



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/06137/2016

THE IMMIGRATION ACTS

Heard at Field House  
On the 6<sup>th</sup> February 2018

Decision & Reasons Promulgated  
On the 3<sup>rd</sup> July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

ZAIN NADEEM  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Mustafa of Counsel, instructed via Direct Access  
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Zain Nadeem, who had applied for a residence card on the basis that he was an extended family member under the Immigration (European Economic Area) Regulations of 2006.

2. The application was refused, he appealed and that appeal was heard by Designated Judge Shaerf without a hearing at Taylor House on the 24<sup>th</sup> August last year. In a decision promulgated on the 29<sup>th</sup> August he applied the case of Sala to the effect that there was no right of appeal under the Regulations for somebody in the Appellant's position. Accordingly he declined to consider the merits of the appeal and found that there was no appeal for want of jurisdiction.
3. The Appellant sought to appeal that decision on the basis that the case of Sala was wrongly decided. There is now a further Court of Appeal decision. The case of Khan [2017] EWCA Civ 1755 confirmed that the case of Sala was incorrectly decided and that the Appellant would in circumstances such as these have a right of appeal.
4. Accordingly the Judge erred in law by finding as he did that there was no jurisdiction and I set aside that decision. There has been no consideration of the merits of this appeal and accordingly I remit this decision to the First-tier Tribunal to be heard by a Judge other than Judge Shaerf and the Appellant will have to submit further updated evidence to show what the position is at the date of the next hearing.
5. I apologise for the delay in the promulgation of this decision. There was an administrative issue which had not been brought to my attention until recently and which I have now corrected.

#### NOTICE OF DECISION

The appeal is allowed and the decision of the First-tier Tribunal is set aside. The appeal is remitted to the First-tier Tribunal to be re-heard on all matters, not before Judge Shaerf.

No anonymity direction is made.

Signed



Date 22<sup>nd</sup> February 2018

Deputy Upper Tribunal Judge Parkes

Fee Award

The appeal has been remitted to the First-tier Tribunal, the issue of a fee award remains an issue for the First-tier Tribunal at the conclusion of the appeal.

Signed



Date 22<sup>nd</sup> February 2018

Deputy Upper Tribunal Judge Parkes

Re-signed



Date 1<sup>st</sup> July 2018

Deputy Upper Tribunal Judge Parkes