



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

Appeal Number: EA/08672/2016

**THE IMMIGRATION ACTS**

**On the papers at Field House  
on 9 April 2018**

**Decision and Reasons  
Promulgated  
On 12 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SALEEM RAZA  
(anonymity direction not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Upon reading the grant of permission to appeal to the Upper Tribunal and upon reading the respondent's email of 9 April 2018

**ERROR OF LAW FINDING AND REASONS**

- 1.** The appellant appeals with permission against a decision of First-tier Tribunal Judge Aziz who, on 28 July 2017, dismissed the appellant's appeal for want of jurisdiction.
- 2.** The appellant has appealed against the respondent's refusal to grant a Residence Card as confirmation of a right of residence in the United Kingdom as an extended family member of an EEA national.

**Error of law**

3. The Judge found the First-tier Tribunal had no jurisdiction in light of the decision in the case of *Sala* [2016] UKUT 00411.
4. Although not before the Judge at the time, the Court of Appeal in the case of *Khan* [2017] EWCA Civ 1755 found that *Sala* was wrongly decided. Although this decision post-dates the determination under challenge it relates to a situation that existed at the date the First-tier Tribunal found as it did, which is in relation to a legal position which has been found to be always unsustainable.
5. The respondent in the email of 9 April 2018 notes that in light of *Khan* and the decision of the Supreme Court in *SM (Algeria)* [2018] UKSC 9, the permission application is not opposed and it is requested the Upper Tribunal deals with the matter under Rule 39 and remits the matter back to the First-tier Tribunal without the need for parties to attend the Initial hearing listed for 10 April 2018.
6. According, I find the First-tier Tribunal erred in law in a manner material to the decision they had no jurisdiction to hear the appeal.
7. The Upper Tribunal sets aside the decision of the First-tier Tribunal, vacates the Initial hearing listed for 10 April 2018 as the same is no longer required, and substitutes a decision remitting the appeal to the First-tier Tribunal to be heard on its merits. The appellant has not yet had the opportunity of an appeal at which proper findings of fact are made by that Tribunal.

**Decision**

8. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to the First-tier Tribunal sitting at Hatton Cross to be heard by a Judge of that Tribunal on its merits.**

Anonymity.

9. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 9 April 2018