



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

Appeal Number: HU/04315/2015

THE IMMIGRATION ACTS

Heard at Field House

On 3 July 2017

**Decision &
Promulgated
On 6 July 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**THANH TUNG TRAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Baines, Counsel instructed by Kitty Falls Immigration Law

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Vietnam and his date of birth is 15 December 1994. He made an application for leave to remain on 18 June 2015 and the application was refused by the Secretary of State on 29 July 2015. The

appellant appealed against that decision and his appeal was dismissed by Judge of the First-tier Tribunal Bart-Stewart following a hearing at Taylor House on 9 September 2016. The decision was promulgated on 28 October 2016. Permission was granted by Upper Tribunal Judge Jordan on 8 May 2017, with reference to MM (Lebanon) and Others v Secretary of State [2017] UKSC 10.

2. Ms Holmes conceded, at the start of the hearing, with particular reference to MM, that the judge materially erred and I agree with her. The judge materially erred when considering proportionality because he did not factor into the assessment evidence of third-party support. There was no proper assessment of the appellant's income from various sources which is relevant when assessing proportionality. The judge did not make findings of fact in respect of third party support.
3. I set aside the decision of the judge to dismiss the appeal. I agreed with the parties that that the matter should be remitted to the First-tier Tribunal for a re-hearing.
4. In the light of Ms Holmes' concession it is not necessary for me to engage in detail with the decision of the First-tier Tribunal, or indeed with each and every ground of appeal. There is to be a *de novo* hearing. Article 8 will need to be considered on the facts and evidence pertaining at that time.

No anonymity direction is made.

Signed Joanna McWilliam

Date 4 July 2017

Upper Tribunal Judge McWilliam