



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

Appeal Numbers: EA/10610/2016
EA/10611/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 26 April 2018**

**Decision & Reasons Promulgated
On 04 May 2018**

**SABINA YEASMIN & IBRAHIM JAHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. The appellants are citizens of Bangladesh, born 01.01.1985 and 12.01.1978 respectively. They each made an application to the Secretary of State for an EEA residence card. The application was refused in a decision served on 17.8.16, for reasons that I need not need to set out herein.

Decision of the First-tier Tribunal

2. The appellants lodged appeals before the FtT. The appeals came before FtT Judge Martin who concluded in a decision dated 08.08.2017 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 appellants appealed such decision to the Upper Tribunal and FtT Judge Andrew 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 appeals back to the First-tier Tribunal to be heard afresh.

Decision

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

The appeal are remitted to the First-tier Tribunal.

Signed:

Dated: 26.4.18



Upper Tribunal Judge O'Connor