



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/07236/2016

THE IMMIGRATION ACTS

Heard at Field House

On 14 February 2018

**Decision & Reasons
Promulgated
On 8 March 2018**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**MR EDMOND AHMETAJ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Presenting Officer

For the Respondent: Mr M Rashid, instructed by Carlton Law Chambers

DECISION AND REASONS

(Decision delivered orally on 14 February 2018)

Introduction

1. The appellant is a citizen of Albania, born 8 August 1984. He made an application to the Secretary of State for an EEA residence card, as the extended family member of Viera Jaupi - the appellant's niece and a national of Slovakia, who was said to be exercising EU treaty rights in the United Kingdom. Such application was made pursuant to Regulations 8 and 17(4) of the Immigration (EEA) Regulations 2006. The application was refused on 6 June 2016 for reasons that I need not set out herein.

Decision of the First-tier Tribunal

2. An appeal was lodged to the First-tier Tribunal against the decision of the 6 June. This came before Resident Judge Zucker on 25th July 2017, who decided it without a hearing in a decision sent out two days later. Judge Zucker concluded, following the guidance given by this Tribunal in Sala [2016] UKUT 00411, that the First-tier Tribunal had no jurisdiction.
3. The appellant appealed such decision to the Upper Tribunal. First-tier Tribunal Judge Birrell thereafter granted permission, thus the matter comes before me.

Discussion

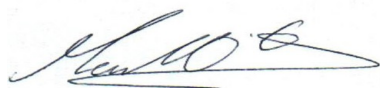
4. Prior to the grant of permission, but not referred in the grant of permission, the Court of Appeal considered the very issue in play in the instant case - see Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755. The Court concluded that the Upper Tribunal had been wrong in its conclusion 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 on its substantive merits.
6. I also observe that this appeal is physically linked, and ought to be linked in terms of the hearing date, with the appeal referenced as EA/07238/2016. I am told that that appeal has a hearing date set for the 12 June at Taylor House. It may be that I do not have power to direct the First-tier Tribunal to hear the two appeals together but if I do, then I so direct. If I do not have such power then I make the observation that it seems to me eminently sensible, given the interrelated facts of the cases, that they are heard on the same day by the same judge.

Decision

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

The appeal is remitted to the first-tier Tribunal.

Signed:

A handwritten signature in black ink, appearing to be 'H. W. B.', written over a light blue horizontal line.

Upper Tribunal Judge O'Connor
2018

Date: 8 March