



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

Appeal Number: EA/07175/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 14th February 2018**

**Decision & Reasons
Promulgated
On 7th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR JAVED KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Pakistan, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 2nd June 2016 to refuse his application for a residence card as the extended family member of an

EEA national under Regulations 8 and 17(4) of the Immigration (EEA) Regulations 2006. Resident Judge Zucker dismissed the Appellant's appeal in a decision promulgated on 27th July 2017 for want of jurisdiction in accordance with the case of **Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC)**. The Appellant appeals against that decision with permission granted by First-tier Tribunal Judge Birrell on 24th December 2017.

2. First-tier Tribunal Judge Birrell granted Permission to Appeal on the basis that, given that **Sala** has since been found to be wrongly decided, the grounds disclose an arguable error of law on the basis of **OM (AA(1) wrong in law) Zimbabwe CG [2006] UKAIT 00077**.
3. At the hearing before me there was no appearance by or on behalf of the Appellant. I was satisfied that the notice of hearing had been sent to the Appellant and his representative at the addresses provided in the application for permission to appeal to the Upper Tribunal. I was therefore satisfied that the Appellant had been notified of the date and time of the hearing and that it was in the interests of justice to proceed with the appeal in accordance with the Tribunal Procedure (Upper Tribunal) Rules 2008.
4. At the hearing Mr Wilding indicated that the Secretary of State agreed that there had been an error of law in relation to this case in light of the decision of the Court of Appeal in the case of **Khan v SSHD [2017] EWCA Civ 1755**. Given that the Appellant, who had requested a consideration of his appeal on the papers in the First-tier Tribunal, had not had any consideration of the substance of his appeal, he considered it appropriate that the case be remitted to the First-tier Tribunal.

Error of Law

5. In light of the decision in **Khan** I am satisfied that the decision of the First-tier Tribunal that it did not have jurisdiction to proceed to hear this appeal was wrong in law.
6. Given that the matters involved in this appeal have not been considered at all by the First-tier Tribunal, I consider it appropriate to remit the appeal to the First-tier Tribunal to be considered afresh.
7. I note that in the Notice of Appeal to the First-tier Tribunal submitted in June 2016 the Appellant indicated that he wanted an oral hearing. Because of the decision in **Sala** a direction was issued to the parties on 14th June 2017 indicating that unless the Appellant put forward reasons why the Tribunal had jurisdiction to hear the appeal the appeal would be determined on the papers. Although the Appellant submitted reasons connected with the pending reference in the case of **Banger (Unmarried Partner of British National) [2017] UKUT 125 (IAC)** it was decided that it was appropriate for the appeal to be heard on the papers and that is what happened.

8. Accordingly, the Appellant has not to date complied with the usual directions as regards the filing of evidence to support his appeal accordingly the Appellant is reminded that it would be appropriate to do so in advance of the rehearing of this matter in the First-tier Tribunal. In these circumstances it is appropriate that the matter should be listed for an oral hearing in the First-tier Tribunal.

Notice of Decision

9. The decision of the First-tier Tribunal contained a material error of law.
10. The decision of the First-tier Tribunal is set aside.
11. The matter is remitted to the First-tier Tribunal to be heard afresh.
12. No anonymity direction is made.

Signed

Date: 7th March 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No award for costs is made as the matter is still outstanding before the First-tier Tribunal.

Signed

Date: 7th March 2018

Deputy Upper Tribunal Judge Grimes