



**Upper Tribunal
(Immigration and Asylum Chamber)**
EA/02352/2016

Appeal Numbers:

EA/02354/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 14 February 2018**

**Determination
Promulgated
On 26 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

**MRS NIGER SULTANA
MR MOHAMMED NEYAMAT ULLAH
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Poddar, Counsel for Hamlet Solicitors, London
For the Respondent: Mr Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Bangladesh born on 15 January 1990 and 31 July 1994 respectively. They appealed against the decision of the respondent dated 8 February 2016 refusing to grant them each an EEA residence card. Their appeals were heard by First-Tier Tribunal Judge

Saffer on 13 June 2017. The appeals were dismissed for want of jurisdiction in a decision promulgated on 15 June 2017.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Chamberlain on 23 November 2017. The permission states that subsequent to the application for permission to appeal being made, the Court of Appeal held in the case of ***Khan*** [2017] AWCA Civ 1755 that a decision to refuse to issue a residence card to an extended family member is an EEA decision and thus can be appealed to the First-Tier Tribunal in the ordinary way, and so the Tribunal has jurisdiction to hear such appeals. Permission was granted on 23 November 2017.
3. There is a Rule 24 response by the respondent dated 24 December 2017. This states that although the Court of Appeal in the said case of ***Khan*** has overturned the case of ***Sala*** [2016] UKUT 00411 (IAC) which states that there is no statutory right of appeal against the decision of the Secretary of State not to grant a residence card to a person claiming to be an extended family member, permission has been sought, in the case of ***Khan***, to appeal to the Supreme Court and the Court of Appeal has imposed a stay on the effect of the Judgement, pending the outcome of that application. The same point is also being considered separately by the Supreme Court in ***SM*** (Algeria) which was heard at the end of November 2017. The respondent contends that ***Sala*** still remains good law. The respondent therefore seeks that this appeal be adjourned and not listed until the outcome of the above application for permission to appeal is decided or the Supreme Court's decision in ***SM*** is promulgated.
4. The Rule 24 response goes on to state that it is trite law that the First-Tier Tribunal has no jurisdiction to consider the Article 8 element of the appellants' appeal and the case of ***Amirteymour -v- Secretary of State for the Home Department*** [2017] EWCA Civ 353 is quoted.

The Hearing

5. The Tribunal's position is that all cases based on the said case of ***Sala*** which have been dismissed through want of jurisdiction are to be remitted to the First-Tier Tribunal. As this is the policy of the Tribunal I direct that this appeal is remitted to the First-Tier Tribunal and that an adjournment is not granted for the reasons quoted by the respondent.

Notice of Decision

6. I direct that the decision of the First-Tier Tribunal is set aside. None of its findings are to stand other than as a record of what was said on that occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to remit the case to the First-Tier Tribunal for an entirely fresh hearing.
7. The members of the First-Tier Tribunal chosen to consider the case are not to include First-Tier Tribunal Judge Saffer.
8. Anonymity has not been directed.

Signed

Date 23rd March 2018

Deputy Upper Tribunal Judge Murray