



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/30469/2015**

Appeal Numbers:

IA/34609/2015

IA/30488/2015

THE IMMIGRATION ACTS

At Field House

On 17 October 2018

**Decision & Reasons
Promulgated**

On 1 November 2019

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

K M S (1)

F D K (2)

A M (3)

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. The appellants are citizens of India whose dates of birth are recorded as 20 April 1976, 23 June 1985 and 22 July 2013 respectively. They made an application to the Secretary of State for an EEA residence card. The applications were refused in a decision dated 27 August 2015, for reasons that I need not set out herein.

Decision of the First-tier Tribunal

2. The appellants lodged an appeal before the First-tier Tribunal. That appeal came before FtT Judge Kimnell, who concluded in a decision sent on 1 February 2017, that the First-tier Tribunal did not have jurisdiction to

determine the appeal. No findings were made in relation to the substance of the appeal. The Judge's conclusion was informed by the guidance given by this Tribunal in Sala [2016] UKUT 00411.

3. The appellants appealed such decision to the Upper Tribunal and FtT Judge Robertson refused permission in a decision sent on 18 August 2017.

Directions by Upper Tribunal

4. On 30 August 2017 the appellants made an application to the Upper Tribunal for permission to appeal. Upper Tribunal Judge Macleman granted permission in a decision sent on 25 September 2018 and indicated that the Upper Tribunal was minded to find an error of law, set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal. If either of the parties was opposed to this course they were directed to inform the Tribunal in writing (giving reasons), not later than 7 days from the date these Directions were sent. Following that period, the parties were informed that the Upper Tribunal would issue its decision.
5. The Upper Tribunal has not received any relevant correspondence from either party within the stipulated timeframe.

Discussion

6. The Court of Appeal has now given consideration to the very issue in play in the instant case - see Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755. The Court concluded that the Upper Tribunal had been wrong in its conclusion and rationale in Sala. It is not in dispute that the effect of the decision in Khan, if applied to this case, is that the First-tier Tribunal was wrong to conclude that it did not have jurisdiction in these appeals.
7. For this reason, I set aside the decision of the First-tier Tribunal and remit the appeals back to the First-tier Tribunal to be heard afresh.

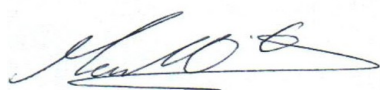
Decision

The decision of the First-tier Tribunal is set aside.

The appeals are remitted to the First-tier Tribunal.

Signed:
2018

Dated: 17 October



Upper Tribunal Judge O'Connor