



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/07399/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 29 June 2018

Decision & Reasons Promulgated
On 3 July 2018

Before

Deputy Upper Tribunal Judge Pickup

Between

Muhammad Ismail
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: No attendance and not represented

For the respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Resident Judge Zucker promulgated 17.7.17, dismissing for want of jurisdiction his appeal against the decision of the Secretary of State, dated 7.6.16, to refuse his application made on 11.12.15 for an EEA Residence Card, pursuant to the Immigration (EEA) Regulations 2006.
2. Neither the appellant nor any representative attended the appeal hearing. When contacted by telephone, the representatives confirmed that they would not be

attending but asked for the matter to be dealt with on paper. That was not possible but I have dealt with it in any event.

3. This is one of those appeals of an EFM which, following the binding decision of the Upper Tribunal in Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC), the First-tier Tribunal was obliged to dismiss for want of jurisdiction, the Upper Tribunal having found that there was no right of appeal for an EFM against the decision of the Secretary of State.
4. However, in Khan v SSHD [2017] EWCA Civ 1755, the Court of Appeal held that Sala was wrongly decided. It follows that, at least in respect of applications to be considered under the 2006 Regulations, an EFM does have a right of appeal.
5. It follows that there was an error of law in the making of the decision of the First-tier Tribunal, requiring the decision to be set aside and remade.

Remittal

6. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. There has not been any fact-finding at all in respect of this case.
7. The appellant did not attend and was not represented so that it was not practical in any event to remake the decision.
8. In all the circumstances, I remit this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2.

Decision

9. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal at Bradford.



Signed
Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

I make no fee award.

Reasons: The outcome of the appeal has yet to be determined.

A handwritten signature in black ink, appearing to read 'D. Pickup', written in a cursive style.

Signed
Deputy Upper Tribunal Judge Pickup

Dated