



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

Appeal Number: EA/03669/2016

THE IMMIGRATION ACTS

At Field House

On 27 March 2018

**Decision & Reasons
Promulgated**

On 28 March 2018

Before

Upper Tribunal Judge Blum

Between

MITHARSUN NAVANATHAN

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

NOTICE OF DECISION

1. In a decision promulgated on 27.7.17 Judge of the First-tier Tribunal Shimmin concluded that he had no jurisdiction to entertain the appellant's appeal against the respondent's decision dated 15.3.16 to refuse his application for an EEA residence card pursuant to the Immigration (European Economic Area) Regulations 2006. Judge Shimmin's decision relied on the Upper Tribunal decision of Sala [2016] UKUT 0411. This was overturned by the Court of Appeal in Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755.
2. In the notice of decision dated 14.2.18 I indicated that the Upper Tribunal was minded to find an error of law, set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal. If either of the parties was opposed to this course they were directed to inform the Tribunal in writing (giving reasons), not later than 28 days

from the date the Directions were issued. Following that period, the parties were informed that the Upper Tribunal would issue its decision.

3. The Upper Tribunal has not received any correspondence from either party within the stipulated timeframe. In the 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.
4. The Upper Tribunal is consequently satisfied that the First-tier Tribunal's decision is marred by a material legal error (the unlawful view that it lacked jurisdiction).

Notice of Decision

The First-tier Tribunal decision is vitiated by a material error of law. The case is remitted back to the First-tier Tribunal for a fresh (de novo) hearing, before a judge other than judge of the First-tier Tribunal Shimmin.



Signed
Upper Tribunal Judge Blum

Date
27th March 2018