



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

Appeal Number: EA/09765/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 23 February 2018**

**Decision & Reasons
Promulgated
On 16 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MR IFTA KHAIRUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Salim, Legal Representative.

For the Respondent: Mr L Tarlow, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh who made application for a Residence Card as confirmation of a right to reside in the United Kingdom as the extended family member of a person exercising "Treaty rights" in the United Kingdom pursuant to Regulation 8 and 17(4) of the Immigration (European Economic Area) Regulations 2006. That application was refused and he appealed and in a decision promulgated on 27 July 2017 Resident Judge of the First-tier Tribunal Zucker dismissed the appeal for want of jurisdiction.

2. The Appellant sought permission to appeal which was granted.
3. Thus the appeal came before me today.
4. On 9 November 2017 in **Khan v SSHD and Anor** [2017] EWCA Civ 1755 the Court of Appeal held that **Sala** was wrongly decided and that a decision to refuse admission or a Residence Card to an extended family member is an “EEA decision” within the meaning of the above mentioned 2016 Regulations and therefore attracts a right of appeal.
5. On this basis both representatives agreed that Resident Judge of the First-tier Tribunal Zucker had materially erred and that the appeal should be remitted to the First-tier Tribunal to be heard afresh.
6. That is an analysis that I share.

Decision

The making of the decision of the First-tier Tribunal involved the making an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Court and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Resident Judge of the First-tier Tribunal Zucker.

No anonymity direction is made.

Signed

Date 16 March 2018.

Deputy Upper Tribunal Judge Appleyard