



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

Appeal Number: EA/02859/2015

**THE IMMIGRATION ACTS**

**On the papers at Field House**

**Decision & Reasons  
Promulgated  
On 7 March 2018**

**On 23 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MD ASADUZZAMAN MIA  
(anonymity direction made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**On the papers**

**DECISION AND REASONS**

1. On 10 March 2017 First-tier Tribunal Judge Thew, when considering the appellant's appeal against the respondent's refusal to grant a residence card as an extended family member of an EEA national exercising treaty rights in the United Kingdom, dismissed the appeal for want of jurisdiction.
2. The Judge relied upon the decision of the Upper Tribunal of *Sala [2016] UKUT 411* for which, at that time, the Judge cannot be criticised.

3. The appellant sought permission to appeal which was refused by another judge of the First-tier Tribunal but renewed the application to the Upper Tribunal. In an order dated 18 December 2017 Upper Tribunal Judge Jordan granted permission to appeal given that the Court of Appeal in *Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755* had found that *Sala* was wrongly decided.
4. Judge Jordan gave directions for the respondent to serve and file a response to the grant of permission within twenty-one days confirming whether the respondent agrees that the determination was in error, that the determination should be set aside and the determination remade by the first-tier Tribunal. Judge Jordan noted that if the respondent considers this can be dealt with by consent there will be no need for a hearing in the Upper Tribunal and an order will be made to that effect.
5. There is no trace of a response being received from the Secretary of State and accordingly the matter came before me as Duty Judge on the 29 January 2018. A further direction was made and sent to the parties, in the following terms:

“Upon there being no response from the Secretary of State to [2] of the direction of Upper Tribunal Judge Jordan contained in the grant of permission to appeal dated 18 December 2017, the following direction shall apply to the further conduct of this appeal:

  1. Unless the Secretary of State by 4 PM 9 February 2018 responds to the direction of Upper Tribunal Judge Jordan and, in addition, confirms whether she has any objection to the Upper Tribunal finding a material error of law in the manner identified in the grant of permission and remitting the appeal to the First-tier Tribunal to be heard afresh without further hearing and/or receiving further evidence, the Upper Tribunal shall proceed on the basis the Secretary of State has no objection to such a proposed course of action and shall determine the merits of the appeal on the papers in accordance with the grant of permission remitting the same to the First-tier Tribunal to be considered afresh.
  2. The appeal shall be referred to Upper Tribunal Judge Hanson for further consideration on the first available date after 10 February 2018.”
6. The matter has been referred in accordance with that direction. There is still no response from the Secretary of State to the direction of either Upper Tribunal Judge Jordan or the direction of the 29 January 2018 set out above. Whilst it is appreciated the Secretary of State has, to some extent, reserved her position in relation to *Sala* pending an application for permission to appeal to the Supreme Court against that decision, in *SM (Algeria) (Appellant) v Entry Clearance Officer, UK*

*Visa Section (Respondent) [2018] UKSC 9* the Supreme Court found that *Sala* had been wrongly decided.

7. Accordingly, for the reasons set out in the grant of permission of Upper Tribunal Judge Jordan I find the Judge of the First-tier Tribunal has erred in law in a manner material to the decision that Tribunal did not have jurisdiction to hear the appeal. I set that decision aside and remit the appeal to the First-tier-Tribunal to be heard on its merits.

**Decision**

8. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of that Judge. I remit the appeal to the First-tier Tribunal sitting at Taylor House to be considered on its merits.**

Anonymity.

9. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Hanson

Dated the 23 February 2018