



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01482/2015

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice
On 20 August 2018

Decision & Reasons Promulgated
On 19 September 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR SHAHBAZ JAVED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Elliot-Kelly, Counsel instructed by Sunrise Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in this case appeals against a decision made by First-tier Tribunal Judge Courtney, who in a Decision and Reasons promulgated on 22 October 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 (which had been brought under the 2006 EEA Regulations) 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 under these Regulations.

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 Courtney.

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 Courtney.

Signed:

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

Upper Tribunal Judge Craig

Date : 14 September 2018