



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

Appeal Number: EA/08872/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 28 November 2018**

**Decision & Reasons  
Promulgated  
on 30 November 2018**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**GULSHANA BEGUM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Bhuiyan, of Universal Solicitors

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. In a decision promulgated on 10 August 2017 Judge of the First-tier Tribunal Herlihy concluded that she had no jurisdiction to entertain the appellant's appeal against the respondent's decision dated 16 June 2016 to refuse her application for an EEA Family Permit pursuant to the Immigration (European Economic Area) Regulations 2006. Judge Herlihy's decision relied on the Upper Tribunal decision of **Sala** [2016] UKUT 0411. This was overturned by the Court of Appeal in **Khan v Secretary of State for the Home Department** [2017] EWCA Civ 1755.

2. In the light of **Khan** the First-tier Tribunal was wrong in law to conclude that it did not have jurisdiction to hear the appeal.
3. The Upper Tribunal is consequently satisfied that the First-tier Tribunal's decision is marred by a material legal error (the unlawful view that it lacked jurisdiction).

**Notice of Decision**

**The First-tier Tribunal decision is vitiated by a material error of law. The case is remitted back to the First-tier Tribunal for a fresh (de novo) hearing, before a judge other than judge of the First-tier Tribunal Herlihy.**



28 November 2018

Signed  
Upper Tribunal Judge Blum

Date