



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/05894/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Decision & Reasons  
promulgated**

**On 13 February 2018**

**On 16 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**TAREK AHMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Salam of Salam & Co Solicitors.

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

**DECISION AND REASONS**

1. This is an appeal against a decision of First-tier Tribunal Judge Shimmin promulgated on 26 June 2017, following consideration of the appeal on the papers without an oral hearing, in which the Judge following the decision of the Upper Tribunal in Sala (EFMs: Right of Appeal) [2016] UKUT 00411 found that Tribunal had no jurisdiction to hear the appellant's appeal. The respondent's refusal of 3 May 2016 refers to an application for a residence card as family members

whereas this has always been an application a Extended Family Members of an EEA national.

2. Permission to appeal to the Upper Tribunal was granted on 28 November 2017 by reference to the later decision of the Court of Appeal in Khan [2017] EWCA Civ 1755 which found the decision in Sala was wrong and set the same aside.
3. Whilst Mr Bates indicated the respondent would prefer cases of this nature to be stayed pending an appeal to the Supreme Court against the decision in Khan, there is no evidence that permission has been sought or granted by the Supreme Court or that an order has been made staying the decision in Khan pending the hearing of any appeal to the higher court. In the absence of such order the decision of the Court of Appeal is binding upon this tribunal. The request for a stay is refused. If such order is subsequently granted the respondent will be able to renew any application to the First-tier Tribunal.
4. I find the First-tier Tribunal, through no fault of Judge Shimmin, has erred in law in finding that tribunal had no jurisdiction to hear the appeal. I set the decision aside.
5. In light of the fact there has been no hearing of the merits of this appeal before the First-tier Tribunal, this appeal is allowed to the limited extent it is remitted to that Tribunal to be heard afresh.

### **Decision**

6. **The Immigration Judge materially erred in law. I set aside the decision of the original Immigration Judge. I remit the appeal to the First-tier Tribunal.**

Anonymity.

7. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Judge of the Upper Tribunal Hanson

Dated the 13 February 2018