



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

Appeal Number: EA/02051/2016

THE IMMIGRATION ACTS

Heard at Field House

On 5th February 2018

**Decision & Reasons
Promulgated**

On 21st February 2018

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**HARIS ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Hussain, Solicitor

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Kelly promulgated on 20 June 2017, in which the Appellant's appeal against the decision to refuse to issue him with an EEA Residence Card dated 28 January 2017 was dismissed for want of jurisdiction on the basis of the Upper Tribunal's decision in Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC).

2. Permission to appeal was sought on the basis that the reasoning in Sala, (which in substance was itself under further challenge), should not apply to the Appellant. Permission to appeal was granted by Judge Chamberlain on 23 November 2017 pursuant to the Court of Appeal's decision in Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755.
3. At the hearing, I indicated that the appeal should be allowed, the decision set aside and the appeal remitted to the First-tier Tribunal for determination given the decision in Khan confirmed that the First-tier Tribunal did have jurisdiction to hear an appeal against the refusal of an EEA Residence Card for an extended family member. The Home Office Presenting Officer indicated the Respondent's view that Khan was wrongly decided and subject to an application for permission to appeal to the Supreme Court.
4. Following the hearing, the Supreme Court handed down judgement in SM (Algeria) v Entry Clearance Officer, UK Visa Section [2018] UKSC 9 which expressly approved the decision in Khan. There can be no further doubt that the First-tier Tribunal has jurisdiction to determine appeals such as the present one where the decision was made under the Immigration (European Economic Area) Regulations 2006 and it was an error of law for the First-tier Tribunal to dismiss this appeal for want of jurisdiction.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal for a de novo hearing.

No anonymity direction is made.

Signed
2018



Date 16th February

Upper Tribunal Judge Jackson