



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

Appeal Number: EA/11652/2016

THE IMMIGRATION ACTS

**Determined at Field House
On 22 January 2018**

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

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**ABBAS KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

DECISION AND REASONS

1. In a decision promulgated on 1 September 2017 Judge of the First-tier Tribunal Sweet concluded that he had no jurisdiction to entertain Mr Khan's appeal against the respondent's decision dated 2 September 2016 to refuse his application for an EEA family permit pursuant to the Immigration (European Economic Area) Regulations 2006. Judge Sweet'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 directions issued on 9 January 2018 Upper Tribunal Judge Bruce 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 7 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 Sweet.



22 January 2018

Signed
Upper Tribunal Judge Blum

Date