



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

Appeal Number: EA/06665/2016

**THE IMMIGRATION ACTS**

**At Field House**

On 27 March 2018

**Decision & Reasons  
Promulgated**

On 28 March 2018

**Before**

**Upper Tribunal Judge Blum**

**Between**

**PUVANESVARAN WELAPAH**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**NOTICE OF DECISION**

1. In a decision promulgated on 17.8.17 Judge of the First-tier Tribunal Bird concluded that he had no jurisdiction to entertain the appellant's appeal against the respondent's decision dated 17.5.16 to refuse his application for an EEA residence card pursuant to the Immigration (European Economic Area) Regulations 2006. Judge Keane's decision relied on the Upper Tribunal decision of Sala [2016] UKUT 0411. This was overturned by the Court of Appeal in Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755.
2. In the notice of decision dated 14.2.18 I indicated that the Upper Tribunal was minded to find an error of law, set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal. If either of the parties was opposed to this course they were directed to inform the Tribunal in writing (giving reasons), not later than 28 days

from the date the Directions were issued. Following that period, the parties were informed that the Upper Tribunal would issue its decision.

3. The Upper Tribunal has not received any correspondence from either party within the stipulated timeframe. In the light of Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755, the First-tier Tribunal was wrong in law to conclude that it did not have jurisdiction to hear the appeal.
4. The Upper Tribunal is consequently satisfied that the First-tier Tribunal's decision is marred by a material legal error (the unlawful view that it lacked jurisdiction).

### **Notice of Decision**

**The First-tier Tribunal decision is vitiated by a material error of law. The case is remitted back to the First-tier Tribunal for a fresh (de novo) hearing, before a judge other than judge of the First-tier Tribunal Bird.**



Signed  
Upper Tribunal Judge Blum

Date  
27<sup>th</sup> March 2018