



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: EA/00314/2016

THE IMMIGRATION ACTS

Heard at Field House

On 26th January 2018

**Decision & Reasons
Promulgated**

On 19th February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR MUHAMMAD FAIZAN KHALID
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 24th April 1988. The Appellant by his solicitors had applied for a residence card as a confirmation of a right to reside in the United Kingdom on 16th July 2016. That application was refused by the Secretary of State in a Notice of Refusal dated 15th December 2017.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal I M Scott sitting at Taylor House on 26th October 2016. The Appellant's appeal under Regulation 26 of the 2006 Regulations was dismissed by the First-tier Tribunal Judge in a promulgation dated 22nd November 2016. Grounds of Appeal were lodged with the Upper Tribunal on 14th November 2017. On 18th December 2017 Upper Tribunal Judge McWilliam granted permission to appeal. The application was granted on

the prospect that in the 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.

3. On 29th December 2017 the Secretary of State filed a reply to the Grounds of Appeal to the Upper Tribunal. The assertion is made therein that whilst the court ordered a stay on the effect of the judgment pending a renewed application for permission to the Supreme Court and (if permission is granted) the determination of the appeal that as an application for permission in *Khan* had now been filed with the Supreme Court, therefore the overturning of the decision in *Sala (EFMs: Right of Appeal) [2016] UKUT 0411 (IAC)*, that is, a refusal to document an extended family member, is not an EEA decision and thus not appealable, that the overturning of *Sala* remained stayed. The ground contended that the same point was under consideration by the Supreme Court in *SM (Algeria)*, which was heard on 29th November 2017 and the Secretary of State therefore asked the Tribunal to adjourn the matter until the matter is resolved or at least until judgment is given in *SM (Algeria)*.
4. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant does not appear, nor do his instructing solicitors. No reason is given for their non-attendance. The Respondent appears by her Home Office Presenting Officer, Mr Bramble.
5. Mr Bramble makes submissions relying and effectively mirroring the Rule 24 response, which, he indicates, represents current Home Office policy.
6. I indicated that I had two options before me. I could either follow the suggested path or I could simply find an error of law and remit the matter back to the First-tier where these issues could be properly argued. In the event that the Supreme Court endorsed the view of the Court of Appeal a substantive hearing could then take place whereas if the Supreme Court up upheld the view expressed by the Upper Tribunal in *Sala* then the First-tier Tribunal would be able to deal with the matter on the basis that there was no jurisdiction. I indicated that the second option was my preferred option in the absence of any blanket stay on such applications.

Decision

In such circumstances I found that the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision. I remit the matter back to the First-tier Tribunal sitting at Taylor House to be heard by a judge other than First-tier Tribunal Judge Scott at a date to be fixed. In view of the position regarding pending appeals in the higher courts I make no specific directions.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 16 February 2018

Deputy Upper Tribunal Judge D N Harris