



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/07769/2016**

Appeal Number:

EA/07770/2016

EA/07773/2016

THE IMMIGRATION ACTS

Heard at Field House

On 18 April 2018

**Decision & Reasons
Promulgated
On 27 April 2018**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**ARIFIN MOHAMMAD LUTFUL
JOYNOB ARIFIN
ZAFIR ARIFIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. The appellants are citizens of Bangladesh whose dates of birth are recorded as 5 October 1977, 10 December 1984 and 16 September 2011 respectively. They made an application to the Secretary of State for an EEA residence card. The application was refused in a decision served on 10 June 2016, for reasons that I need not set out herein.

Decision of the First-tier Tribunal

2. The appellants lodged an appeal before the FtT. That appeal came before FtT Judge Zucker, who concluded in a decision dated 4 August 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 Baker granted permission, decision dated 29 January 2018.

Directions by Upper Tribunal

4. In a notice of decision dated 27 February 2018 UT Judge Rimington 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.

Discussion

5. The Upper Tribunal has received correspondence from the appellant's solicitor and from the Home Office stating that they are in agreement with the case being remitted to the FtT.
6. The Court of Appeal has 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.
7. 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: 18th April 2018



Upper Tribunal Judge O'Connor