



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

Appeal Number: EA/03009/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 1 February 2018**

**Decision & Reasons
Promulgated
On 21 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR NOORULLAH ZAFAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. He was born on 22 January 1991.
2. He appealed against the respondent's decision to refuse to issue him with a residence card as the alleged extended family member of an EEA national.
3. In a decision promulgated on 28 June 2017, Judge M J Gillespie (the judge) found there was no valid right of appeal and dismissed the appeal for want of jurisdiction.

4. The grounds claim the judge erred in dismissing the appeal for want of jurisdiction and relied upon **MM (Sudan) [2014] UKUT 105 (IAC)**, **Izuazu (Article 8 - new Rules) [2013] UKUT 45 (IAC)**.
5. Upper Tribunal Judge Martin granted permission to appeal on 21 December 2017. The judge dismissed the appeal for want of jurisdiction following **Sala (EFMs: right of appeal) [2016] UKUT 00411 (IAC)**. She considered the grounds arguing that the decision was unreasonable, had merit in light of the Court of Appeal's decision in **Khan [2017] EWCA Civ 1755** which found that **Sala** was incorrectly decided and extended family members had a right of appeal under the Immigration (European Economic Area) Regulations 2006.
6. The Rule 24 response said that whilst it was right that the Court of Appeal in **Khan** overturned the Upper Tribunal in **Sala**, there was a stay on the effect of the judgment pending a renewed application for permission to the Supreme Court. An application for permission in **Khan** has now been filed with the Supreme Court and therefore the overturning of **Sala** remains stayed. The Secretary of State requested an adjournment until the matter is resolved or at least until judgment is given in **SM (Algeria)**.

Submissions on Error of Law

7. Mr Avery relied upon the Rule 24 response and requested an adjournment.

Conclusion on Error of Law

8. It is inappropriate to grant an adjournment in these circumstances. In light of **Khan**, Upper Tribunal Judge Martin granted permission to appeal on the basis that it was arguably wrong in law for the judge to have concluded that he did not have jurisdiction to hear the appeal.
9. The parties both accept that the judge, through no fault of his own, erred in law for the reasons set out in **Khan**. Accordingly, the First-tier Tribunal does have jurisdiction to determine the appeal and therefore the decision to the contrary of the judge is set aside.
10. The appeal be remitted to the First-tier Tribunal to allow substantive consideration of the appeal.

Notice of Decision

The making of the decision of the First-tier Tribunal involved a material error of law. I set aside the decision of the First-tier Tribunal and remit the appeal for a de novo hearing.

No anonymity direction is made.

Signed

Date 1 February 2018

Deputy Upper Tribunal Judge Peart