



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

Appeal Number: EA/02913/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 22 February 2018**

**Decision & Reasons
Promulgated
On 26 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

**SAAD AHMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Lazar, Highland Solicitors

For the Respondent: Mr C Avery, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal issued on 22 June 2017 dismissing his appeal against the respondent's decision made on 24 February 2016 refusing his application for a residence card as the extended family member of an EEA national exercising treaty rights in the UK.

2. The appellant is a citizen of Pakistan born on 25 May 1989. He entered the UK on 8 September 2010 as a Tier 4 student. On 3 September 2015 he applied for a residence card as confirmation of a right to reside in the UK as the extended family member of an EEA national. His application was refused for the reasons set out in the respondent's decision.
3. The appellant appealed against this decision and his appeal was allocated for a decision on the papers on 21 June 2017. In the light of the decision of the Upper Tribunal in Sala (EFMs: Right of Appeal) [2016] UKUT 411, the judge found that he had no jurisdiction to hear the appeal.
4. However, in Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755, the Court of Appeal held that there was jurisdiction to hear an appeal against an extended family member decision. This has been confirmed by the Supreme Court in SM (Algeria) v Entry Clearance Officer [2018] UKSC 9.
5. In the light of these judgements, Mr Avery conceded that the First-tier Tribunal did have jurisdiction to hear the appeal and had erred in law by holding to the contrary. Both representatives accepted that the proper course would be for the appeal to be remitted to the First-tier Tribunal for a full hearing.

Decision

6. The First-tier Tribunal erred in law and the decision that there was no jurisdiction to hear the appeal is set aside. The appeal is remitted to the First-tier Tribunal sitting at Taylor House for reconsideration by a full hearing on the merits.

Signed: H J E Latter
February 2018

Dated: 22

Deputy Upper Tribunal Judge Latter