



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

Appeal Number: EA/02899/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13<sup>th</sup> February 2018**

**Decision & Reasons  
Promulgated  
On 23<sup>rd</sup> February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**RAMEEZ ALI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No representation

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Kelly of the First-tier Tribunal (the FtT) promulgated on 22<sup>nd</sup> June 2017.
2. The Appellant is a citizen of Pakistan born 14<sup>th</sup> May 1990 who applied for a residence card as the extended family member of an EEA national.

3. The application was refused on 25<sup>th</sup> February 2016 with reference to regulations 8(2) and 17 of the Immigration (European Economic Area) Regulations 2006.
4. The Appellant appealed to the FtT. Although the Appellant requested an oral hearing, the FtT decided the appeal on the papers having notified the parties that it was proposed to deal with the appeal on the papers in the light of the decision in Sala [2016] UKUT 00411 (IAC).
5. On 21<sup>st</sup> June 2017 the FtT, following the decision in Sala, dismissed the appeal for want of jurisdiction, finding that the FtT did not have the jurisdiction to hear an appeal from an extended family member.
6. The Appellant applied for permission to appeal to the Upper Tribunal contending that the FtT should have stayed the proceedings pending the outcome of a reference to the European Court of Justice.
7. Permission to appeal was granted by Judge Chamberlain of the FtT in the following terms;
  1. The Appellant, who is not represented, seeks permission to appeal, in time, against the decision of First-tier Tribunal Judge Kelly who, in a Decision and Reasons promulgated on 22<sup>nd</sup> June 2017, dismissed the Appellant's appeal for want of jurisdiction. The Appellant had appealed against the Respondent's decision to refuse to issue a residence card as an extended family member.
  2. The grounds allege that by refusing to stay the proceedings, the judge fell into a material legal error.
  3. Subsequent to this application being made, the Court of Appeal has held in the case of Khan [2017] EWCA Civ 1755 that a decision to refuse to issue a residence card to an extended family member is an EEA decision and thus can be appealed to the First-tier Tribunal in the ordinary way. The Tribunal has jurisdiction to hear such appeals.
  4. Permission to appeal is granted.
8. Following the grant of permission the Respondent did not submit a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
9. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

### **The Upper Tribunal Hearing**

10. The Appellant did not attend the hearing. I was satisfied that proper notice of the hearing had been given to the Appellant at the last address notified to the Tribunal. There was no application for an adjournment and no explanation for the Appellant's non-attendance. I decided, in the

circumstances, that it was appropriate to proceed and consider whether the FtT had erred in law.

11. Mr Avery submitted that it would be appropriate to adjourn the hearing, to await the decision of the Supreme Court, in Khan. I did not find that to be appropriate. My view was that Khan has been decided by the Court of Appeal, and is binding authority upon the Upper Tribunal and therefore it was appropriate to proceed.
12. I set aside the decision of the FtT and indicated that I would issue a written decision providing reasons.

### **My Conclusions and Reasons**

13. I find that the FtT erred in law. The FtT cannot be blamed, as it was obliged to follow the decision in Sala. However the Court of Appeal in Khan found that Sala was wrongly decided. Therefore the Appellant did have a right of appeal to the FtT against refusal of his residence card application as an extended family member. The FtT erred in law in finding that it did not have jurisdiction.
14. I find the error of law to be material, and the decision needs to be re-made. I have taken into account paragraph 7.2 of the Senior President's Practice Statements. The effect of the FtT error has been to deprive the Appellant of a fair hearing and an opportunity for his case to be put to and considered by the FtT. It is therefore appropriate to remit this appeal back to the FtT to be decided afresh.
15. The parties will be advised of the venue, time and date of the hearing in due course. The appeal is to be heard by an FtT Judge other than Judge Kelly.
16. It should be noted that the Respondent has not submitted a bundle of documents, and a bundle of any documents to be relied upon by the Respondent must be lodged with the FtT at least 28 days before the hearing date. Within the same timescale the Appellant must also lodge any documentation to be relied upon.

### **Notice of Decision**

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT to be heard afresh.

### **Anonymity**

No anonymity direction was made by the FtT. There has been no request for anonymity made to the Upper Tribunal and I see no need to make an anonymity order.

Signed

Date 13<sup>th</sup> February 2018

Deputy Upper Tribunal Judge M A Hall  
**TO THE RESPONDENT**  
**FEE AWARD**

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FtT.

Signed

Date 13<sup>th</sup> February 2018

Deputy Upper Tribunal Judge M A Hall