



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/03543/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 12th February 2018**

**Decision & Reasons
Promulgated
On 5th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**NAVEED ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. At the outset of the proceedings before me, Ms Everett on behalf of the Respondent applied for an adjournment of this matter. This was on the basis that the proceedings be stayed pending a decision in the Supreme Court wherein the Respondent was seeking to challenge the principle set out in **Khan v SSHD [2017] EWCA Civ 1755**. I refused the application as I considered that I was bound by the principle in **Khan** and therefore I would proceed to make a decision on the instant matter. Ms Everett made no further submissions.

2. The Appellant's appeal against a decision of the Respondent, made on 11th March 2016, to refuse his application for a residence card as an extended family member of an EEA national exercising treaty rights in the United Kingdom was dismissed by the First-tier Tribunal. This was on the basis that it was established by the reported decision in **Sala (EFMs: right of appeal) [2016] UKUT 00411 (IAC)** that the Tribunal had no jurisdiction to entertain the appeal.
3. It has now been held that **Sala** was wrongly decided. There is indeed a right of appeal to the First-tier Tribunal against decisions taken by the Respondent refusing applications pursuant to the Immigration (EEA) Regulations 2006 (see **Khan** above).
4. The decision under challenge in the present proceedings was taken pursuant to the 2006 Regulations. Therefore it follows it was an error of law for the First-tier Tribunal to dismiss the appeal for want of jurisdiction.
5. This means that the appeal has not yet started its process through the First-tier Tribunal and therefore there remains outstanding a triable issue which needs to be resolved. The appeal to the Upper Tribunal is allowed therefore to the extent that the appeal is remitted to the First-tier Tribunal to be determined fully on its merits.

Decision

In dismissing the appeal for want of jurisdiction the First-tier Tribunal materially erred in law.

The appeal to the Upper Tribunal is therefore allowed to the extent that this appeal is remitted to the First-tier Tribunal (not Judge Saffer) to be determined on its merits.

No anonymity direction is made.

Signed
2018

C E Roberts

Date

26 February

Deputy Upper Tribunal Judge Roberts