



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/03917/2015**

Appeal Numbers:

EA/03925/2015

EA/03928/2015

EA/03931/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd February 2018**

**Decision & Reasons
Promulgated
On 25th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR ABDUL WAQAR - 1st Appellant
MS KASHMALA GUL - 2nd Appellant
UF - 3rd Appellant
AB - 4th Appellant
(ANONYMITY ORDERS NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Ahmed of Counsel
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

The Proceedings

1. The Appellants are all citizens of Pakistan. The first Appellant was born on 20th of March 1983 and the 2nd Appellant was born on 7th of September 1984. They are married to each other and the 3rd and 4th Appellants are their children born on 4th of March 2012 and 17th of October 2014 respectively. The 1st Appellant entered the United Kingdom as a student in July 2010 and the 2nd Appellant joined him here as a student dependent in June 2011. She gave birth to both children in this country. In June 2015 the Appellants applied for residence cards on the grounds that the 1st Appellant's maternal uncle, a Belgian citizen, had supported him financially in Pakistan and continue to support him financially in the United Kingdom. The Appellants were also members of the uncle's household in this country.
2. The applications were refused by the Respondent on 7th of December 2015 because there was said to be insufficient evidence of prior and present dependency upon an EEA national sponsor and insufficient evidence of membership of the household of that EEA national sponsor.
3. The Appellant's appeal against that decision came before Judge of the First-tier Tribunal Monson sitting at Taylor House on 16th of March 2017. He found that there was no right of appeal against the Respondent's decision following the Upper Tribunal authority of **Sala [2016] UKUT 411**. That decision held that where an applicant was making an application for a residence card under Regulation 8 of the EEA Regulations 2006 as an extended family member the Regulations did not give a right of appeal because there was no entitlement to a residence card by an applicant under Regulation 8, it was a discretionary provision.
4. Subsequently that decision was overturned by the Court of Appeal in the case of **Khan [2017] EWCA Civ 1755**. The Court of Appeal found that on their true construction the 2006 Regulations did provide for a right of appeal. Although the judgement in Khan was handed down on 9th of November 2017 some seven months after the First-tier Tribunal hearing in this case because the decision was to find that the 2006 Regulations had always provided for a right of appeal the First-tier decision in this case was retrospectively invalidated.
5. Following the dismissal of the appeals for want of jurisdiction the Appellants had appealed that decision and permission to appeal was granted by Judge of the Upper Tribunal Jordan on 19th of December 2017 on the basis of the clarification of the meaning of the 2006 Regulations in **Khan**.
6. When the matter came before me to determine whether there was a material error of law in the determination, I indicated that I considered there was (because of the decision in **Khan**) and neither party disputed that. Both parties agreed that the correct course of action was to remit this appeal back to the First-tier Tribunal with no findings preserved for the matter to be re-determined. I therefore set aside the decision of the First-

tier Tribunal on the grounds of material error of law and I remit the case back to the First-tier Tribunal to be reheard with no findings preserved.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside. I remit the appeal back to the First-tier Tribunal to be reheard by any Judge other than Judge Monson.

Appellant's appeal allowed to the extent stated

I make no anonymity order as there is no public policy reason for so doing.

Signed this 2nd of February 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

I set aside the decision not to make a fee award in this case. That issue will also have to be re-determined by the First-tier.

Signed this 2nd of February 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge