



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

Appeal Number: EA/08395/2016

THE IMMIGRATION ACTS

Heard at Field House

On 3 April 2018

**Decision &
Promulgated
On 5 April 2018**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**MD. NURUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Ahamed of RMS Immigration Ltd.

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Designated First-tier Tribunal Judge Shaerf promulgated on 9 August 2017.
2. The First-tier Tribunal Judge declined to engage with the facts and issues in the appeal in reliance upon the case of **Sala (EFMs: right of appeal) Albania [2016] UKUT 00411 (IAC)**, dismissing the appeal for want of jurisdiction.

3. The decision in **Sala** has since been overturned in the Court of Appeal in the case of **MK v Secretary of State for the Home Department [2017] EWCA Civ 1755**. Mr Clarke readily conceded on behalf of the Respondent that the decision of the First-tier Tribunal should be set aside for error of law and the appeal be re-made by way of a hearing before the First-tier Tribunal with all issues under the EEA Regulations at large. Ms Ahamed indicated that this was the outcome sought by the Appellant.
4. I observe that it seems to me that the appeal can now be heard by any Judge - including Judge Shaerf who, not having engaged in any of the facts and issues, is not in any way disqualified from now looking at the case afresh. Notwithstanding this observation, it may be that Listing may wish to consider putting the case in front of a different Judge.

Notice of Decision

5. The decision of the First-tier Tribunal is vitiated for error of law.
6. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge with all issues at large.
7. No anonymity direction is sought or made.

Signed:

Date: **3 April 2018**

Deputy Upper Tribunal Judge I A Lewis