



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/11980/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
Reasons Promulgated  
On 26<sup>th</sup> March 2018  
2018**

**Decision &  
On 9<sup>th</sup> April**

**Before**

**DEPUTY JUDGE FARRELLY OF THE UPPER TRIBUNAL**

**Between**

**MR MUHAMMAD IQBAL  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr.E.K Mahmood of Nationwide Law Associates  
For the respondent: Mr.E.Tufan, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction**

1. The appellant is a national of Pakistan who, on 15 March 2016, applied for a residence card as confirmation of his right to reside in the United Kingdom further to European Treaty provisions. The application made was on the basis he was an extended family member and dependant on his sibling and his Romanian wife.

2. The respondent refused the application on 9 September 2016 on the basis he had not provided evidence of dependency before he came to United Kingdom or thereafter.
3. Her appeal was heard before First-tier Tribunal Judge Rayner at Taylor House on 5<sup>th</sup> September 2017. In a decision promulgated on 11<sup>th</sup> September 2017 the judge found there was no jurisdiction to hear the appeal. This was on the basis of the guidance given in the Upper Tribunal decision of Sala (EFM's: right of appeal) [2016] UKUT 00411.
4. Permission to appeal to the Upper Tribunal has been granted in light of the Court of Appeal decision of Khan -v- SSHD [2017] EWCA Civ 1755 which held that the decision in Sala was wrong.
5. At the hearing, Mr. Tufan, Home Office Presenting Officer acknowledged that the decision of First-tier Tribunal Judge Rayner in declining jurisdiction materially erred in law as it is now understood. He helpfully provided me with a copy of the decision of SM (Algeria) -v-ECO [2018] UKSC 9 where the Supreme Court reaffirmed Khan -v- SSHD.
6. Given that an error of law has been accepted the disposal of the appeal requires a fresh hearing before the First-tier Tribunal. Given the factual issues which will have to be decided a remittal is called for.

### Decision

The decision of First-tier Tribunal Judge Rayner materially errs in law and is set aside. There are no material facts to preserve. The matter is remitted for a de novo hearing before the First tier Tribunal.

*Francis J Farrelly*

Deputy Upper Tribunal Judge  
2018

Date: 06 April