



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/03797/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 18 January 2018

**Decision & Reasons
Promulgated**

On 12 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MR EVANS AKOGU AMANA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: M A Consultants

For the Respondent: Mr Tarlow, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nigeria, born on 14 May 1971. He appeals to the Upper Tribunal with permission from Judge of the First-tier Tribunal Brunnen given on 13 October 2017. Judge Brunnen decided that the reason for deciding the appeal to the First-tier Tribunal against the appellant (based on the case of **Sala [2016] UKUT 416 (IAC)**) was arguably wrong. Accordingly, Judge Brunnen granted permission to appeal to the Upper Tribunal.

2. The Upper Tribunal was referred to the case of **Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755** by Mr Tarlow, who represents the respondent. According to that case **Sala** was wrongly decided. In **Khan** the Court of Appeal decided the First-tier Tribunal had jurisdiction to hear an appeal from a refusal by the Secretary of State to issue a residence card, for example, to an extended family member. The appellant in this case claims to have established a relationship with a Polish national called Teresa Baleyzer. Having established such a relationship, the appellant applied for a permanent resident card and, following refusal, appealed to the First-tier Tribunal.
3. At the hearing I was shown a fax of 23 November 2017 from the appellant's representatives, Messrs M A Consultants, indicating that they were in receipt of correspondence from the Home Office confirming that there was no objection to the matter being remitted back to the First-tier Tribunal for a fresh hearing. This was, presumably, in the light of the decision of the Court of Appeal in the case of **Khan**. The fax records that in her Rule 24 response the respondent has indicated that she does not oppose the application for permission to appeal to the First-tier Tribunal. I understand from Mr Tarlow that the basis for the consensual remittal of this matter is that the case of **Khan**, to which reference has been made.
4. I take into account the fact that there was no hearing before the First-tier Tribunal, and certainly no hearing on the merits, the appeal being dealt with on the papers. It is clear to me having regard to the case of **Khan** that there was a material error by the First-tier Tribunal in determining that there was no right of appeal. I therefore find a material error of law in the decision of the First-tier Tribunal. It will be necessary to hold a *de novo* hearing in front of any judge of the First-tier Tribunal.
5. I therefore direct that this matter be remitted to the First-tier Tribunal to be heard by any judge of that tier. All additional directions will be made by the First-tier Tribunal.

Notice of Decision

The appeal is allowed.

I direct that the appeal against the decision of the respondent to refuse to issue a residence card be remitted to the First-tier Tribunal.

No anonymity direction is made.

Signed

Date 07 February 2018

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award but have decided to make no fee award

Signed

Date 07 February 2018

Deputy Upper Tribunal Judge Hanbury