



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

Appeal Number: IA/32890/2015

THE IMMIGRATION ACTS

Considered at Newport

**Decision and
Promulgated**

Reasons

On 23 January 2018

On 24 January 2018

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**MUYHAMMAD YABUB TAHIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan. In a decision dated 18 December 2017, I granted the appellant permission to appeal the decision of Judge Birk dated 28 October 2017 who had concluded that the FtT had no jurisdiction to hear his appeal following Sala [2016] UKUT 00411 (IAC) in the following terms:

“1. The First-tier Tribunal (Judge Birk) dismissed the appellant’s appeal against a decision to refuse him a residence card as an extended family member of an EEA national under the Immigration (EEA) Regulations 2006. The basis of the decision was that the FtT had no jurisdiction applying Sala (EFMs – Right of Appeal) [2016] UKUT 00411 (IAC).

2. This application was lodged out of time on 23 November 2017 but shortly after the Court of Appeal overruled Sala in Khan v SSHD [2017] EWCA Civ 1755 (judgment handed down on 9 November 2017).

Although the application should have been filed before 19 May 2015 and so the delay is serious and significant, any application to the UT at the time was very likely to be refused because of Sala. The law has now changed and the FtT did have jurisdiction to hear the appellant's appeal. I acknowledge the importance that time limits be observed. However, I note that the respondent will not suffer any specific prejudice if time is extended. By contrast, the implications for the appellant may be serious. Despite the delay, and given that this application was made promptly after Khan, and applying the overriding objective and considering the proportionality of maintaining the time limit, I consider that, balancing all the circumstances, it is just to extend time.

3. In the light of Khan, the FtT was wrong to conclude that it did not have jurisdiction to hear the appeal.

4. The Upper Tribunal is minded to find an error of law, set aside the decision of the First-tier Tribunal and remit the case to the FtT.

5. A party who opposes this course of action is directed to inform the Tribunal in writing (with reasons), **not later than 7 days from the date this decision is sent** by the Upper Tribunal. Following that period, the Upper Tribunal will issue its decision."

2. My decision was sent to the parties on 3 January 2018. On 12 January 2018, the appellant responded objecting to the appeal being remitted to the FtT rather than being dealt with by the UT. There was no response on file from the respondent when the file was returned to me.
3. No hearing has been requested by either party. Given the nature of the issues, and having regard to the appellant's submissions, I am satisfied that the appeal should be determined without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended)
4. The FtT clearly erred in law in concluding, in line with Sala (now overruled by Khan), that it had no jurisdiction to hear the appeal against the refusal of a residence card as an extended family member. I set that decision aside.
5. Although the appellant contends that the matter should be retained by the UT, there are no findings of fact. There is no valid decision on the substance of the appellant's appeal: the FtT has yet to do so in the light of its conclusion on jurisdiction. It is appropriate that it do so and that the UT should not be the primary, indeed, first judicial body to consider the substance of the appellant's appeal.
6. For these reasons, it is appropriate to remit the appeal to the FtT for the substance of the appellant's appeal to be determined by a judge other than Judge Birk.

Signed

A handwritten signature in black ink, appearing to read "Andrew Grubb", with a horizontal line underneath it.

A Grubb
Judge of the Upper Tribunal

23 January 2018