



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/02998/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 14 March 2018**

**Promulgated**

**On 04<sup>th</sup> April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**MR TASNEEM MUKHTAR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr R Sharma, counsel instructed by Sky Solicitors  
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant who is a national of Pakistan born on 13 November 1986, who made an application for a residence card as an extended family member of an EEA national on 15 May 2015. In a decision dated 16 November 2015 this application was refused by the Respondent. The Appellant appealed against this decision and his appeal came before First-tier Tribunal Judge M J Gillespie for hearing on 26 June 2017. In a decision and reasons promulgated on 29 June 2017 the judge disposed of the appeal without a hearing and in the absence of the parties in light of the decision in Sala (EFMs: right of appeal: Albania) [2016] UKUT 411 (IAC).

2. An application for permission to appeal was made in time on the Appellant's behalf on the basis firstly that the Appellant's case was clearly distinguishable from that in *Sala* and secondly that *Sala* was arguably not good law in light of the fact that the Court of Appeal in the case of Khan [2017] EWCA Civ 1755 had granted permission to appeal.
3. Permission to appeal was granted in a decision dated 21 December 2017 by Upper Tribunal Judge Martin on the basis that the grounds of appeal have merit in light of the Court of Appeal's judgment in Khan [2017] EWCA Civ 1755 which found that *Sala* was incorrectly decided and that extended family members of EEA nationals do have a right of appeal under the Immigration (European Economic Area) Regulations 2006.
4. At the hearing before me Mr Sharma for the Appellant and Ms Brocklesby-Weller for the Respondent agreed that the appropriate course of action in light of the judgment in *Khan* was that the appeal be remitted to the First-tier Tribunal for a hearing *de novo* given that no consideration had been given to the appeal to date.

*Decision*

5. On the basis of the parties' agreement and in light of the judgment in *Khan*, I find that First-tier Tribunal Judge Gillespie erred materially in law in finding that there was no jurisdiction to hear the appeal based on the jurisprudence in force at that time which has subsequently been found not to be correctly decided. I remit the appeal for a hearing *de novo* before the First-tier Tribunal.

No anonymity direction is made.

Signed Rebecca Chapman

Date 28.3.18

Deputy Upper Tribunal Judge Chapman