



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/11763/2016

THE IMMIGRATION ACTS

Heard at Field House
On 21st May 2018

Decision & Reasons Promulgated
On 19th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

NAVEED AHMED KHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Pakistan born on 12th December 1968. He applied for a family permit to accompany his brother, Abdul Waheed, a British citizen residing

in Spain, to the United Kingdom under Regulations 7 and 9 of the Immigration (European Economic Area) Regulations 2006 (the Regulations). That application was refused for the reasons given in a Notice of Immigration Decision on 30th August 2016. The Appellant appealed and his appeal was heard by Judge of the First-tier Tribunal S J Walker (the Judge) sitting at Taylor House on 31st August 2017. He decided to dismiss the appeal for the reasons given in his Decision dated 4th October 2017. The Appellant sought leave to appeal that decision and on 5th April 2018 such permission was granted.

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. At the hearing before me there was no appearance by or on behalf of the Appellant, and no explanation for that absence. I decided to hear the appeal in the absence of the Appellant under the provisions of Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I was satisfied that the Appellant had been notified of the hearing in accordance with those Rules and that it was in the interests of justice to proceed for the reasons which will become apparent later.
4. Mr Tufan first raised the issue of timeliness. He pointed out that the Judge granting leave to appeal had not dealt with this issue in his grant of permission. I decided to treat the Notice of Appeal as having been made in time thereby validating the grant of leave to appeal. According to what the Appellant wrote in his Notice of Appeal, he was served with a copy of the Decision appealed against in Pakistan on 19th November 2017. His application for permission to appeal to the Upper Tribunal was sent on 13th December 2017 following a change in jurisprudence. This is not an excessive delay in the circumstances, and in any event the appeal has considerable merit. I extended time in accordance with the decisions in **Wang and Chin (extension of time for appealing) [2013] UKUT 00343 (IAC)** and **R (on the application of Onowu) v First-tier Tribunal (Immigration and Asylum Chamber) (extension of time for appealing: principles) IJR [2016] UKUT 00185 (IAC)**. Having announced my decision, I proceeded to consider if the decision of the First-tier Tribunal contained a material error of law. The Judge dismissed the appeal for want of jurisdiction following the decision in **Sala (EFMs: right of appeal) [2016] UKUT 00411 (IAC)**. Mr Tufan acknowledged that that decision had been subsequently reversed by the Court of Appeal in its decision in **Khan [2017] EWCA Civ 1755**.
5. I find a material error of law in the decision of the First-tier Tribunal which I therefore set aside. The Judge made his decision on the basis of the decision in **Sala** subsequently overturned by the Court of Appeal in its decision in **Khan**. It follows that the Judge erred in law.
6. In the absence of the Appellant I did not proceed to re-make the decision in the appeal. Instead, that decision will be re-made by the First-tier Tribunal in accordance with the provisions of paragraph 7.2(b) of the Practice Statements.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision in the appeal will be re-made by the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed

Date 15 June 2018

Deputy Upper Tribunal Judge Renton