



IAC-BH-PMP-V1

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

Appeal Number: AA/07264/2014

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke  
On 5<sup>th</sup> August 2015**

**Decision & Reasons Promulgated  
On 1<sup>st</sup> September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GARRATT**

**Between**

**MARCUS MBUNGU  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Neville, of Counsel instructed by J D Spicer Zeb Solicitors  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. On 24<sup>th</sup> November 2014 Judge of the First-tier Tribunal Parkes gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal E M M Smith in which he dismissed the appeal against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant, a male citizen of the Democratic Republic of Congo.
2. Judge Parkes thought it arguable that the judge had applied the wrong standard of proof to the evidence when finding that the appellant was not a credible witness.

### **Error on a Point of Law**

3. At the commencement of the hearing Mr McVeety agreed that the judge appeared to have given himself the wrong self direction in paragraph 16 of the decision indicating that the standard of proof was “the balance of probabilities”. Nevertheless, he drew attention to the response of 12<sup>th</sup> December 2014 in which it was argued that, in paragraph 24, the judge had referred to *K (DRC)* [2003] UKIAT 00014 (I believe this should be a reference to the decision in *SK (DRC)* [2003] UKIAT 00014) which examined the guidance set out in *Chiver (10758)* decided in 1994 referring to the “low standard of proof”.
4. Mr Neville contended that the judge had clearly contradicted himself and it could not be clear which standard had actually been applied to the evidence before the judge reached his negative findings. I was also reminded of the decision of the former Immigration Appeal Tribunal in *Kaja (Political asylum: standard of proof) (Zaire)* [1994] UKIAT 11038 which makes it clear that there is only one standard of proof of a reasonable degree of likelihood to be applied in relation to asylum claims as a one stage process. On this basis paragraph 24 of the decision could not be seen as a complete or correct self direction.
5. After considering the matter for a few moments I indicated that I was satisfied that the decision showed a material error on a point of law such that the decision should be set aside and re-made. That was because the judge’s self direction under the heading “Burden and standard of proof” in paragraph 16 clearly sets out the civil standard which is wrong. I am not satisfied that the judge’s comments in paragraph 24 of the decision can be said to show that the judge simply made a mistake in his self direction because the judge’s comment that he was not satisfied “*even* to the low standard of proof” (my emphasis) could be said to suggest that the judge was applying two standards to the evidence when, as *Kaja* makes clear, there is only one.

### **DIRECTIONS**

6. The decision of the First-tier Tribunal shows an error on a point of law such that it should be set aside and re-made.
7. Having regard to the nature of the error it will be necessary for the appeal to be heard afresh. Applying the provisions of paragraph 7.2(b) of the Practice Statements by the Senior President of Tribunals dated 25<sup>th</sup> September 2012 it is appropriate that this matter should be heard afresh by the First-tier Tribunal.
8. The appeal will be heard by the First-tier Tribunal on 18<sup>th</sup> March 2016 at the Stoke Hearing Centre.
9. A Lingala interpreter will be required.
10. The appeal is not to be heard by Judge of the First-tier Tribunal E M M Smith.

**Anonymity**

Anonymity was not requested before the Upper Tribunal nor do I consider it appropriate.

Signed

Date

Deputy Upper Tribunal Judge Garratt