



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

Appeal Number: EA/05117/2016

THE IMMIGRATION ACTS

Heard at Field House

On 20 April 2018

**Decision & Reasons
Promulgated
On 23 April 2018**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MISS SAFIYYAH CADER

Appellant

and

ENTRY CLEARANCE OFFICER, PRETORIA, SOUTH AFRICA

Respondent

Representation:

For the Appellant: Mr E Akohene, Afrifa and Partners solicitors

For the Respondent: Mrs Z Kiss, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Zimbabwe. On 31 March 2016, she applied for an EEA family permit to join her aunt who is a Portuguese national residing in the UK. She therefore relies on EU law rights as the extended family members of an EEA national exercising Treaty rights in the UK. Her application was refused by the Respondent on 13 April 2016. The Respondent gave the Appellant a right of appeal.
2. On 29 June 2017, the appeal came before First-tier Tribunal Judge Turquet. By a decision promulgated on 3 July 2017 ("the Decision"), the Judge dismissed the appeals on the basis that there was no valid right of

appeal. She did so in reliance on the case of Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC) ("Sala"). At that time, Sala represented the law on appeal rights for extended family members and, as a reported decision of this Tribunal, the Judge was bound to follow it. However, in the case of Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755, the Court of Appeal held that Sala was wrongly decided. That is now also confirmed by the Supreme Court in SM (Algeria) v Entry Clearance Officer, UK Visa Section [2018] UKSC 9. Sala has therefore been overturned and is no longer good law.

3. Permission to appeal was sought on the sole ground that the Judge was wrong to find that there was no valid right of appeal. Permission to appeal the Decision was granted by First-tier Tribunal Judge Andrew on 25 January 2018 in the following terms:-

"1. The Appellant seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Turquet) who, in a determination promulgated on 3rd July 2017 found that the Appellant had no right of appeal against a decision made by the Respondent to refuse to grant her an EEA family permit.

2. I am satisfied that there is an arguable error of law in this decision in view of the guidance in Khan v SSHD [2017] EWCA Civ 1755."

4. Based on supervening case law, there is a clear error of law in the Decision based on the Judge's finding, premised on Sala, that she had no jurisdiction to decide the appeal. Accordingly, I set aside the Decision.
5. Mr Akohene was initially disposed to argue that I should re-make the Decision. However, having considered the matter and, in particular, that there are no factual findings made at all concerning the Appellant's case, he indicated that the appeal should be remitted. Mrs Kiss for the Respondent did not object to that course.
6. The effect of the error of law was to deprive the Appellant of the ability to have her case considered by the First-tier Tribunal. No factual findings have been made at all on her case. Having regard to paragraph 7.2 of the Practice Statements of the Immigration and Asylum Chambers, I agree that it is appropriate to remit the appeal for re-hearing before a First-tier Tribunal Judge other than Judge Turquet

Decision

I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Turquet promulgated on 3 July 2017 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a different Judge.

Signed 

Dated: 20 April 2018

Upper Tribunal Judge Smith