



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

**Appeal Number EA/01639/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28<sup>th</sup> March 2018**

**Decision and Reasons Promulgated  
On 4<sup>th</sup> April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PARKES**

**Between**

**MUHAMMAD IFTIKHAR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Dhanji (Counsel, instructed by AH Solicitors)  
For the Respondent: Mr S Kandola (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of Pakistan. On the 9<sup>th</sup> of December 2014 he applied for a residence card as the extended family member (EFM) on a EEA national in the UK exercising treaty rights under the EEA Regulations 2006. The application was refused and the Appellant's appeal was heard by First-tier Tribunal Judge M A Khan at Harmondsworth on the papers and dismissed in a decision promulgated on the 16<sup>th</sup> of August 2017.
2. The Judge, relying on the case of Sala (EFMs: Right of Appeal) [2016] UKUT 411 (IAC), found that the Appellant did not have a right of appeal against the decision of the Respondent. Accordingly he found that there was no valid appeal and that he did not have jurisdiction to hear the appeal.
3. The Appellant sought permission to appeal to the Upper Tribunal in grounds of the 31<sup>st</sup> of August 2017 on the basis that the Appellant did have a right of appeal. The application was considered by First-tier Tribunal Judge Beach who granted permission to appeal on the 31<sup>st</sup> of January 2018. By the time permission had been granted the Court of Appeal had decided Khan [2017] EWCA Civ 1755 which overturned Sala.

4. It is common ground that the Judge erred in finding that there was no valid appeal although he cannot be criticised for the approach that he took on the information and decisions that were available at the time. In the circumstances given that the Judge was in error, no findings were made and the case will have to be remitted to the First-tier Tribunal for re-hearing. The Appellant should bear in mind that the case will be decided as matters stand at the date of the hearing and accordingly up-to-date evidence on all relevant aspects will need to be served in accordance with the directions previously given by the First-tier Tribunal.

## CONCLUSIONS

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

I set aside the decision.

The appeal is remitted to the First-tier Tribunal for re-hearing`.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

I make no fee award which remains a matter for the First-tier Tribunal dependent on the outcome and findings made in the remitted hearing.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 28<sup>th</sup> March 2018

