



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

Appeal Number: AA/00141/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 11 May 2017**

**Decision & Reasons Promulgated
On 9 June 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**MN
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan (Counsel)

For the Respondent: Mr A McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication

thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. I have anonymised the appellant's name because this decision refers to his asylum claim.

Summary of asylum claim

2. The appellant is a citizen of Afghanistan. He contends that he has a well-founded fear of persecution in Afghanistan for reasons relating to a long-standing land dispute.

Procedural history

3. In a decision dated 28 November 2016 First-tier Tribunal Judge N Sharkett dismissed the appellant's appeal. The First-tier Tribunal considered the main issue in the appeal to relate to the appellant's credibility [55]. Although the First-tier Tribunal accepted that there was a land dispute, it comprehensively rejected the credibility of the appellant's claim that he was targeted for reasons related to this [58-70].
4. In a decision dated 19 January 2017 First-tier Tribunal Judge Pedro granted permission to appeal observing that it was arguable that the entire decision is unsafe because the First-tier Tribunal's findings are partly based upon the application of the incorrect standards of proof – the balance of probabilities.
5. The SSHD submitted a rule 24 notice dated 10 February 2017 in which she acknowledged that the First-tier Tribunal refers to a balance of probabilities but described this as "*nothing more than a typographical error*".

Hearing

6. At the beginning of the hearing Mr McVeety accepted that the appeal was unopposed and the decision needs to be remade in its entirety. He was entirely correct to do so for the reasons set out below.
7. Both representatives agreed that the error of law is such that the decision needs to be remade completely. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Error of law discussion

8. I can state my reasons briefly given the respondent's concession. The First-tier Tribunal correctly directed itself to the "*reasonable*

degree standard of proof” at [50]. The First-tier Tribunal then made wide-ranging adverse credibility findings [59-63] before concluding “*on the balance of probabilities*” that the appellant did not provide a truthful account [64]. There is nothing to support this being a typographical error. Indeed, this obvious and accepted error of law in applying the standard of proof is repeated at [74]. At [73] the First-tier Tribunal confusingly referred to the “*low burden of proof on [the appellant] to show that there is a reasonable degree of likelihood ...*”.

9. The correct application of the standard of proof is a fundamental requirement in the determination of an asylum appeal. In my judgment, the respondent was entirely correct to concede that the First-tier Tribunal has erred in law in applying the incorrect and higher balance of probabilities standard.
10. It follows, as agreed by both representatives, that the conclusion on credibility is vitiated by error of law and unsafe. The decision must be remade entirely and de novo.

Decision

11. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
12. The appeal shall be remade by the First-tier Tribunal de novo.

Signed: **UTJ Plimmer**

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
11 May 2017