



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/10184/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 10 January 2018

On 11 January 2018

Before

UPPER TRIBUNAL JUDGE SOUTHERN

Between

ADEEL TAHIR

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. Mustafa, of Britain, Solicitors

For the Respondent: Ms S. Fijiwala, Senior Home Office Presenting Officer

DECISION

1. The appellant's appeal against a decision of the respondent, made on 16 August 2016, to refuse his application for a residence card as an extended family member of an EEA national exercising Treaty rights in the United Kingdom was dismissed on the basis that it was established by the reported decision in *Sala (EFMs: Right of Appeal)* [2016] UKUT 00411 (IAC) that the tribunal had no jurisdiction to entertain the appeal.
2. It has now been held that *Sala* was wrongly decided and that there was indeed a right of appeal to the First-tier Tribunal against a decision taken pursuant to the Immigration (EEA) Regulations 2006 to refuse such an application. See *Khan v SSHD* [2017] EWCA Civ 1755.

3. The decision under challenge in these proceedings was taken pursuant to the 2006 Regulations and therefore it was an error of law for the First-tier Tribunal to dismiss the appeal for want of jurisdiction.
4. This means that this appeal has not yet begun its journey through the First-tier Tribunal and, as it is agreed between the parties that there is a triable issue to be resolved, the appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined on its merits.

Summary of decision:

In dismissing the appeal for want of jurisdiction the First-tier Tribunal made a material error of law.

The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined on its merits.

Signed



Upper Tribunal Judge Southern

Date: 10 January 2018