



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/07102/2016

THE IMMIGRATION ACTS

At Field House
On 21 May 2018

Decision & Reasons Promulgated
On 24th May 2018

Before

Upper Tribunal Judge O'Connor

Between

**JITENDRAKUMAR LALLUBHAI AHIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. The appellant is a citizen of India, born on 25/07/1980. He made an application to the Secretary of State for an EEA residence card. The application was refused in a decision dated 06/06/2016, for reasons that I need not set out herein.

Decision of the First-tier Tribunal

2. The appellant lodged an appeal before the FtT. That appeal came before FtT Judge Zucker, who concluded in a decision sent on 21/08/2017 that the FtT did not have jurisdiction to determine the appeal. No findings were made in relation to the substance of the appeal. The Judge's conclusion was informed by the guidance given by this Tribunal in Sala [2016] UKUT 00411.

3. The appellant appealed such decision to the Upper Tribunal and FtT Judge Martin refused permission, in a decision sent on 27/10/2017.

Decision and Directions by the Upper Tribunal

4. The appellant appealed such decision to the Upper Tribunal and Upper Tribunal Judge Grubb granted permission, in a decision sent on 30/01/2018.
5. In the same decision, Upper Tribunal Judge Grubb indicated that the Upper Tribunal was minded to find an error of law, set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal. If either of the parties was opposed to this course they were directed to inform the Tribunal in writing (giving reasons), not later than 7 days from the date the Directions were issued. Following that period, the parties were informed that the Upper Tribunal would issue its decision.
6. The Upper Tribunal has not received any relevant correspondence from either party within the stipulated timeframe. In a letter received on 14/02/2018, the appellant has simply requested that his appeal be heard together with that of his spouse, Jaynaben Ahir.

Discussion

7. The Court of Appeal has now given consideration to the very issue in play in the instant case - see Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755. The Court concluded that the Upper Tribunal had been wrong in its conclusion and rationale in Sala. It is not in dispute that the effect of the decision in Khan, if applied to this case, is that the First-tier Tribunal was wrong to conclude that it did not have jurisdiction in this appeal.
8. For this reason, I set aside the decision of the First-tier Tribunal and remit the appeal back to the First-tier Tribunal to be heard afresh.

Decision

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal.

Signed:

Dated: 21/05/2018



Upper Tribunal Judge O'Connor