



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/01541/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 13 September 2018

Decision & Reasons Promulgated  
On 17 September 2018

Before

**UPPER TRIBUNAL JUDGE O'CONNOR**

Between

**BONSU NIMAKO  
(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 Ghana born on 4 November 1982. He made an application to the Secretary of State for an EEA residence card. The application was refused in a decision dated 20 January 2016, 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 Designated FtT Judge McCarthy, who concluded in a decision sent on 4 April 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 Woodcraft granted permission in a decision sent on 6 September 2018. Thus, the matter comes before me.

### **Discussion**

4. 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.
5. 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: 13 September 2018



Upper Tribunal Judge O'Connor