



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

**Appeal Number: EA/03436/2016**

**THE IMMIGRATION ACTS**

**Heard at The Rolls Buildings in London  
On 16 February 2018**

**Decision and Reasons Promulgated  
On 22 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**MR M D AMINUR RAHMAN  
(ANONYMITY NOT DIRECTED)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr A Bashar (Solicitor)  
For the Respondent: Mr P Duffy (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (hereinafter "the tribunal") whereupon it decided he did not have a right of appeal to it from a decision of the Secretary of State refusing to grant him an EEA residence card as an extended family member.
2. The tribunal, although it said it was dismissing the appeal, was actually deciding it did not have jurisdiction because there was no right of appeal and it took that view because of what had been said in a relatively recent decision of the Upper Tribunal in Sala (EFM's: Right of Appeal) [2016] UKUT 00411 (IAC).
3. Before me it was accepted by all parties that it had subsequently authoritatively been determined that Sala had been wrongly decided. It was accepted that the claimant did indeed have a right of appeal to the First-tier Tribunal from the relevant decision of the Secretary of State. Both parties urged me, on that basis, to remit to the First-tier Tribunal and I do so.

4. There will, therefore, be a full hearing of the appeal before the First-tier Tribunal. Such will take place in accordance with the following directions:

- A. The appeal will be heard by the First-tier Tribunal by way of an oral hearing. The claimant shall be provided with a Bengali speaking interpreter. The time estimate for the hearing shall be two hours.
- B. The hearing shall take place before a Judge of the First-tier Tribunal other than Judge Ian Howard or by a Panel of the First-tier Tribunal which does not include Judge Ian Howard. The appeal shall be heard at the Birmingham Hearing Centre since the claimant resides in Birmingham.
- C. These directions may be varied, replaced or supplemented by further directions made by any Salaried Judge of the First-tier Tribunal.

### **Decision**

The First-tier Tribunal's decision to the effect that there was no appeal before it because the claimant did not have a right of appeal is set aside.

The case is remitted to the First-tier Tribunal on the basis that there is a right of appeal and for it to decide that appeal.

I make no anonymity direction since none was sought before me.

Signed:    Date: 16 February 2018

Upper Tribunal Judge Hemingway

### **TO THE RESPONDENT FEE AWARD**

I make no fee award.

Signed:    Date: 16 February 2018

Upper Tribunal Judge Hemingway