



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

Appeal Number: EA/09825/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**On 23 November 2018**

**Decision & Reasons**

**Promulgated**

**On 10 December 2018**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**TOSEEF AHMAD**

**and**

**ENTRY CLEARANCE OFFICER**

Appellant

Respondent

**Representation:**

For the Appellant: Not legally represented (appellant's brother, Sana Ullah, attends)

For the Respondent: Mr C. Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Permission to appeal against the decision of First-tier Tribunal Judge Osborne ("the FtJ") has been granted by a judge of the Upper Tribunal. The FtJ concluded that he had no jurisdiction to hear the appeal against the decision to refuse an EEA family permit, in circumstances where the appellant's claimed entitlement to such is as an extended family member. The FtJ made his decision in the light of *Sala (EFMs: Right of Appeal)* [2016] UKUT 00411 (IAC). Permission to appeal against his decision was granted following *Khan v Secretary of State for the Home Department* [2017] EWCA Civ 175.

2. In a 'rule 24' response (which had not found its way onto the Tribunal's file prior to the hearing, although it is dated 24 October 2018) the respondent does not oppose the appeal and invites the Tribunal to remit the appeal to the First-tier Tribunal ("FtT"). That was also Mr Bates' position at the hearing before me.
3. I explained the circumstances to Mr Ullah who appeared on behalf of the appellant, his brother. It was not suggested on behalf of the appellant that the course proposed by the respondent should not be followed.
4. In the circumstances, in the light of decision in *Khan* which found that *Sala* was wrongly decided, as well as the decision in *SM (Algeria) v Entry Clearance Officer* [2018] UKSC 9, I am satisfied that there is an error of law in the decision of the FtT in his conclusion that he had no jurisdiction to hear the appeal.
5. Accordingly, the decision of the FtT is set aside and the appeal is remitted to the FtT for a hearing *de novo* before a judge other than First-tier Tribunal Judge Osborne.
6. In the light of the new address of the sponsor which the Tribunal is aware of, the remitted hearing should take place in Birmingham.

Upper Tribunal Judge Kopieczek

5/12/18