



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/03110/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 20<sup>th</sup> March 2018**

**Decision & Reasons**

**Promulgated**

**On 9<sup>th</sup> May 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**MR EMMANUEL TOLULOPE IHIDERD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Atim Oji, Counsel

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Owens sitting at Hatton Cross on 25<sup>th</sup> July 2017. She had dismissed the Appellant's appeal on the basis of a lack of jurisdiction. In particular the Judge had in mind and had referred to the Upper Tribunal's decision in **Sala (EFMs: right of appeal) [2016] UKUT 00411 (IAC)**. In granting permission First-tier Tribunal Judge Kelly said as follows:

"The Appellant seeks permission to appeal in time against a decision of First-tier Tribunal Judge Owens promulgated on 16<sup>th</sup> August 2017 to dismiss the appeal against the revocation of his

permit to enter as the extended family member of an EEA national exercising community treaty rights in the United Kingdom. There is little merit in the ground but the facts of the Appellant's case are distinguishable from those in **Sala**. However given that **Sala** was held to have been wrongly decided in **Khan [2017] EWCA Civ 1755** permission to appeal is granted."

2. At today's hearing I heard brief submissions from Ms Oji who in effect said when one reads the Court of Appeal's decision in **Khan** it is clear that there is a material error of law.
3. Mr Melvin in his response said that he queried how one could see this appeal ever succeeding, but on the other hand in terms of justice because there had been no hearing of the Appellant's submissions then it may well be that it is appropriate, if I thought it to be, for the matter to be remitted to the First-tier Tribunal for there to be such a hearing.
4. In my judgment that is indeed the appropriate course. There has to be a hearing of the Appellant's appeal at the First-tier Tribunal. There has been no proper hearing and so it is appropriate for the Upper Tribunal to send the matter back to the First-tier Tribunal for that hearing. At that hearing, the Appellant will get the opportunity to put forward his case and for it to be heard. The only direction I give is that the appeal be heard by a judge other than First-tier Tribunal Judge Owens. All of the other directions shall come from the First-tier Tribunal.

### **Notice of Decision**

The decision of the First-Tier Tribunal contains a material error of law and is set aside.

The matter shall be re-heard at the First-Tier Tribunal.

No anonymity direction is made.

Signed: A Mahmood

Date: 20 March 2018

Deputy Upper Tribunal Judge Mahmood