



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

Appeal Number: EA/07222/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 12th February 2018**

**Decision & Reasons Promulgated
On 21st February 2018**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**BEANT SINGH BRAR
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, Direct Access Counsel

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of India who argues that he is entitled to remain in the UK as an extended family member of an EEA national citizen, namely his uncle Gurpiar Singh Brar. His application was refused by the respondent in a decision dated 3rd June 2016. His appeal against the decision was rejected by Designated First-tier Tribunal Judge Shaerf in a determination promulgated on the 3rd August 2017 on

the basis that the First-tier Tribunal had no jurisdiction following the guidance of the Upper Tribunal in the case of Sala (EFMs: Right of Appeal) [2016] UKUT 00411.

2. Permission to appeal was granted by First-tier Tribunal Judge Birrell on the 24th December 2017 the basis that it was arguable that the First-tier judge had erred in law in deciding that there was no jurisdiction as Sala was arguably wrongly decided.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions - Error of Law

4. Mr Karim argued that the decision was clearly wrong in law following the decision of the Court of Appeal in Muhammad Yasir Khan v SSHD [2017] EWCA Civ 1755.
5. Mr Bramble accepted that this was the finding of the Court of Appeal but argued that this appeal should be adjourned pending the decision of the Supreme Court in SM (Algeria) v Entry Clearance Officer which was expected shortly, and which would address the validity of the decision of the Court of Appeal in Khan.

Conclusions - Error of Law

6. I refused to adjourn the hearing as the Upper Tribunal is bound by the decision of the Court of Appeal in Khan, and so it was not appropriate to adjourn the hearing pending the decision in SM (Algeria).
7. The decision of the First-tier Tribunal erred in law in refusing to accept it had jurisdiction to hear this appeal for the reasons set out by the Court of Appeal in Khan, which the Supreme Court upheld in their decision in SM (Algeria) UKSC [2018] 9 at paragraphs 38 - 39.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal that it had no jurisdiction to hear the appeal.
3. I remit the remaking of the appeal to the First-tier Tribunal.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 19th February 2018