



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/02198/2016
EA/02199/2016

THE IMMIGRATION ACTS

At Field House
On 21 May 2018

Decision & Reasons Promulgated
On 24th May 2018

Before

Upper Tribunal Judge O'Connor

Between

ROHENA BEGUM
MD OLIUR RAHMAN MASUD
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. The appellants are nationals of Bangladesh, and are mother and son, born on 03/02/1977 and 28/01/2004 respectively. They made applications to the Secretary of State for EEA residence cards. Their applications were refused in a decision dated 08/02/2016, for reasons that I need not set out herein.

Decision of the First-tier Tribunal

2. The appellants appealed to the FtT. Those appeals came before FtT Judge Bart-Stewart, who concluded in a decision sent on 21/08/2017, that the FtT 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 Andrew granted permission, in a decision sent on 09/02/2018. Thus, the matter comes before me.

Discussion

4. 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 this appeal.
5. For this reason, I set aside the decision of the First-tier Tribunal and remit the appeal back to the First-tier Tribunal to be heard afresh.

Decision

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

The appeal is remitted to the First-tier Tribunal.

Signed:

Dated: 21/05/2018



Upper Tribunal Judge O'Connor