



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

Appeal Number: EA/03717/2015  
EA/03722/2015  
EA/03724/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 7 March 2018**

**Decision & Reasons  
Promulgated  
On 8 March 2018**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**LAILA [A]  
[A H]  
MOHAMMMAD [H]**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M. Hashan, Solicitor

For the Respondent: Ms J. Isherwood, Senior Home Office Presenting Officer

**DECISION PURSUANT TO RULE 39 OF THE TRIBUNAL PROCEDURE  
(UPPER TRIBUNAL) RULES 2008**

1. The appellants are citizens of Bangladesh. They appealed to the First-tier Tribunal (“FtT) against a decision dated 16 November 2015 to refuse residence cards as extended family members of an EEA national. First-tier Tribunal Judge Turquet (“the FtJ”) dismissed the appeals for want of

jurisdiction in the FtT, relying on the decision in *Sala (EFMs: Right of Appeal)* [2016] UKUT 00411 (IAC) to conclude that the appellants did not have a right of appeal.

2. Permission to appeal against the decision of the FtJ having been granted, their appeal came before me.
3. By consent, the parties agreed the following:
  - (i) the FtJ erred in law in her decision in the light of the decision of the Court of Appeal in *Khan v Secretary of State for the Home Department* [2017] EWCA Civ 1755 which found that *Sala* was wrongly decided and that of the Supreme Court in *SM (Algeria) v Entry Clearance Officer* [2018] UKSC 9 which decided that the decision in *Khan* was correct and that *Sala* should be overruled;
  - (ii) that the FtJ's decision should be set aside; and
  - (iii) that the appeal should be remitted to the FtT for a hearing *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Turquet.
4. Having heard the parties, and considering rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make a consent order in the terms expressed in [3] above, considering it appropriate to do so, and thus remitting the appeal to the FtT for a hearing *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Turquet, with no findings preserved.
5. The consent order is as contained herein, no separate document being required.
6. It is as well to remind the parties of what is said in the respondent's decision about the sponsor's Italian identity card having been reported as "invalid". Ms Isherwood was not able to refer me to any evidence that supports the respondent's position in relation to that identity card. Mr Hashan suggested that this is a matter that ought properly to be resolved within the context of the proceedings before the First-tier Tribunal. I make no findings in relation to that issue but it is a matter that will have to be resolved by the First-tier Tribunal.

Upper Tribunal Judge Kopieczek

7/03/18