



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

Appeal Number: PA/12225/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 14 May 2019**

**Decision & Reasons Promulgated  
On 30 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD**

**Between**

**MR B M H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mrs S Rogers, Legal Representative.

For the Respondent: Mrs R Petterson, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The Appellant is a citizen of Iraq. He made an application for international protection. It was refused and he appealed and following a hearing, and in a decision promulgated on 11 December 2018, Judge of the First-tier Tribunal R L Walker dismissed his appeal.
2. The Appellant sought permission to appeal. It was granted by Judge of the First-tier Tribunal S H Smith on 10 January 2019. His reasons for so granting were:-

*“1. The Appellant seeks permission to appeal, (in time), against a Decision of the First-tier Tribunal (Judge RL Walker) who, in a Decision and Reasons promulgated on 11 December, dismissed his appeal against the Secretary of State’s decision to reject his asylum claim.*

*2. The grounds assert that the Judge erred by applying the balance of probabilities standard of proof, rather than the lower standard of reasonable likelihood applicable to protection cases.*

*3. There is an arguable material error of law. The Judge’s reference at [11] to the balance of probabilities standard applying in “immigration cases” may have been a reference to any Article 8 aspects of the appellant’s case. In the preceding paragraph, the Judge had correctly summarised the lower standard applicable to protection cases. However, at [26], when conducting his operative analysis of the appellant’s credibility, the Judge again cited the balance of probabilities standard. Throughout his discussion of the appellant’s core case, the Judge made no further references to the applicable standard of proof. At [45], the Judge merely referred in generic terms to “the burden of proof”, without specifying what it was. Arguably, the Judge’s analysis of the appellant’s case was conducted pursuant to the balance of probabilities standard, which is arguably a material error of law.”*

3. Thus, the appeal came before me today.
4. Mrs Rogers relied on the grounds seeking permission to appeal as highlighted in the decision granting permission recorded above.
5. Mrs Petterson whilst acknowledging at paragraph 26 of the decision the Judge applied the civil standard of proof rather than the lower standard. She emphasised that it was apparent that on the individual finding within that paragraph it had been in favour of the Appellant. However, she conceded that on a reading of the decision as a whole the Judge may have materially erred in applying the wrong standard of proof.
6. I find that to be the position. The Judge has materially erred by applying the balance of probability standard of proof, rather than the lower standard of reasonable likelihood applicable to protection claims. Whilst the reference to the balance of probabilities in paragraph 11 of his decision may have been to the standard applying in “immigration cases” the difficulty arises out of paragraph 26 where once more there is reference to the balance of probabilities when dealing with an issue relating to the protection claim.
7. The Judge has accordingly materially erred.

**Notice of Decision**

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge R L Walker.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Date: 28 May 2019

Deputy

Upper Tribunal Judge Appleyard