



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/34884/2015

THE IMMIGRATION ACTS

Heard at Field House
On 12 June 2018

Decision & Reasons Promulgated
On 25 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MUHAMMAD KHURRAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. L. Turnbull, Counsel instructed by Ali Levene LLP
For the Respondent: Mr. T. Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Tsamados, promulgated on 19 April 2017, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant a residence card as confirmation of a right to reside in the United Kingdom as an extended family member.

2. Permission to appeal was granted as follows:

“Pursuant to the decision of the Upper Tribunal in *Sala* [2016] UKUT 411 (IAC), the Judge dismissed the appeal for want of jurisdiction.

The time allowed for applying for permission to appeal to the Upper Tribunal expired on 3 May 2017. This application was filed on 1 November. An application is made for time to be extended.

The Appellant submits that he was advised when the Decision was promulgated but in the light of *Sala* there was no prospect that a further appeal would succeed. However, in the light of the reversal of *Sala* by the Court of Appeal - *Khan* [2017] EWCA Civ 1755 - that is no longer the case.

It is arguable that in finding that the Tribunal had no jurisdiction the Judge erred in law.

The Appellant filed this application promptly when the decision of the Court of Appeal became known. I consider that it is in the interests of justice that time be extended.”

3. The Appellant attended the appeal. Having considered the Rule 24 response and, in agreement with both parties, I set aside the decision and remitted the appeal to the First-tier Tribunal to be remade.

Error of Law

4. In the Rule 24 response the Respondent accepted that the decision should be set aside, and the appeal remitted to the First-tier Tribunal following the decision in Khan.
5. I find that the Appellant had applied for a residence card as the extended family member of an EEA national. The appeal was dismissed for want of jurisdiction in accordance with the case of Sala. Sala was overturned by the case of Khan, and I find therefore that jurisdiction lay with the First-tier Tribunal to hear the appeal.
6. Given that the appeal was dismissed for want of jurisdiction, there was no consideration of the core issue in the appeal, the existence of a durable relationship between the Appellant and Sponsor. I therefore find it is appropriate to remit this appeal back to the First-tier Tribunal to be reheard.

Notice of Decision

7. The decision of the First-tier Tribunal involves the making of a material error of law, and I set the decision aside.

8. The appeal is remitted to the First-tier Tribunal to be remade.
9. No anonymity direction is made.

Signed

Date 22 June 2018

Deputy Upper Tribunal Judge Chamberlain