



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

Appeal Number: EA/02477/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8 March 2018**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**THARINDU SAMANPRIYA PANADURA ARYASINGHAGE DON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

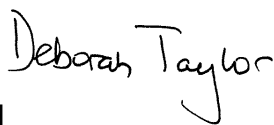
For the Appellant: Ms S Pinder of Counsel instructed by York Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Saffer made following a hearing at Bradford on 13 June 2017.
2. Judge Saffer dismissed the appellant's appeal against the decision of the respondent, dated 11 February 2016, to refuse to grant him an EEA residence card.
3. Judge Saffer followed the Upper Tribunal decision in Sala (EFM's right of appeal) [2016] UKUT 00411 and held that the First-tier Tribunal had no jurisdiction to hear the appeal which the appellant sought to pursue.

4. In the light of Khan v Secretary of State for the Home Department [2017] EWCA Civ 1775 both parties agreed that the First-tier Tribunal was wrong in law to conclude that it does not have jurisdiction to hear the appeal.
5. It was also agreed that the correct course was for a remittal to the First-tier Tribunal. The decision of Judge Saffer is set aside. The appeal is remitted to be heard before a judge other than Judge Saffer at Hatton Cross at a date to be notified.
6. It would appear that the appellant's wife, reference EA026102016, made the same application as that of her husband. It was refused in similar terms by Judge Lawrence on 11 March 2016. It is not clear from the Tribunal's file what has happened to that decision however if a challenge has been made it is clearly in the interests of justice for the two appeals to be linked.

No anonymity direction is made.



Signed

Date 25 March 2018

Deputy Upper Tribunal Judge Taylor