



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

Appeal Number: EA/00609/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 February 2018  
Determination given 16 February  
2018**

**Decision & Reasons Promulgated  
On 15 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**MISS SVITLANA FILIAK  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearances for the Appellant  
For the Respondent: Mr T Melvin, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of the Ukraine, date of birth 18 February 1989, appealed the Respondent's decision, dated 4 January 2016, to refuse to issue an EEA residence card to the Appellant as an extended family

member. Her appeal came before First-tier Tribunal Judge Feeney who, on 3 April 2017, dismissed her appeal on the basis that there was no jurisdiction to entertain an appeal by an EFM reliant upon the case of Sala (EFMs: Right of Appeal) [2016] UKUT 00411 (IAC). The Judge made no findings upon the claim to be an EFM and whether the Appellant met the requirements under Regulation 8 of the 2006 Immigration (European Economic Area) Regulations.

2. It is clear in the light of the case of Khan [2017] EWCA Civ 1755 that Sala is wrong. It is accepted by Mr Melvin that the Supreme Court has considered the application of the Secretary of State to challenge the decision of the Court of Appeal in Khan but the decision of Khan stands and is binding upon this Tribunal. Accordingly it is appropriate that this matter is returned to the First-tier Tribunal to be reconsidered, there being no findings of fact upon which any other decision may be substituted. The Original Tribunal's decision cannot stand.

## **DECISION**

The appeal is allowed to the extent that it is returned to the First-tier Tribunal to be remade in accordance with the law.

## **DIRECTIONS**

- (1) List for hearing at Taylor House.
- (2) List one hour.
- (3) Russian/Ukrainian interpreter required.
- (4) List not before First-tier Tribunal Judge Feeney.
- (5) Relist for an oral hearing.

- (6) The parties or either of them to notify the First-tier Tribunal (IAC) if they do not wish to have an oral hearing on the issues.

No anonymity direction is made.

Signed

Date 7 March 2018

Deputy Upper Tribunal Judge Davey