



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-002033

First-tier Tribunal No: PA/55417/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

18<sup>th</sup> October 2023

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MOHAMMAD SAHABUDDIN**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**On the papers:**

**DECISION AND REASONS**

1. The appellant appeals with permission decision First-tier Tribunal Judge Chana ('the Judge') promulgated following a hearing at Hatton Cross on 5 May 2023, in which the Judge dismissed his appeal on all grounds.
2. Permission to appeal was granted by another judge of the First-tier Tribunal on 14 June 2023, the operative part of the grant being in the following terms:

Ground [1] asserts that the Judge erred in law by misdirecting herself as to the applicable standard of proof. At paragraph [29], the Judge states the burden of proof is on the Appellant to the standard of a 'balance of probabilities'. Whilst this is the applicable standard when considering whether an asylum seeker has a characteristic which could cause them to fear persecution by virtue of section 32(2) of the Nationality and Borders Act 2022, this only applies to claims lodged after 28th June 2022. Given the Appellant lodged further submissions on 17th February 2021, the applicable standard of proof is that of a 'reasonable degree of likelihood'. It cannot be assumed that the Judge would have reached the same findings had she applied the appropriate lower standard of proof.

3. A Rule 24 response filed by the Secretary of State's representative on 6 July 2023 stated the Respondent did not oppose the appeal because the Judge applied the wrong standard of proof. It is accepted the Judge may not have made some of the adverse findings that she did, particularly those which rely on the absence of independent supportive evidence from the appellant.
4. Directions were sent to the parties seeking their view on whether, in light of the Secretary of State's position and the issue on which permission to appeal had

been granted, this Tribunal could dispose of the matters on the papers without a hearing. Responses have now been received from both parties indicating their agreement to the matter being disposed of on the papers and remitted to the First-tier Tribunal sitting at Hatton Cross to be heard *de novo* by a judge other than Judge Chana.

5. Having considered the guidance provided by the Upper Tribunal in relation to whether an appeal should be remitted or remain in the Upper Tribunal I consider it is appropriate to remit in this instance. The accepted failure of the Judge to apply the correct standard of proof means none of the findings can be preserved and the appellant has been denied the opportunity to have the merits of this case considered against the appropriate legal test. Findings will need to be made in relation to all aspects which could be extensive. It is therefore appropriate in the interests of fairness for the appeal to be remitted.

### **Notice of Decision**

6. I set the decision of the Judge aside. There shall be no preserved findings. The appeal shall be remitted to Hatton Cross to be heard *de novo* by a judge other than Judge Chana.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4 October 2023**