



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

Appeal Number: EA/02582/2015

THE IMMIGRATION ACTS

Heard at Field House

Decision &

Reasons

On 13 March 2018

Promulgated

On 28 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MR KAFIL UDIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Appearance.

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

DECISION AND REASONS

1. The Appellant did not attend today's hearing. I took account of the overriding objective and recognising that he had been served with notice of the hearing decided to proceed in his absence.
2. The Appellant is a citizen of Bangladesh who made application for a Residence Card as confirmation of a right to reside in the United Kingdom as the extended family member of a person exercising "Treaty rights" in the United Kingdom pursuant to the Immigration (European Economic Area) Regulations 2006. That application was refused and he appealed

and in a decision promulgated on 23 February 2017 Judge of the First-tier Tribunal Miles dismissed the appeal for want of jurisdiction.

3. The Appellant sought permission to appeal which was granted.
4. Thus the appeal came before me today.
5. On 9 November 2017 in **Khan v SSHD and Anor [2017] EWCA Civ 1755** the Court of Appeal held that **Sala** was wrongly decided and that a decision to refuse admission or a Residence Card to an extended family member is an “EEA decision” within the meaning of the Above-mentioned Regulations and therefore attracts a right of appeal.
6. On this basis Mr Wilding conceded the appeal and invited me to remit the appeal to the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Miles.

No anonymity direction is made.

Signed

Date 25 March 2018.

Deputy Upper Tribunal Judge Appleyard