



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/03131/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Determined at Field House
on 14 February 2018**

Promulgated

**Decision & Reasons
on 16 February 2018**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**NASEEM FAKIRI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. In a decision promulgated on 14 July 2017 Judge of the First-tier Tribunal Saffer concluded that he had no jurisdiction to entertain the appellant's appeal against the respondent's decision dated 7 March 2016 to refuse his application for an EEA residence card pursuant to the Immigration (European Economic Area) Regulations 2006. Judge Saffer's decision relied on the Upper Tribunal decision of Sala [2016] UKUT 0411. This was overturned by the Court of Appeal in Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755.
2. In directions issued on 29 January 2018 Upper Tribunal Judge Pitt indicated that the Upper Tribunal was 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. If either of the parties was opposed to this course they were directed to inform the Tribunal in writing (giving reasons), not later than 7 days from the date the Directions were

issued. Following that period, the parties were informed that the Upper Tribunal would issue its decision.

3. The Upper Tribunal has not received any correspondence from either party within the stipulated timeframe, although it notes letters sent by the appellant's solicitors dated 21 November 2017 and 19 January 2018 to similar effect to the Judge Pitt's directions. 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.
4. The Upper Tribunal is consequently satisfied that the First-tier Tribunal's decision is marred by a material legal error (the unlawful view that it lacked jurisdiction).

Notice of Decision

The First-tier Tribunal decision is vitiated by a material error of law. The case is remitted back to the First-tier Tribunal for a fresh (de novo) hearing, before a judge other than judge of the First-tier Tribunal Saffer.



14 February 2018

Signed
Upper Tribunal Judge Blum

Date