



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

Appeal Number: EA/03585/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 February 2018**

**Decision & Reasons  
Promulgated  
On 30 April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PEART**

**Between**

**MR KHURRAM USMAN KHALID  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Coleman of Counsel

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

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan. He was born on 5 January 1985.
2. He appealed against the respondent's decision dated 30 November 2015 to refuse to issue him with an EEA residence card as the extended family member of an Austrian national.

3. In a decision promulgated on 21 February 2017, Judge C M Phillips (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. The grounds sought to distinguish **Sala (EFMs: right of appeal) [2016] UKUT 411 (IAC)**.
5. On 5 September 2017, Judge Mark Davies refused permission to appeal, finding that the judge correctly applied the law as set out in **Sala**. The grounds were repeated to the Upper Tribunal and on 18 December 2017, Upper Tribunal Macleman said that in light of **Khan [2017] EWCA Civ 1755**, he was minded to set aside the decision and remit the case to the First-tier Tribunal. He directed that any party opposed to such course of action was to inform the Upper Tribunal with reasons no later than seven days from the date of his decision. As I understand it, there was no response.

#### **Submissions on Error of Law**

6. Both sides agreed that the matter should be remitted to the First-tier Tribunal.

#### **Conclusion on Error of Law**

7. The appeal be remitted to the First-tier Tribunal to allow substantive consideration of the appeal.
8. The judge through no fault of her 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 of the judge to the contrary is set aside.

#### **Notice of Decision**

9. 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 15 February 2018

Deputy Upper Tribunal Judge Peart