



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/06707/2016

THE IMMIGRATION ACTS

Heard at Field House
On 13 March 2018

Decision & Reasons Promulgated
On 27 March 2018

Before

UPPER TRIBUNAL JUDGE WARR

Between

MD IQBAL HUSAIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bhuiyal (Universal Solicitors)

For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 8 March 1990. He appeals the decision of the Secretary of State on 27 May 2016 to refuse to issue an EEA residence card to him as an extended family member. The appellant's appeal came before a First-tier Judge on 14 August 2017 on the papers. The judge, applying the decision of the Tribunal in Sala (EFMs: Right of Appeal) [2016] UKUT 0041 (IAC) found she had no jurisdiction in the matter and dismissed the appeal.

2. The appellant applied for permission to appeal and permission was granted on 23 January 2018 in the light of the decision of the Court of Appeal in **Khan v Secretary of State** [2017] EWCA Civ 1755. Since permission was granted the Supreme Court in **SM (Algeria)** [2018] UKSC 9 confirmed the decision in **Khan** and stated that **Sala** should be overruled (paragraph 39 of the judgment). At the hearing before me the representatives agreed in the circumstances that there should be a fresh hearing before a different First-tier Judge.
3. In the light of the agreed position between the parties I find that the First-tier Judge erred in law, although she cannot be criticised for applying the decision in **Sala**. In the circumstances the appeal must, as the parties requested, be remitted for a fresh hearing before the First-tier Tribunal. The appeal should be heard by a different First-tier Judge.

Notice of Decision

4. The First-tier Judge materially erred in law.
5. I remit the appeal for a fresh hearing.
6. The First-tier Judge made no anonymity order and I make none.

TO THE RESPONDENT **FEE AWARD**

The First-tier Judge made no fee award and in the circumstances I consider it premature to make an award. An award can be considered when the case is finally determined.

Signed

Date 27 March 2018

G Warr, Judge of the Upper Tribunal