



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

Appeal Number: DA/00199/2016

**THE IMMIGRATION ACTS**

**Heard at the Royal Courts of Justice**

**Decision & Reasons**

**On 21 January 2019**

**Promulgated**

**On 04 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

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

Appellant

**and**

**MARIO [M]  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**DECISION AND DIRECTIONS**

1. The appellant, Mario [M], was born on 9 July 1994 is a citizen of Portugal. Following a hearing at the Royal Courts of Justice in July 2017, I found an error of law in the decision of the First-tier Tribunal. Subsequently, severe problems arose in securing the attendance of the appellant at court for the resumed hearing. On several occasions, the hearing had to be adjourned on account of the failure of the prison authorities to produce him. Eventually, at a hearing on 21 January 2019, the appellant was produced. His mother also attended the tribunal. Following a discussion with the appellant and the Senior Presenting Officer, I concluded that the interests of justice indicated that the decision should be remade following a hearing in the First-tier Tribunal. It is possible that other witnesses for the appellant will attend to give evidence in addition to the appellant's mother. Given that the appellant is in prison and is not legally represented, it would be extremely difficult for him to comply with

directions to serve witness statements and other documentary evidence prior to the next hearing. The fact-finding effort exercise which will be required may be lengthy and it will be better if it is undertaken in the First-tier Tribunal. I therefore rescind my previous direction that the decision should be remade following a rehearing in the Upper Tribunal and direct that the decision shall be made following a hearing *de novo* in the First-tier Tribunal.

**Notice of Decision**

2. The decision of the First-tier Tribunal which was promulgated on 18 January 2017 is set aside. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date 21 January 2019

Upper Tribunal Judge Clive Lane