IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001700
First-tier Tribunal No:
PA/00947/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 March 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MNIR SAID
(no anonymity order)

Appellant

and

SSHD

Respondent

Decided under rule 34 without a hearing on 13 February 2023

DECISION AND REASONS

1. On 8 April 2022 FtT Judge Komorowski granted the appellant permission to appeal against the decision of FtT Judge Austin:

> With respect to para. 5 of the grounds, despite the correct statements of the law as to the standard of proof in the judge's decision at paras. 8-11, it is arguable from the references to matters being "not … likely" (para. 54), "more likely than not" (para. 56), "more likely" (ibid.), and "more likely than not" (para. 60, twice), that the judge wrongly applied the civil standard of proof to at least some of the issues material to the international protection appeal.
>
> With respect to para. 7 of the grounds, it is arguable that the judge was required to set out the discrepancies the judge relied on, and that these have not been set out anywhere in the judge's reasons.

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> The complaint in para. 8 appears to me to be without merit. But I grant permission on all grounds taking a "pragmatic view" …

2. On 20 April 2022 the SSHD responded to the grant of permission, conceding error of law:

> The respondent … invites the Tribunal to remit the appeal to the FTT for a *'de novo'* hearing to consider whether the appellant faces a real risk on return to Iraq, or whether removal would otherwise be disproportionate under Art 8.
>
> The SSHD accepts that the FTTJ's use of the phrase "I consider it more likely than not" [56/60] suggests that the civil standard of the *balance of probabilities* was incorrectly applied. The SSHD notes that the FTTJ does not otherwise reference the lower standard in their findings of fact [49-60]. The SSHD accepts that the Art 8 proportionality assessment [61] would likewise be materially undermined by errors in the protection claim assessment.

3. It is appropriate, under rule 34, to decide on error of law and on further procedure without a hearing.

4. The decision of the FtT is set aside, and stands only as a record of what was before the tribunal. The case is remitted for a fresh hearing, not before Judge Austin.

Hugh Macleman
Judge of the Upper Tribunal, Immigration and Asylum Chamber
13 February 2023