



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12031/2016

THE IMMIGRATION ACTS

Heard at Field House
Oral determination given following hearing
On 12 September 2018

Decision & Reasons Promulgated
On 20 September 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR SAZAN RRENJOLLARI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Toal (Counsel)
For the Respondent: Mr I Jarvis (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant in this case appeals with leave against the decision of First-tier Tribunal Judge Webb who had dismissed his appeal against the respondent's decision to deport

him. For the reasons which follow it is not necessary to set out the details of his claim or the respondent's reasons for deporting him.

2. On behalf of the respondent before this Tribunal Mr Jarvis referred to paragraph 40 of Judge Webb's decision in which the judge had, in Mr Jarvis's words, narrated what he understood to be the applicable test of unduly harsh and how that plays out in practice. The judge considered that this phrase must be considered as meaning "excessively cruel". Mr Jarvis accepted on behalf of the respondent that that was not the correct test having regard to the Court of Appeal decision in *MM (Uganda)* [2016] EWCA Civ 450, which made it clear that a decision maker would need to look at all the factors in the round. On behalf of the respondent Mr Jarvis accepted that the "unduly harsh" test does not have a threshold of cruelty.
3. In these circumstances the respondent accepted that Judge Webb's decision must be set aside and remade. In these circumstances it was submitted further that as none of the findings which Judge Webb made could stand it was appropriate to remit this appeal back to the First-tier Tribunal for rehearing.
4. On behalf of the appellant, Mr Toal agreed that the appropriate course was to remit this appeal for rehearing by the First-tier Tribunal.
5. For the reasons given by Mr Jarvis I also agree that the decision of Judge Webb must be set aside and will so order. It is accordingly not necessary to make any findings with regard to the other grounds argued, as the appeal will in any event be reheard now and none of the findings made by Judge Webb will be retained. I accordingly make the following decision:

Decision

The decision of First-tier Tribunal Judge Webb, dismissing the appellant's appeal against the respondent's decision to deport him is set aside as containing a material error of law and the appeal is remitted to the First-tier Tribunal, sitting at Taylor House, to be reheard de novo (with no findings retained) by any judge other than First-tier Tribunal Judge Webb.

No anonymity direction is made.

Signed:

A handwritten signature in blue ink that reads "Ken Craig". The signature is written in a cursive style with a long, sweeping tail on the letter 'g'.

Upper Tribunal Judge Craig

Date: 17 September 2018