



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

Appeal Number: EA/01950/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd April 2018**

**Decision & Reasons Promulgated
On 12 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR KHALID MAHMOOD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Rana, Counsel

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 4th January 1972. The Appellant had applied for a residence card on the basis that he is an extended family member who has been dependent on his EEA national Sponsor/a dependent member of his EEA national Sponsor's household and continues to be so in the UK. His application was considered in accordance with Regulation 8(2) of the Immigration (EEA) Regulations 2006 and was refused on the basis that the Appellant sought a residence card as confirmation of a right to reside by Notice of Refusal dated 12th October 2015.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Cohen sitting at Taylor House on 2nd August 2017. In a decision and reasons promulgated on 10th August 2017 the appeal was dismissed for want of jurisdiction on the basis that the Tribunal considered the decision under appeal to be one to which the guidance in the case of *Sala (EFMs: right of appeal) [2016] UKUT 00411 (IAC)* applied.
3. On 24th August 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 1st February 2018 Judge of the First-tier Tribunal Beach granted permission to appeal.
4. It is on that basis that the appeal comes before me. The Appellant appears by his instructed Counsel Mr Rana. The Secretary of State appears by her Home Office Presenting Officer Mr Wilding.
5. It is accepted by both legal representatives that the decision in *Sala* was overturned by the decision of the Court of Appeal in *Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755* which confirmed that an extended family member did have the right of appeal to the First-tier Tribunal as an extended family member under the Immigration (European Economic Area) Regulations 2006.
6. Consequently through no fault of his own the judge in following *Sala* made an error of law. This matter has never been aired before the Tribunal. In such circumstances it is agreed by both legal representatives that the correct approach is to set aside the decision and to remit the matter back to the First-tier Tribunal for rehearing.

Notice of Decision

- (1) On finding that the decision of the First-tier Tribunal discloses a material error of law the decision of the First-tier Tribunal is set aside.
- (2) The appeal is remitted back to the First-tier Tribunal sitting at Taylor House with an ELH of two hours to be heard before any judge of the First-tier Tribunal other than Immigration Judge Cohen.
- (3) That there be leave to either party to file and/or serve a copy of such objective and/or subjective evidence upon which either party relies at least seven days prior to the restored hearing.
- (4) That an Urdu interpreter do attend the restored hearing.

No anonymity direction is made.

Signed

Date 11 April 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 11 April 2018

Deputy Upper Tribunal Judge D N Harris