



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/06160/2016

**THE IMMIGRATION ACTS**

Decision & Reasons Promulgated  
On 28 June 2018

BEFORE

UPPER TRIBUNAL JUDGE O'CONNOR

Between

THUVARAHA KIRUBAKARAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**DECISION AND REASONS**

**Introduction**

1. The appellant is a national of Sri Lanka born 27.11.1990. She made an application to the Secretary of State for an EEA residence card. The application was refused in a decision served on 7.5.16, for reasons that I need not need to set out herein.

**Decision of the First-tier Tribunal**

2. The appellant lodged an appeal before the FtT. That appeal came before FtT Judge Shimmin, who concluded in a decision promulgated 23.6.17, that the FtT did not have jurisdiction to determine the appeal. No findings were made in relation to the substance of the appeal. The Judge's conclusion was informed by the guidance given by this Tribunal in Sala [2016] UKUT 00411.

3. The appellant appealed such decision to the Upper Tribunal and FtT Judge Mailer granted permission. Thus, the matter comes before me.

### **Discussion**

4. The Court of Appeal has now given consideration to the very issue in play in the instant case - see Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755. The Court concluded that the Upper Tribunal had been wrong in its conclusion and rationale in Sala. It is not in dispute that the effect of the decision in Khan, if applied to this case, is that the First-tier Tribunal was wrong to conclude that it did not have jurisdiction in this appeal.
5. For this reason, I set aside the decision of the First-tier Tribunal and remit the appeal back to the First-tier Tribunal to be heard afresh.

### **Decision**

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal.

Signed

Date 19<sup>th</sup> June 2018



Upper Tribunal Judge O'Connor