



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/02295/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 18 April 2018

**Decision &
Promulgated**

On 27 April 2018

Reasons

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**OLUWATOYIN YINKA ADEBAYO
(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 Nigeria, born 28 April 1969. He made an application to the Secretary of State for an EEA residence card. The application was refused in a decision served on 27 October 2015, for reasons that I need not need to set out herein.

Decision of the First-tier Tribunal

2. The appellant lodged an appeal before the FtT. That appeal came before FtT Judge Zucker, who concluded in a decision dated 5 January 2017, that the FtT 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 UT Judge Deans, sitting as a Judge of the FtT, refused permission, decision dated 2 May 2017.

Directions made by the Upper Tribunal

4. Following a further application to appeal to the Upper Tribunal, Upper Tribunal Judge Kebede granted permission, decision dated 16 March 2018.
5. UT Judge Kebede indicated that the Upper Tribunal was minded to find an error of law, set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal. If either of the parties was opposed to this course they were directed to inform the Tribunal in writing (giving reasons), not later than 7 days from the date the Directions were issued. Following that period, the parties were informed that the Upper Tribunal would issue its decision.
6. The Upper Tribunal has not received any correspondence from either party within the stipulated timeframe.

Discussion

7. 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.
8. 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.

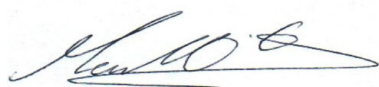
Decision

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

The appeal is remitted to the First-tier Tribunal.

Signed:

Dated: 18th April 2018



Upper Tribunal Judge O'Connor