



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/03305/2015

THE IMMIGRATION ACTS

**Decision & Reasons Promulgated
On 15th June 2018**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**SHEHBAZ ABDUL KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. The appellant is a citizen of India born on 16 September 1987. He made an application to the Secretary of State for an EEA residence card. The application was refused in a decision dated 17 November 2015, for reasons that I need not set out herein.

Decision of the First-tier Tribunal

2. The appellant lodged an appeal before the First-tier Tribunal. That appeal came before Upper Tribunal Judge Martin, who concluded in a decision sent on 3 February 2017, that the First-tier Tribunal did not have jurisdiction to determine the appeal. No findings were made in relation to the substance of the appeal. The Judge's conclusion was informed by the guidance given by this Tribunal in Sala [2016] UKUT 00411.

3. The appellant appealed such decision to the Upper Tribunal and Designated FtT Judge McCarthy granted permission in a decision sent on 1 March 2018.

Directions by Upper Tribunal

4. In Directions sent on 19 April 2018 Upper Tribunal Judge Coker indicated that the Upper Tribunal was minded to find an error of law, set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal. If either of the parties was opposed to this course they were directed to inform the Tribunal in writing (giving reasons), not later than 7 days from the date these Directions were sent. Following that period, the parties were informed that the Upper Tribunal would issue its decision.
5. The Upper Tribunal has not received any relevant correspondence from either party within the stipulated timeframe.

Discussion

6. The Court of Appeal has now given consideration to the very issue in play in the instant case - see Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755. The Court concluded that the Upper Tribunal had been wrong in its conclusion and rationale in Sala. It is not in dispute that the effect of the decision in Khan, if applied to this case, is that the First-tier Tribunal was wrong to conclude that it did not have jurisdiction in this appeal.
7. For this reason, I set aside the decision of the First-tier Tribunal and remit the appeal back to the First-tier Tribunal to be heard afresh.

Decision

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal.

Signed:

Dated: 12 June 2018



Upper Tribunal Judge O'Connor