



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

Appeal Number: EA/10631/2016
EA/10638/2016
EA/10640/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 28th February 2018**

**Decision & Reasons Promulgated
On 2nd March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**ADNAN [M]
ASIFA [A]
[A A]**

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER (PAKISTAN)

Respondent

Representation:

For the Appellant: M-R Solicitors, South Woodford

For the Respondent: Ms Fujiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants, who are a family of three and are citizens of Pakistan, appealed against a decision of the Respondent, made on 2nd August 2016 refusing their applications for residence cards as extended family members of an EEA national exercising treaty rights in the United Kingdom. Their appeals were dismissed by the First-tier Tribunal. This was on the basis that it had been established by the reported decision in

Sala (EFMs: right of appeal) [2016] UKUT 00411 (IAC) that the Tribunal had no jurisdiction to entertain the appeals.

2. It has now been held that **Sala** was wrongly decided. There is indeed a right of appeal to the First-tier Tribunal against decisions taken by the Respondent refusing applications pursuant to the Immigration (EEA) Regulations 2006, as decided by the Court of Appeal in **Khan v SSHD [2017] EWCA Civ 1755**.
3. The decision under challenge in the present proceedings was taken pursuant to the 2006 Regulations. Therefore it follows that it was an error of law for the First-tier Tribunal to dismiss the appeals for want of jurisdiction.
4. This means that these appeals have not yet started their process through the First-tier Tribunal and therefore there remain outstanding triable issues which need to be resolved. The Appellants' appeals to the Upper Tribunal are therefore allowed to the extent that the appeals are remitted to the First-tier Tribunal to be determined fully on their merits. Both representatives who appeared before me were in agreement that this is the proper course.

Decision

In dismissing the appeals for want of jurisdiction the First-tier Tribunal materially erred in law.

The appeals to the Upper Tribunal are therefore allowed to the extent that these appeals are remitted to the First-tier Tribunal (not Judge S J Clarke) to be determined on their merits.

No anonymity direction is made.

Signed
2018

C E Roberts

Date

01

March

Deputy Upper Tribunal Judge Roberts