



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

Appeal Number: EA/00711/2016

THE IMMIGRATION ACTS

Heard at Field House

24 November 2017

**Decision & Reasons
Promulgated**

On 27 November 2017

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**MADIHA BIBI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant is a citizen of Pakistan and appeals against a decision of the respondent dated 31 December 2015 to refuse to issue a residence card as confirmation of a right of residence as an extended family member of an EEA national.
2. In a decision promulgated on 5 April 2017 a judge of the First-tier Tribunal ("FtT) dismissed the appeal for want of jurisdiction, concluding that in the light of *Sala (EFMs: Right of Appeal)* [2016] UKUT 00411 (IAC) the FtT did not have jurisdiction to consider the appeal.

3. Permission to appeal to the Upper Tribunal has been granted, and a hearing date of 21 December 2017 has been fixed. However, the parties are agreed that in the light of the decision of the Court of Appeal in *Khan v Secretary of State for the Home Department* [2017] EWCA Civ 1755, which found that *Sala* was wrongly decided, the First-tier Tribunal Judge (“FtJ”) erred in law in concluding that the FtT had no jurisdiction to consider the appeal.
4. In the circumstances, and in the light of *Khan*, I am satisfied that the FtJ erred in law, that her decision should be set aside and that the appeal be remitted to the FtT for a hearing *de novo*. Plainly the FtJ was unaware of the decision in *Khan*, and applied the law as it was thought to be at the time she considered the matter.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Herlihy.

Upper Tribunal Judge Kopieczek
23/11/17

dated