



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

PA/11220/2019

THE IMMIGRATION ACTS

Heard at George House, Edinburgh

Decision & Reasons
Promulgated

On 10 December 2021

On 20 December 2021

Before

Mr C M G OCKELTON, VICE PRESIDENT, & UT JUDGE MACLEMAN

Between

SUTHAKAR RAJANAYAGAM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Fyffe, of McGlashan MacKay, Solicitors

For the Respondent: Mr Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge McLaren dismissed the appellant's appeal by a decision promulgated on 16 August 2021.
2. The appellant sought permission to appeal to the UT. The first and leading ground is that although the judge stated the standard of proof correctly at [16], she repeatedly assessed matters by other standards such as "more likely", "some doubts", and "more than likely", in such a way that the correct standard of proof was not applied.
3. FtT Judge Adio granted permission on 5 October 2021, on the view that cumulatively the Judge's expressions gave the impression of applying a higher standard of proof.
4. In a rule 24 response to the grant of permission the SSHD concedes that the language used in the decision "is indicative of applying the civil

standard of balance of probability rather than the lower standard of reasonable degree of likelihood”, and says that the case should be remitted to the FtT.

5. That concession was correctly made. It is usual for particular matters in a case to be established to degrees varying from near certainty to faint possibility, and it is not an error to say so; but it must be clear that the correct overall standard was applied to issues essential to the outcome. The decision, unfortunately, leaves that in considerable doubt.
6. The outcome is as agreed. The decision of the FtT is set aside, and the case is remitted for a fresh hearing, not before Judge McLaren.
7. No anonymity direction has been requested or made.



10 December 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is “sent” is that appearing on the covering letter or covering email.