



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/11192/2016

THE IMMIGRATION ACTS

Heard at Field House
On 25 May 2018

Decision & Reasons Promulgated
On 31st May 2018

Between

ROSALIO POS GARCIA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Guatemala born on 4 June 1999. He made an application to the Secretary of State for an EEA residence card. The application was refused in a decision dated 2 September 2016, for reasons that I need not set out herein.

Decision of the First-tier Tribunal

2. The appellant lodged an appeal before the First-tier Tribunal. That appeal came before Upper Tribunal Judge Martin, who concluded in a decision sent on 8 August 2017, that the First-tier Tribunal 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 appellant appealed such decision to the Upper Tribunal and Upper Tribunal Judge Martin granted permission in a decision sent on 21 March 2018. 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 appeal back to the First-tier Tribunal to be heard afresh.

Decision

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

The appeal is remitted to the First-tier Tribunal.

Signed:

Dated: 25 May 2018



Upper Tribunal Judge O'Connor