



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: EA/08652/2016

THE IMMIGRATION ACTS

Heard at Field House

On January 19, 2018

**Decision & Reasons
Promulgated**

On January 23, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR FAHMEED SAEED
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Siaw, Legal Representative

For the Respondent: Mr Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity direction.
2. The appellant is a Pakistani national. The appellant applied on January 14, 2016 for a residence card as the extended family member of an EEA national under Regulations 8 and 17 of the Immigration (European Economic Area) 2006. The respondent refused this application on July 5, 2016.
3. The appellant lodged grounds of appeal on July 18, 2016 under Regulation 26 of the 2006 Regulations and Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Khawar (hereinafter called "the Judge") on September 22, 2017 and in a decision promulgated on October 5, 2017 the Judge

found there was no jurisdiction to hear the appeal relying on Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC).

4. The appellant appealed the decision on October 20, 2017. Permission to appeal was granted by Judge of the First-tier Tribunal Chohan on November 1, 2017 on the basis of the Court of Appeal decision in Khan v SSHD [2017] EWCA Civ 1755.
5. The matter came before me on the above date and the parties were represented as set out above.

PRELIMINARY ISSUE

6. Both Mr Nath and Mr Siaw indicated that they had discussed the case and submitted that this appeal should be adjourned pending the decision by the Supreme Court in SM (Algeria) v Entry Clearance Officer which was due to address the rights of appeal to extended family members. The decision was imminent albeit no date for the handing down of the decision had been announced.
7. I indicated to both representatives that I had two options today. I could either follow their suggested path or I could simply find an error in law and remit the case back to the First-tier where these issues could be properly argued. In the event the Supreme Court endorsed the views of the Court of Appeal a substantive hearing could then take place whereas if the Supreme Court upheld the view expressed by the Upper Tribunal in Sala then the First-tier Tribunal would be able to deal with the matter on the basis there was no jurisdiction. I indicated that the second option was my preferred option in the absence of any blanket stay on such applications.
8. Both representatives agreed with my suggestion and I found an error in law for the reason argued in the grounds of appeal.

DECISION

9. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision. I remit the decision to the First-tier Tribunal to be heard by a Judge other than Judge of the First-tier Tribunal Khawar.

Signed

Date 19/01/2018



Deputy Upper Tribunal Judge Alis