



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/08875/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 March 2018**

**Decision and Reasons  
Promulgated  
On 11 May 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MURRAY**

**Between**

**WAWALAGE SHASHI RUWANTHA FERNANDO  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No Appearance

For the Respondent: Mr Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka born on 22 November 1986. He appealed against the decision of the respondent dated 7 July 2016 refusing to grant him a residence card as an extended family member (unmarried) of an EEA national in accordance with Regulation 8 of the Immigration EEA Regulations 2006 as amended.
2. The appeal was heard by Judge of the First-Tier Tribunal Colvin on 23 August 2017 and dismissed for want of jurisdiction in a decision

promulgated on 25 August 2017. The case was dismissed based on the case of **Sala** [2016] UKUT 00411 (IAC).

3. The **Sala** decision has been found to be wrong and permission to appeal was granted by Judge of the First-Tier Tribunal Swaney on 1 February 2018. This states that in light of the decision of the Court of Appeal in **Khan** [2017] EWCA Civ 1755 the grounds disclose an arguable and material error of law in the Judge's decision.
4. There was no Rule 24 response.
5. There was no appearance by the appellant or a representative on his behalf. Neither did his sponsor and partner Miss Justyna Zycka appear, however the Presenting Officer submitted that there is a material error of law as a result of the decision in the said case of **Khan**. He also submitted that as there has been no decision to remove there is no human rights appeal.

### **Decision**

6. As the case of **Sala** has been overturned the appellant's claim requires to be re-heard as this has resulted in there being a material error of law in the First-tier Tribunal's decision, promulgated on 25 August 2017.
7. I direct that this claim is remitted to the First-Tier Tribunal for re-hearing and that Judge Colvin's decision promulgated on 25 August 2017 must be set aside. None of its findings are to stand other than as a record of what was said on that occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 to remit the case to the First-Tier Tribunal for an entirely fresh hearing.
8. Members of the First-Tier Tribunal chosen to consider the case are not to include Judge Colvin.
9. Anonymity has not been directed.

Signed

Date 04 May 2018

Deputy Upper Tribunal Judge Murray