



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

Appeal Number: EA/03592/2015

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE**

**On 30<sup>th</sup> January 2018**

**Decision and  
Promulgated**

**On 07<sup>th</sup> February 2018**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE  
G A BLACK**

**Between**

**MISS JONABEL SALVANA HACHERO  
NO ANONYMITY ORDER MADE**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Malik (Counsel)

For the Respondent: Mr P Nath (Home Office Presenting Officer)

**DECISION AND REASONS**

1. I shall refer to the parties as “the appellant” and “the Respondent”. This is an error of law hearing to consider whether or not there is a material error of law in the decision the Designated First-tier Tribunal (Judge McCarthy) (“FTT”) promulgated on 4th April 2017 in which he dismissed the appeal for want of jurisdiction.

**Background**

2. The appellant is a citizen of Philippines and she applied for an EEA residence card as an extended family member.

**FTT decision**

3. The FTT followed the decision in **Sala [2016] UKUT 00411 (IAC)** in finding that the 2006 EEA Regulations do not provide a right of appeal to a person relying on Regulation 8 as an extended family member.

**Application for permission to appeal**

4. In grounds it was contended that the FTT erred by following **Sala** which was not binding and/or was wrong and the FTT had jurisdiction to hear the appeal.

**Permission grant**

5. Permission was granted by FTJ Chamberlain who found that there were arguable grounds showing an error having regard to **Khan [2017] EWCA Civ 1755** in which it was decided that a refusal to an extended family member was an appealable decision.

**Discussion and conclusion**

6. Both parties were agreed that the judgment in **Khan** was presently the applicable law. Whilst there was a judgment from the Supreme Court pending, the time scale was not known. I agreed that the most pragmatic course to take was to remit the matter to the First-tier Tribunal for hearing.

**Decision**

7. There is a material error of law in the decision which shall be set aside. The appeal is to be remitted to the First-tier Tribunal at Taylor House (not before DFTJ McCarthy) for a hearing de novo.

Signed

Date 5.2.2018

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

Signed

Date 5.2.2018

GA Black

## Deputy Judge of the Upper Tribunal