



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/01464/2015**

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Centre  
On 5 January 2016**

**Decision and Reasons  
Promulgated  
On 2 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**MOHAMED FAJEED USAN  
(NO ANONYMITY ORDER)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms N M Hashmi, instructed by Lyon Legal Ltd  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. On 6 July 2015, Designated First-tier Tribunal Judge Macdonald granted the appellant permission to appeal to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judge Henderson that was promulgated on 10 June 2015 on the grounds that it was arguable that the judge had applied the wrong standard of proof throughout.
2. In its rule 24 response notice, the Home Office accepted that the judge's decision and reasons statement was fatally flawed for the reasons identified by Judge Macdonald. I am in agreement. Although at paragraph 53 of his decision and reasons statement Judge Henderson refers to the "reasonable likelihood test", everywhere else, including his self direction at

paragraphs 21 and 22 and his findings at paragraphs 32 and 41 he applies a balance of probabilities test.

3. Such a fundamental error cannot be considered to be a mere slip and therefore the whole decision is unsound and must be set aside and remitted to the First-tier Tribunal for a fresh hearing. Ms Hashmi thought some positive findings might be preserved but I suggested that it would be wrong to pick and choose since the First-tier Tribunal Judge rehearing the appeal will have to make their own credibility findings on all the available evidence in the round. For the avoidance of doubt, nothing whatsoever is preserved from Judge Henderson's decision and reasons.
4. I direct that the appeal is to be remitted to the First-tier Tribunal to be heard by a judge other than Judge Henderson. As per the appellant's request, the appeal is to be heard in Birmingham.

### **Decision**

The decision and reasons statement of Judge Henderson contains an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal for a fresh hearing as per the direction given above.

Signed

Date

Judge McCarthy  
Deputy Judge of the Upper Tribunal