the appellant did not have a right of appeal.
6. The appellant made application for permission to appeal. He attached no grounds. Designated Judge Woodcraft in a decision dated 23 August 2017 refused permission to appeal. He said at that time, **Sala** remained good law. He found no arguable error of law.
7. The grounds were renewed and on 18 December 2017, Upper Tribunal Judge Macleman said that notwithstanding the absence of grounds and absence of an address for the appellant in light of **Khan [2017] EWCA Civ 1755** he was minded to set aside the judge's decision and remit the case to the First-tier Tribunal. UT Judge Macleman directed that any party opposed to such set aside and remittal was directed to inform the Upper Tribunal with reasons no later than seven days from 18 December 2017. There was no response to the direction.

Submissions on Error of Law

8. Both sides agreed the appeal should be remitted to the First-Tier Tribunal.

Conclusion on Error of Law

9. The judge through no fault of his own, erred in law for the reasons set out in **Khan**. Accordingly, the First-tier Tribunal does have jurisdiction to determine the appeal and therefore the decision to the contrary of the judge is set aside.
10. The appeal be remitted to the First-tier Tribunal to allow substantive consideration of the appeal.

Notice of Decision

11. The making of the decision of the First-tier Tribunal involved a material error of law. I set aside the decision of the First-tier Tribunal and remit the appeal for a de novo hearing.

No anonymity direction is made.

Signed

Date 15 February 2018

Deputy Upper Tribunal Judge Peart