



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

Appeal Number: EA/04484/2018

**THE IMMIGRATION ACTS**

**Decision made at Field House  
On 2 March 2020**

**Decision & Reasons Promulgated  
On 10 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**USMAN AHMED MALIK  
[ANONYMITY DIRECTION NOT MADE]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Moffatt promulgated 23.8.19, dismissing his appeal against the decision of the Secretary of State to refuse his application made on 23.9.16 for an EEA Residence card, pursuant to the Immigration (EEA) Regulations 2016.
2. As explained in my decision promulgated 13.2.20, following the decision of the Court of Appeal in Khan [2017] EWCA Civ 1755, out of time, the appellant sought to appeal the respondent's decision of 23.3.17 which, in reliance on Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC), purported to refuse a right of appeal.
3. The appellant applied to the First-tier Tribunal for permission to appeal out of time, which was granted by Judge Shanahan on 17.7.18. However, it appears that Judge Shanahan may have misunderstood the decision which the appellant sought to challenge and assumed that it was the later

decision of the respondent, dated 8.2.18. Permission having been granted and time extended, the First-tier Tribunal also misunderstood the decision under challenge, with Judge Moffatt believing it to be the later decision of 8.2.18.

4. Subsequently, the appellant sought to appeal the decision of the First-tier Tribunal on the basis that the judge was considering the wrong decision. Had the error been spotted sooner, it is likely that the First-tier Tribunal would have set its decision aside and reconsidered the application for an extension of time to appeal the decision of 23.3.17, and, if extension/permission granted, the substantive decision in the appeal.
5. In my decision and directions promulgated 13.2.20, on the renewed application to the UT for permission to appeal, I indicated that my preliminary view was that the decision of the First-tier Tribunal should be set aside for error of law and the matter remitted to the First-tier Tribunal for reconsideration of the application for an extension of time to appeal the decision of 23.3.17 and for a substantive decision on the correct decision under challenge. I directed that absent any written objection within 14 days, the Upper Tribunal would proceed to determine the appeal without an oral hearing and remit the matter to the First-tier Tribunal as indicated. No response has been received.
6. In the circumstances and for the reasons explained above, I set aside the decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal, on the basis that the First-tier Tribunal Judge made a decision in respect of a decision of the respondent that was not under challenge and failed to address the decision against which the appellant had appealed to the First-tier Tribunal. This is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

*Decision*

7. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal.



**Signed**

**Upper Tribunal Judge Pickup**

