



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

Appeal Number: EA/00952/2016

THE IMMIGRATION ACTS

Heard at Field House

On 26 January 2018

**Decision & Reasons
Promulgated**

On 28 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MR TAHMID UR RAHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance or representation

For the Respondent: Mr S Staunton, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Ian Howard promulgated on 21 February 2017. Put briefly, the appeal was dismissed on the basis that the Upper Tribunal in **Sala (EFMs: right of appeal) [2016] UKUT 00411** had declared that there was

no statutory right of appeal against the decision of the Respondent not to grant a residence card.

2. As the grounds make plain, the decision in **Sala** has subsequently been overturned and it was on that basis that Judge Plimmer gave permission to appeal and indicated as follows:
 - “1. In the light of Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755 the First-tier Tribunal was wrong in law to conclude that it did not have jurisdiction to hear the appeal.
 2. 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 First-tier Tribunal.
 3. Any party opposed to this course shall inform the Upper Tribunal in writing with reasons, not later than 7 days from the date this decision is sent. Following that period, the Upper Tribunal will issue its decision.”
3. On 29 December 2017, the Secretary of State filed a Rule 24 letter and although it is out of time I take its content fully into account. The Tribunal was invited to stay the appeal on the basis that there are proceedings pending in the higher courts whereby the decision in **Sala** may well be revisited, not least there is reference to the fact that **Khan** may be going to the Supreme Court and that the point is under consideration in **SN (Algeria)**, heard by the Supreme Court in November 2017 with judgment is awaited.
4. The difficulty with that submission is that the Court of Appeal decision in **Khan** is binding on the Upper Tribunal unless and until overturned or declared *per incuriam*. It is not the practice of this Tribunal routinely to stay cases pending further developments in the law. Thus ordinarily the order suggested by Upper Tribunal Judge Plimmer would have been made without further argument.
5. The complication in the current appeal is the non-appearance of the appellant and the absence of any legal representative. That is explained by a letter on the court file received in the Upper Tribunal on 22 January 2018 and on its face copied to the Secretary of State but apparently not yet received. The letter from Hafiz & Haque Solicitors states that attempts have been made to contact the client but have failed to reach him and therefore they have no instructions to represent him.
6. In the circumstances I was satisfied that it was appropriate to proceed with the appeal, notwithstanding the absence of the appellant and the fact he was unrepresented. I intend making the order as heralded by

Judge Plimmer setting aside the decision of the First-tier Tribunal on the basis that there was a clear error of law and remitting it to be heard afresh in the First-tier Tribunal.

7. I direct that this determination be served on Hafiz & Haque Solicitors at the address which is currently on file, albeit from their letter of 22 January 2018 they are no longer on record as acting. I also require that this determination is sent to the appellant at his last known home address which is as follows:

[-]
[-]
[London]

Notice of Decision

- (1) Having found an error of law, the decision of the First-tier Tribunal is set aside
- (2) The appeal is remitted to the First-tier Tribunal at Taylor House to be heard afresh.
- (3) A copy of this decision is to be sent to the solicitors hitherto on record as acting for the appellant with a further copy to the appellant personally at the address stated at paragraph 7 herein.
- (4) No anonymity direction is made.

Signed *Mark Hill*

Date 23 February 2018

Deputy Upper Tribunal Judge Hill QC