



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

Appeal Number: HU/14539/2019

**THE IMMIGRATION ACTS**

**Heard at Field House via Microsoft Decision & Reasons  
Teams Promulgated  
On 30 September 2021 On 28 February 2022**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**RICARDO MARLONDO SIMMS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Ferguson, instructed by A & A Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Jamaica. He appealed to the First-tier Tribunal against the Secretary of State's decision of 1 June 2018 refusing a human rights claim and refusing to revoke a deportation order. The judge concluded that the appeal could not succeed under Article 8 and none of the exceptions to deportation applied to the appeal.
2. The appellant sought permission to appeal this decision. His application for permission to appeal was refused first by a Judge of the First-tier Tribunal and then on renewal by a Judge of the Upper Tribunal. A Cart

judicial review was unsuccessful, but subsequently, on 4 February 2021 Popplewell LJ granted permission to appeal for judicial review on the basis that it was arguable that the judge had failed properly to apply the undue harshness test in section 117C(5) as subsequently more fully explained in HA (Iraq) [2020] EWCA Civ 1176.

3. I need say little about the matter in light of the fact that it was common ground between the representatives before me that the judge had erred in law. Mr Walker accepted, on the basis of the points made by Ms Ferguson in her skeleton argument to the Court of Appeal, that the judge had failed properly to assess the effects of deportation on the appellant's partner and children and there was therefore a material error of law in the decision.
4. I agree with what was in effect a joint submission in this respect and as a consequence, the appeal will have to be reheard. Ms Ferguson did not wish for any findings of the judge below to be preserved, and there is further evidence which has been put in on a Rule 15A application including an updated social worker's report, further medical evidence and updated evidence from the appellant's partner. As a consequence, I consider that the degree of remaking required in this case is such that the matter will require to be reheard in full and I direct that that be done by a Judge of the First-tier Tribunal at Harmondsworth or Hatton Cross before a judge other than Judge Kainth.

### **Notice of Decision**

The appeal is allowed to the extent set out above.

No anonymity direction is made.



Signed

Date 7 October 2021

Upper Tribunal Judge Allen