



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/02720/2015**

Appeal Number:

THE IMMIGRATION ACTS

At Field House

On 19th February 2018

**Decision & Reasons
Promulgated**

On 22nd February 2018

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

MOHAMMED MASUM BILLAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant sought to appeal the respondent's decision dated 03 November 2015 to refuse to issue a residence card as the extended family member of an EEA national. At the date when the appellant lodged the appeal there was a right of appeal to the First-tier Tribunal against the decision under The Immigration (European Economic Area) Regulations 2006 ("the EEA regulations 2006").
2. The appeal was listed for hearing before the First-tier Tribunal on 30 January 2017. There was no appearance by or on behalf of the appellant or on behalf of the respondent. First-tier Tribunal Judge Manyarara ("the judge") proceeded to determine the appeal in a decision promulgated on 09 February 2017.
3. In a four-page decision the judge outlined the relevant case of *Sala (EFMs: Right of Appeal)* [2016] UKUT 00411, which was applicable at the time. She gave reasons to explain her conclusion that there was no valid appeal before the First-tier Tribunal.

4. Upper Tribunal Judge O'Connor granted permission to appeal against the decision in light of the subsequent decision in *Khan v SSHD* [2017] EWCA Civ 1755 (affirmed by the Supreme Court in *SM (Algeria) v ECO* [2018] UKSC 9) in which the Court of Appeal concluded that *Sala* was wrongly decided. The Upper Tribunal was minded to find an error of law, set aside the First-tier Tribunal decision and remit the case to the First-tier Tribunal subject to any further representations made by either party within seven working days of the order. The Upper Tribunal does not appear to have received any written objections from the parties in response to this direction.
5. Although the judge headed the decision "No Valid Appeal" and it was sent out under cover of a standard notice referring to rule 22 of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 I am satisfied that the decision is of the kind identified by the Tribunal in *Ved and another (appealable decisions; permission applications; Basnet)* [2014] UKUT 150 and *Abiyat and others (rights of appeal) Iran* [2011] UKUT 00314, which has a right of appeal to the Upper Tribunal. The matter was determined by a judge with full reasons and was appealable to the Upper Tribunal.
6. In the absence of any objection to the course of action proposed by Upper Tribunal Judge O'Connor I find that the First-tier Tribunal decision involved the making of an error of law because *Sala* has been found to be wrongly decided.
7. The case will be remitted to the First-tier Tribunal for a fresh hearing and the hearing date listed in the Upper Tribunal for 28 February 2018 will be vacated.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside and the case remitted to the First-tier Tribunal for a fresh hearing

The hearing listed in the Upper Tribunal on **28 February 2018** will be vacated

Signed  Date 19 February 2018
Upper Tribunal Judge Canavan