



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

Appeal Number: EA/00681/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**Oral determination given following  
hearing**

**On 11 January 2018**

**On 1 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCGINTY  
UPPER TRIBUNAL JUDGE CRAIG**

**Between**

**MR MOHAMED RISHAD JAMALDEEN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr I Khan, Counsel instructed by Courtland Solicitors

For the Respondent: Mr T Melvin, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant in this case appeals against a decision made by the First-tier Tribunal (Judge Howard) who in a decision and reasons promulgated on 30 August 2017 dismissed the appellant's appeal against the respondent's decision to reject his EEA residence card application as an extended family member. The basis of the decision was that relying on the decision of this

Tribunal in *Sala (EFMs: Right of Appeal)* [2016] UKUT 00411 (IAC) the judge considered that he lacked jurisdiction to hear the appeal because there was no statutory right of appeal against a decision of the respondent not to grant a residence to a person claiming to be an extended family member.

2. The Court of Appeal in *Khan v SSHD* [2017] EWCA Civ 1755 has decided that the decision in *Sala* was incorrect and that there is a statutory right of appeal in these circumstances. It follows that the First-tier Tribunal's decision contained a material error of law and that the decision must now be re-made. In these circumstances the appropriate course is to remit this appeal back to the First-tier Tribunal to be heard by any judge other than First-tier Tribunal Judge Howard.

### **Decision**

**The decision of the First-tier Tribunal that there was no statutory right of appeal contained a material error of law and the appeal is remitted to be re-heard by the First-tier Tribunal, sitting at Hatton Cross (or such other hearing centre as shall be directed) by any judge other than First-tier Tribunal Judge Howard.**

Signed:

A handwritten signature in black ink, appearing to read 'Ken Craig', is written over a light blue rectangular stamp or watermark.

Upper Tribunal Judge Craig Date : 25 February 2018