Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00730/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2nd October 2018	**On 10th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOHAMED [O]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Ms M Butler, Counsel

DECISION AND REASONS ON ERROR OF LAW

1. The appellant in this appeal is the Secretary of State. However, it is more convenient to refer to the parties as they were before the First Tier Tribunal. From now on, therefore, I shall refer to Mr [O] as "the appellant" and to the Secretary of State as "the respondent".

2. The appellant arrived in the UK clandestinely in November 2015 and claimed asylum. Although his age was initially contested, it is now accepted that he was only 15 when he arrived and submitted his application. The respondent accepted the appellant was an ethnic Kurd

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from Iraq. However, the account given by the appellant of fearing ISIS and also fearing the Kurdish population in general because of his father's former role with the Ba'ath Party were rejected on credibility grounds. The appellant appealed.

3. The appeal was heard by Judge of the First Tier Tribunal Martins at Hatton Cross on 20 February 2018. In a decision not promulgated until 1 June 2018, the judge allowed the appeal. She found the appellant credible as to the reasons he had put forward for fearing to return to Iraq. She followed country guidance that the appellant's home area was an area of internal armed conflict and considered whether the appellant could relocate safely to another area of the country. She gave reasons why she considered this would be unduly harsh. She allowed the appeal on asylum grounds.

4. The respondent sought permission to appeal on short grounds. These challenge the decision on the basis that the judge appeared to have accepted the credibility of the appellant's account without giving any clear reasons for doing so.

5. The application was considered by Judge of the First-tier Tribunal Parkes. He considered the decision lacked any analysis of the appellant's case and amounted to a "bald, unreasoned acceptance". However, his order concluded by stating that the grounds did not disclose any arguable error of law and that permission to appeal was refused. This was apparently amended under the so-called 'slip rule' to show that the judge intended to grant permission, although the amended decision confusingly continued to read that the grounds did not disclose any arguable error of law.

6. The appellant submitted a rule 24 response arguing that the decision should be upheld. The response also pointed out that it had been decided in *Katsonga ("Slip Rule"; FtT's general powers)* [2016] UKUT 00228 (IAC) that rule 31 of the First-tier Tribunal Procedure Rules cannot be used to reverse the effect of a decision. I raised with the representatives how to approach the question of the Upper Tribunal's jurisdiction in this case. Both parties were keen to proceed on the basis that permission had been granted. I am grateful for their constructive assistance. In the event that the purported grant of permission by the First-tier Tribunal is invalid, I reconvene as a Judge of the First-tier Tribunal in order to grant permission. The parties consented to waive the requirement for an order to that effect being sent out.

7. I heard submissions from the representatives on the issue of whether the judge's decision contained a material error of law. I shall only set these out as is necessary to explain my decision.

8. Mr Tufan wished to argue matters which had not been raised in the grounds seeking permission to appeal, such as whether Kirkuk is still a 'contested area' and whether the appellant could obtain a CSID, but I did not permit him to do so. He acknowledged the grounds were brief and he simply argued that the judge's decision is not adequately reasoned. Ms Butler argued the decision is adequately reasoned. I agree with Ms Butler and my reasons are as follows.

9. In her decision the judge set out in considerable detail the reasons given by the respondent for disbelieving the appellant, the points made in the grounds of appeal and the oral evidence given at the hearing. At paragraph 54 of her decision, she began her findings and conclusions by stating that she found the appellant credible. Although she does not say so expressly, it is clear that she meant by this that she accepted the entirety of the account put forward. She continued in paragraph 55 as follows:

> "The respondent accepts the appellant's identity, age, nationality and Kurdish ethnicity. Much of the respondent's rejection of the appellant's claim is based on alleged inconsistencies, inaccuracies or vagueness in the answers given by him at his asylum interview. As argued on the appellant's behalf, it is highly relevant to any assessment of the appellant's asylum interview, that he was a minor at the time it took place (as is now accepted), but he was not treated as such by the respondent. The appellant was not given any of the procedural safeguards he was entitled to, significantly the attendance of a legal representative, and therefore the appellant's answers at interview are to be assessed against that background; namely that he was a minor who is to be given the benefit of the doubt according to the respondent's own policy. I find that the appellant gave satisfactory explanations for the inconsistencies and discrepancies noted by the respondent. It is significant to note that he was 15 years old at the time, that from the information he had, his father was kidnapped and his departure was organised by his mother and uncle. As he explained in his witness statement, it was not for him to decide when to leave Iraq."

10. I find in this paragraph there are two very clear reasons for the positive credibility finding made by the judge: firstly, that the various inconsistencies relied on by the respondent had to be viewed in the context that the appellant was only 15 years of age at the time of his interview and he was not accompanied at the time, and, secondly, that he had provided adequate explanations in his subsequent evidence for the apparent discrepancies in his account. In my judgment, in the circumstances of this case, these reasons are adequate.

11. This is a case in which it is helpful to have regard to some of the general guidance provided by the higher courts. In *Piglowska v Piglowski* [1999] UKHL 27 Lord Hoffman, allowing an appeal from the Court of Appeal, and restoring the decision of the lower courts stated that,

> "These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well-known … An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

12. In *RH v SSHD* [2007] EWCA Civ 640, in upholding the determination of the adjudicator, Buxton LJ said,

> "14. There is, however, a more fundamental reason why the approach of the AIT was mistaken. We were shown very familiar authority in the shape of Flannery v Halifax [2000] 1 WLR 377, and English v Emery Reimbold [2002] 1 WLR 2409, which were said to demonstrate that in addressing this question it was not enough for the adjudicator to say to believe the mother, he must go on and say why he did not accept or did not rely on the answer given by the boy. Had they both given evidence to him there might possibly be something in that, but it is not required of a tribunal of fact, particularly one that has heard witnesses, to say more than that it fully accepts the evidence of the one witness. This court did not intend, in either Flannery or English v Emery Reimbold to go further than that, and more particularly it was careful to emphasise in English v Emery Reimbold that the reasoning necessary to be set out by a tribunal of fact depends very largely upon the nature of the dispute before it. That is conspicuously the case in Flannery, which was a case about two competing expert witnesses, where the parties were entitled to some indication of why one has been preferred to the other. In this case it is absolutely clear why the adjudicator decided the matter that he did. He decided it simply and crudely because he believed what the mother told him. The issue before him was whether she had sole responsibility for the child, and his series of reasons for believing what she said about that could, in my view, not possibly be offset by one answer given by the applicant, part of which is accepted on all sides to be mistaken and the other part of which, on the mother's evidence, is plainly wrong.
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> 15. I therefore cannot accept, I fear, that the Asylum and Immigration Tribunal was justified at the first stage in finding that Mr Watkins had made an error of law. I would go further and say this, that when appeal tribunals are considering the determination of an adjudicator who has heard witnesses and who has seen all the papers, they should be extremely careful before translating what may be their view that they would have found the facts differently from what the adjudicator found into a conclusion that the adjudicator has erred in law in what he has found. Provided it is clear what the basis of the conclusion is -- and here it manifestly is clear -- it is not open to an appellate tribunal to go behind the determination of the tribunal of fact.

13. Applying these basic principles, in my view, the judge in this case gave sufficient reasons to explain her decision that, notwithstanding the numerous challenges made, she accepted that the appellant had given a truthful account. In the circumstances, she was entitled to go on to find that there would not be a sufficiency of protection for the appellant in his home area and that he would be unable or he could not reasonably be expected to relocate internally.

14. For these reasons, the decision of Judge Martins allowing the appeal on protection grounds shall stand and the respondent's appeal against her decision is dismissed.

Notice of Decision

The Judge of the First-tier Tribunal did not make a material error of law and her decision allowing the appeal shall stand.

Signed Date 3 October 2018

Deputy Upper Tribunal Judge Froom