



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/05337/2016  
& EA/07486/2016

**THE IMMIGRATION ACTS**

Decision & Reasons Promulgated  
31 May 2018

**KALPANA CHHETRI  
MAHESH LAMA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

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

Respondent

**DECISION AND REASONS**

**Introduction**

1. The appellants are citizens of Nepal whose dates of birth are recorded as 13 February 1992 and 7 June 1987 respectively. They made applications to the Secretary of State for an EEA residence card. The applications were refused in separate notices of decision dated 20 February 2016 (addressed to Mr Lama) and 19 April 2016 (addressed to Mrs Chhetri), for reasons that I need not set out herein.

**Decision of the First-tier Tribunal**

2. The appellants lodged an appeal before the First-tier Tribunal. These appeals came before FtT Judge Keane, who concluded in a decision sent on 7 September 2017, that the First-tier Tribunal did not have jurisdiction to determine the appeals. No findings were made in relation to the substance of the appeals. The Judge's conclusion was informed by the guidance given by this Tribunal in Sala [2016] UKUT 00411.

3. The appellants appealed such decision to the Upper Tribunal and FtT Judge Parkes granted permission in a decision sent on 4 April 2018. Thus, the matter comes before me.

### **Discussion**

4. The Court of Appeal has now given consideration to the very issue in play in these cases - 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 these appeals.
5. For this reason, I set aside the decision of the First-tier Tribunal and remit the appeals back to the First-tier Tribunal to be heard afresh.

### **Decision**

The decision of the First-tier Tribunal is set aside.

The appeals are remitted to the First-tier Tribunal.

Signed:

Dated: 29 May 2018



Upper Tribunal Judge O'Connor