



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

Appeal Number: EA/03432/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 26 January 2018**

**Decision & Reasons
Promulgated
On 23 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MR MAYOORAN KARUNAKARAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Popal, Counsel, instructed by Amirthan & Suresh Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 27 November 1983 whose application for a residence card as an extended family member of an EEA national exercising treaty rights was refused on 3 March 2016. The appellant's subsequent appeal to the First-tier Tribunal was heard by Judge McCarthy.

2. In a decision promulgated on 8 February 2017 the judge, applying the Upper Tribunal decision in *Sala (EFMs)* [2016] UKUT 0411, dismissed the appeal for want of jurisdiction.
3. Before me both parties were in agreement that in light of the recent Court of Appeal decision *Khan v Secretary of State for the Home Department* [2017] EWCA Civ 1755 it was an error of law to find that there was no jurisdiction to hear the appeal. I agree.
4. As no findings were made by the First-tier Tribunal on the substantive issues the matter will need to be remitted to the First-tier Tribunal to be heard afresh.

Notice of Decision

- (1) The decision of the First-tier Tribunal contains a material error of law and is set aside.
- (2) The appeal is remitted to the First-tier Tribunal to be heard before a judge other than First-tier Tribunal Judge McCarthy.
- (3) No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 19 February 2018