



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/08648/2016

THE IMMIGRATION ACTS

Heard at Field House

On 11th January 2018

**Decision & Reasons
promulgated**

On 9th February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**MR IMRAN NAZIR
(ANONYMITY DIRECTION NOT MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance and not represented

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant was sent a notice of hearing to the address he had provided to the Tribunal and indeed also to his representatives, Legal Rights Partnership. Neither he nor his representatives had attended the hearing in readiness for the listed time of 10am. When I got to the end of my list and there were no other cases to deal with so I returned to this case, there not being anything else for me to deal with. There was still no attendance by or on behalf of the Appellant.

2. Mr Wilding made various submissions but by way of background the position is as follows.
3. By way of a decision of First-tier Tribunal Judge Traynor sitting at Taylor House on 9th August 2017 the Appellant's appeal was dismissed for want of jurisdiction. The Appellant appealed against that decision explaining in his grounds of appeal that because there were various cases of the higher courts that were awaiting judgment then he should be granted permission to appeal. Indeed, permission to appeal was granted by First-tier Tribunal Judge Cruthers. The learned judge had said,
 - "1. This "appeal" stands dismissed by a decision of First-tier Tribunal Judge Traynor. By reference to the decision in **Sala [2016] UKUT 00411 (IAC), circulated on 19 September 2016**. It was the judge's assessment that the appeal had to be dismissed for want of jurisdiction (his paragraph 7).
 2. The grounds on which the appellant seeks permission to appeal are arguable. As reflected in paragraph 1 of those grounds, the appellant's case is that he is entitled to an EEA residence card as the unmarried partner ("extended family member") of a Polish national, Ms Iwona Gregoorczyk. The crux of the grounds (in their second paragraph 1) is that **Sala** "was incorrectly decided and the Appellant, as an EFM is entitled to appeal against the decision refusing his residence permit".
 3. The appellant should not take this grant of permission as any indication that the "appeal" will ultimately be successful."
4. In the Respondent's Rule 24 response it is said:-

"The respondent is currently considering the recent Court of Appeal decision in '**Khan v SSHD [2017] EWCA Civ 1755**'. The respondent therefore is not presently in a position to formally respond to the merits of the Grounds of Appeal."
5. Before me today Mr Wilding said the appeal was not opposed but he said it was relevant to note that there was still no evidence from the Appellant. The Respondent did not accept that the Appellant was in a durable relationship and the lengthy reasons for refusal letter explained why the relationship was not accepted. It was of concern that the evidence has still not been submitted. Mr Wilding invited me to remit the case to the First-tier Tribunal for hearing but for me to observe that there was no evidence from the Appellant in response to the Secretary of State's decision and that I should observe that it would be expected that the Appellant would submit his evidence before the First-tier Tribunal.
6. Dealing first with the error of law issue it is clear in view of the Court of Appeal's decision in **Khan** that there is an error of law in First-tier Tribunal Judge Traynor's decision thereby the case has to be remitted for a re-

hearing at the First-tier Tribunal. As for any observations that I should make, in my judgment it is for the Appellant to take such action that he is advised to take, so as to deal with the evidential matters to enable his appeal to succeed. The Secretary of State has made it plain by way of the reasons for refusal letter and by way of the submissions today that the basis of the Appellant's factual claim is not admitted and that it is significantly challenged. In those circumstances it should be abundantly clear to the Appellant that if he fails to provide the evidence that the Secretary of State has suggested should be provided then his case will be the subject of significant scrutiny by the Secretary of State at the remitted hearing before the First-tier Tribunal.

7. Therefore, with those matters in mind the matter is remitted to the First-tier Tribunal for a complete re-hearing on all issues. This hearing will take place at Hatton Cross. Any directions will follow from that Tribunal.

Decision

There is an error of law in the decision of the First-tier Tribunal and is therefore set aside.

There shall be a rehearing at the First-tier Tribunal.

No anonymity direction is made.

Signed: A Mahmood.

Date: 11 January 2018

Deputy Upper Tribunal Judge Mahmood