



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

Appeal Numbers: EA/03332/2015  
EA/03333/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 February 2018**

**Determination  
Promulgated  
On 27 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MURRAY**

**Between**

**MRS SHAHINOOR KHAN SHANTA  
MR AHMAD TAFIN  
(ANONYMITY DIRECTIONS NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Aslam, Counsel for PGA Solicitors, London  
For the Respondent: Mr Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Bangladesh born on 31 December 1989 and 30 October 1983. They appeal against the decision of the respondent dated 23 November 2015 refusing to issue each of them a residence card under the Immigration European Economic Area Regulations 2006 as extended family members of an EEA national exercising Treaty Rights in

the United Kingdom. Their appeals were heard by Judge of the First-Tier Tribunal Callow on 25 April 2017. The appeals were dismissed for want of jurisdiction in a decision promulgated on 8 May 2017.

2. An application for permission to appeal was lodged. Permission was granted by Judge of the First-Tier Tribunal Ford on 14 November 2017. The Permission states that the Court of Appeal in ***Khan*** [2017] AWCA Civ 1755 has overturned the case of ***Sala*** [2016] UKUT 00411 (IAC). Khan states that there should be a right of appeal to extended family members of an EEA national exercising Treaty Rights in the UK. It was because of the decision in Sala that the appeal was dismissed. The Permission states that it is arguable that the claims should not have been dismissed.
3. There is a Rule 24 response by the respondent dated 24 December 2017. This states that while the Court of Appeal in the said case of ***Khan*** has overturned ***Sala***, permission has been sought to appeal to the Supreme Court and the Court of Appeal have imposed a stay on the effect of the Judgement, pending the outcome of that application. The same point is also being considered separately by the Supreme Court in ***SM*** (Algeria) which was heard at the end of November 2017 and the respondent therefore contends that ***Sala*** still remains good law. The response states that the respondent is seeking that the appeals be adjourned and not listed until the outcome of the above application and permission to appeal is decided or the Supreme Court's decision in ***SM*** is promulgated.
4. The response goes on to state that it is trite law that the First-Tier Tribunal Judge has no jurisdiction to consider the Article 8 element of the appellant's appeal. Reference is made to ***Amirteymour -v- The Secretary of State for the Home Department*** [2017] EWCA Civ 353.

### **The Hearing**

5. Counsel for the appellants submitted that as the case of ***Sala*** has been overturned these claims should be remitted to the First-Tier Tribunal. He submitted that they should not be adjourned to await decisions in the said cases of ***Khan*** and ***SM***.
6. The Presenting Officer relied on the Rule 24 response and sought an adjournment until the said cases of ***Khan*** and ***SM*** have been decided.
7. The Tribunal policy in these cases is that an adjournment should not be granted for these reasons and that failed claims based on the said case of ***Sala*** should be remitted to the First-Tier Tribunal for a re-hearing on all issues. That is what I am directing as the decision dismissing the appeals for want of jurisdiction, can no longer stand.

### **Notice of Decision**

8. I direct that the decision of the First-Tier Tribunal is set aside. None of its findings are to stand other than as a record of what was said on that

occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to remit the claims to the First-Tier Tribunal for an entirely fresh hearing.

9. The members of the First-Tier Tribunal chosen to consider these cases are not to include Judge Callow.
10. Anonymity has not been directed.

Signed

Date 23 March 2018

Deputy Upper Tribunal Judge Murray