



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/02577/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 10 January 2018

**Decision & Reasons
Promulgated**

On 29 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SHAHRUKH BILAL

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance and no representation

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Maciel promulgated on 6 March 2017.
2. The First-tier Tribunal Judge declined to engage with the facts and issues in the appeal in reliance upon the case of **Sala (EFMs: right of appeal) Albania [2016] UKUT 00411 (IAC)**.
3. The decision in **Sala** has since been overturned in the Court of Appeal in the case of **MK v Secretary of State for the Home Department [2017] EWCA Civ 1755**. The effect is that it is now conceded by the

Respondent by way of a Rule 24 response dated 14 November 2017 that the decision of the First-tier Tribunal should be set aside for error of law and the appeal be re-made by way of a hearing before the First-tier Tribunal with all issues under the EEA Regulations at large. (It does seem to me that the appeal can indeed be heard by any Judge including Judge Maciel who, not having engaged in any of the facts and issues, is not in any way disqualified from now looking at the case afresh. Notwithstanding this observation, it may well be that Listing may wish to consider putting the case in front of a different Judge.)

4. I should add for completeness that on the facts of this particular case the application for permission to appeal was lodged very shortly out of time. The grant of permission to appeal does not identify this, and indeed records that the application for permission to appeal was in time. An explanation was offered in the grounds of appeal for the slight delay by reference to a misunderstanding as to whether the time for lodging the appeal was 14 days or 28 days. In the event, the appeal was lodged well within the 28 day period that the Appellant had mistakenly understood applied to him. The Secretary of State takes no point in this regard before me, and in all of the circumstances it seems to me that it is entirely appropriate that time be treated as extended. Accordingly, the matter is disposed of in the terms indicated.

Notice of Decision

5. The decision of the First-tier Tribunal is vitiated for error of law.
6. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge with all issues at large.
7. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **26 January 2018**

Deputy Upper Tribunal Judge I A Lewis