



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

Appeal Number: EA/07383/2016

THE IMMIGRATION ACTS

Heard at Field House

**On 14 March 2018
(judgment delivered orally)**

**Decision & Reasons
Promulgated
On 28 March 2018**

Before

**UPPER TRIBUNAL JUDGE GRUBB
UPPER TRIBUNAL JUDGE BLUM**

Between

SAHAR ENNAKHLI

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

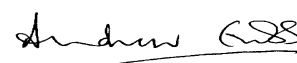
DECISION AND REASONS

1. The appellant in this case is a citizen of Morocco who applied on 7 December 2015 for a residence card as an extended family member of an EEA national under the Immigration (EEA) Regulations 2006 (SI 2006/1003 as amended). That application was refused by the Secretary of State on 16 May 2016 and the appellant appealed to the First-tier Tribunal.
2. The appeal was dealt with on the papers by First-tier Tribunal Judge Rodger on 7 July 2017. In accordance with the decision of the Upper

Tribunal in Sala (EFMs: Right of Appeal [2016] UKUT 411 (IAC), the judge concluded that he had no jurisdiction to hear the appeal as there was no right of appeal under the 2006 Regulations by a person claiming to be an extended family member of an EEA national who had been refused a residence card.

3. Following that, the appellant sought permission to appeal to the Upper Tribunal which was granted by the First-tier Tribunal on 16 January 2018 in the light of the Court of Appeal's subsequent decision in Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755 which had concluded that Sala was wrongly decided and that there was a right of appeal under the 2006 Regulations in the case of a person who claimed to be an extended family member of an EEA national and who had been refused a residence card.
4. The appeal was listed before us today. The appellant did not attend and his representatives on record also did not attend. However in the circumstances we considered it proper to deal with the appeal in their absence without objection from Mr Jarvis who represented the Secretary of State under rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) on the basis that the appellant and his representatives had notice of the hearing and it was in the interests of justice to proceed with it.
5. In the light of the decision in Khan the appellant did indeed have a right of appeal to the First-tier Tribunal against the refusal to grant a residence card to him under the 2006 Regulations.
6. In those circumstances we conclude that the judge erred in law in determining that he had no jurisdiction.
7. We set aside his decision and remit the appeal to the First-tier Tribunal for a substantive hearing before a judge other than Judge Rodger.

Signed



A Grubb
Judge of the Upper Tribunal

26 March 2018