Upper Tribunal
(Immigration and Asylum Chamber)   Appeal Number: IA/34558/2015

THE IMMIGRATION ACTS

Heard at Field House   **Decision & Reasons Promulgated**
On 9th April 2018   **On 2nd May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MR ANAND JAYANT KATDHARE
(ANONYMITY DIRECTION NOT MADE)

                                                                    Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

                                                                    Respondent

Representation:
For the Appellant: No appearance; attendance excused
For the Respondent: Mr C Avery, Senior Presenting Officer

DECISION AND DIRECTIONS

1.   By a decision promulgated on 9th February 2018, Upper Tribunal Judge
     Kekic granted permission to appeal the decision of Designated First-tier
     Tribunal Judge Shaerf promulgated on 24th April 2017 on the basis that the
     judge was arguably wrong in law to have concluded that he did not have
     jurisdiction to hear the appeal. That conclusion was based on the Upper
     Tribunal's decision in *Sala* (*EFM; Right of Appeal)* [2016] UKUT 00411.

2.   In the case of *Khan v Secretary of State for the Home Department* [2017]
     EWCA Civ 1755 the Court of Appeal held that Sala was wrongly decided.

Judge Kekic concluded that in the light of <u>Khan</u>, it was arguable that the decision was no longer legally sustainable.

3.   The Supreme Court in the case of *SM (Algeria) v Entry Clearance Officer, UK Visa Section* [2018] UKSC 9 held that <u>Khan</u> was correctly decided and that <u>Sala</u> should be overruled.

4.   The appeal has been listed before me for hearing in the Upper Tribunal, but in light of the Court of Appeal's judgment in <u>Khan</u> and the Supreme Court's judgment in <u>SM</u>, the Senior Presenting Officer had accepted that an error of law does appear in the decision, and accordingly I set aside the decision and remit the appeal to the First-tier Tribunal.

5.   No anonymity direction is made.

<u>Direction</u>

6.   The appeal is to be remitted to the First-tier Tribunal for a hearing *de novo* on all issues.

Signed   Date 02 May 2018

Deputy Upper Tribunal Judge Saini