



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

Appeal Number: EA/00355/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8th February 2018**

**Decision & Reasons
Promulgated
On 2nd March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**MD SHAFIKUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Junior, Lawland Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Md Shafikul Islam against the decision of Judge Henderson sitting at Taylor House on 24th November 2016. The decision, which was promulgated on 2nd December 2016, was to dismiss the appeal for want of jurisdiction.
2. The original application had been brought on the basis that the Appellant was an extended family member of a European Union citizen exercising European Community Treaty rights in the United Kingdom. In the decision of **Sala (Extended Family Members - Right of Appeal) [2016] UKUT**

00411 (IAC), it was held that as an extended family member the Appellant did not have a right of appeal and it was following that decision that Judge Henderson dismissed the appeal.

3. The Appellant appealed on the ground that, amongst other things, the judge made an error of law in concluding that she did not have jurisdiction to hear the appeal. The matter came before Upper Tribunal Judge Plimmer on 15th December 2017 and she directed as follows:
 1. In light of **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.
 2. The Upper Tribunal is minded to find an error of law, to set aside decision of the First-tier Tribunal and remit the case to the First-tier Tribunal.
 3. Any party opposed to this course shall inform the Upper Tribunal in writing with reasons, not later than seven days from the date this decision is sent. Following that period, the Upper Tribunal will issue its decision.
4. I am unclear why the matter has been listed for oral hearing given that I am told that nobody has indicated that they are opposed to the course suggested in paragraph 2 of Judge Plimmer's directions. Be that as it may, it is clearly appropriate that I now make the decision that she was minded to make on the 15th December 2017. I therefore set aside the decision of the First-tier Tribunal for error of law in holding that there was no jurisdiction to entertain the appeal, and remit the matter to the First-tier Tribunal for a complete rehearing.
5. It seems to me that given the rather narrow basis upon which the appeal was dismissed and the consequent absence of any findings upon the substantive merits of the appeal, it may be heard by any judge, including (if convenient) Judge Henderson.

Notice of Decision

The appeal is allowed and is remitted to be heard by any judge sitting at Taylor House.

No anonymity direction is made.

Signed

Date: 26th February 2018

Deputy Upper Tribunal Judge Kelly