



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

Appeal Number: EA/02513/2016

THE IMMIGRATION ACTS

At Field House

On 12 April 2018

**Decision & Reasons
Promulgated
On 24 April 2018**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR OLABINJO OGUNNOWO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant is a citizen of Nigeria. He seeks to appeal against a decision dated 11th February 2016 to refuse to grant him an EEA residence card.
2. On 19th September 2016 an Upper Tribunal decision was promulgated, namely **Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC)**. That indicated that there was no statutory right of appeal against the decision of the Secretary of State not to grant a residence card to a person claiming to be an extended family member.
3. Thus it was that the First-tier Tribunal, in a decision promulgated on 15th June 2017 by First-tier Tribunal Judge Saffer, indicated that it had no jurisdiction to entertain that matter.
4. It also indicated that, in the light of **Amirteymour and Others (EFA appeals: human rights) [2015] UKUT 00466**, an appeal in respect of

the refusal to grant a residence card did not encompass without more an appeal in respect of human rights. That required a distinct appeal in the proper form.

5. The decision in **Khan v SSHD [2017] EWCA Civ 1755** indicated that the decision in **Sala** was incorrect and that the First-tier Tribunal did indeed have jurisdiction to entertain the appeal. Accordingly, permission to challenge that decision was granted and the matter initially listed in the Upper Tribunal to challenge the decision. It seems to me that that a hearing is unnecessary in all the circumstances.
6. It is clearly a matter in which the decision of the First-tier Tribunal should be set aside so that the substantive appeal in relation to an EEA residence card can be considered by the First-tier Tribunal.
7. Thus the decision of the First-tier Tribunal Judge is set aside and is to be re-made in the light of **Khan**.
8. Costs reserved.

No anonymity direction is made



Signed

Date 12 April 2018

Upper Tribunal Judge King TD