IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005578

First-Tier Tribunal No: PA/51529/2022
LP/00412/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22nd March 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DBA
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr Diwnycz, a Senior Home Office Presenting Officer.
For the Respondent: Mr A Hussian of Counsel.

Heard at Phoenix House (Bradford) on 18 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the above respondent is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the above respondent, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Nazir ('the Judge'), promulgated following a hearing at Newcastle, who allowed the appeal against the refusal of DBA's claim for international protection and/or leave to remain in the United Kingdom on any other basis.
2. The appellant is a citizen of Iraqi of Kurdish ethnicity.

3. The Judge sets out findings of fact from [31] of the decision under challenge. At [39] the Judge states DBA is found to be a person who has provided an account that is largely credible. The Judge accepts his account overall. At [40], in light of the positive credibility finding, the Judge accepts DBA does not currently possess a CSID card and does not currently have contact with his family. The Judge finds the point of return will be to Baghdad as DBA originates from Kirkuk. The Judge finds DBA will not be able to obtain his original CSID or replacement identity documents within a reasonable time, meaning he will face a real risk of being exposed to conditions that will breach his rights contrary to Article 3 ECHR.
4. At [45] the Judge states the appeal is allowed on Refugee Convention grounds.
5. The Secretary of State sought permission to appeal claiming the Judge failed to adequately deal with conflicts in the evidence identified in the refusal letter. The Secretary of State submits that although the Judge describes DBA as an unsophisticated witness no reasons are given for that conclusion which did not assist the Secretary of State in understanding why the appeal was allowed. It is stated the Judge did not explain which parts of DBA's accounts are accepted and which were not. The Grounds also assert the Judge's finding that DBA is no longer in contact with his family is inadequately reasoned when his own evidence was that he stayed with an uncle close to Sulaymaniyah prior to leaving Iraq. It is also claimed the Judge failed to apply section 8 of the 2004 Act properly, fails to adequately consider redocumentation, and failed to deal with material issues.
6. Permission to appeal was refused by another judge of the First-tier Tribunal and renewed to the Upper Tribunal where it was granted by Upper Tribunal Judge Kebede, on 30 January 2024, on the basis it was said there is some arguable merit in the assertion in the grounds that the Judge failed to address the various credibility concerns raised in the refusal decision and failed to adequately resolve discrepancies raised by the Secretary of State, such as at [17] of the refusal. All grounds are said to be arguable.

Decision and reasons

7. As was submitted by Mr Hussain that (i) the Judge had the benefit of not only the documentary evidence but also seeing and hearing DBA give oral evidence, (ii) the Judge makes a specific reference to having had regard to the Refusal Letter and the evidence as a whole, (iii) at [30] the Judge specifically confirms that consideration has been given to all the evidence in the round when arriving at the conclusion set out in the determination, (iv) the Judge applied the lower standard of proof in relation to whether DBA had made out his claim, and, (v) that although DBA was unrepresented the Secretary of State provided a Presenting Officer to represent his interests making it reasonable to assume that all points being relied upon by the Secretary of State will have been brought to the attention of the Judge and considered.
8. Mr Hussain also referred to documentary evidence before the Judge noting ISIS had a developing interest in DBA's home area at that time, including examples of armed conflict, which it was submitted made it was not implausible that the events occurred as outlined before the Judge. Specific reference is made to [11], [15], [26], [27 – 30], and [32] of the decision under challenge, amongst others in Mr Hussain's submissions. The significance of [15] is there the Judge refers to the refusal letter and thereafter sets out a summary of the points being raised.
9. During the course of the hearing I referred the parties to the judgment of the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 464 at [2] in which that Court found:

Appeals on fact

2. The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:

   i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

   ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

   iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

   iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

   v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

   vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.

3. If authority for all these propositions is needed, it may be found in *Piglowska v Piglowski* [1999] 1 WLR 1360; *McGraddie v McGraddie* [2013] UKSC 58, [2013] 1 WLR 2477; *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29; *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 WLR 2600; *Elliston v Glencore Services (UK) Ltd* [2016] EWCA Civ 407; *JSC BTA Bank v Ablyazov* [2018] EWCA Civ 1176, [2019] BCC 96; *Staechelin v ACLBDD Holdings Ltd* [2019] EWCA Civ 817, [2019] 3 All ER 429 and *Perry v Raleys Solicitors* [2019] UKSC 5, [2020] AC 352.

10. This approach has been repeated in the more recent decision of the Court of Appeal in Hafiz Aman Ullah v Secretary of State for the Home Department [2014] EWCA Civ 201 in which Lord Justice Green in giving the lead judgement, with which the other members of the Court agreed, wrote:

UT's jurisdiction and errors of law

26. Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:

   (i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];

(ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49 at paragraph [45];

(iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see *R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority* [2013] UKSC 19 at paragraph [25];

(iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see *UT (Sri Lanka) v The Secretary of State for the Home Department* [2019] EWCA Civ 1095 at paragraph [27];

(v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 at paragraph [34];

(vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see *MM (Lebanon) v Secretary of State for the Home Department* [2017] UKSC 10 at paragraph [107].

11. Mr Diwnycz accepted that the application for permission to appeal did not appear to take the guidance set out above into account.
12. In light of the fact the Judge has not been shown not to have considered the evidence with the required degree of anxious scrutiny, and in light of the fact that having done so, even if another judge would not come to the same conclusion, the Judge's findings have not been shown to be outside the range of those reasonably open to the Judge on the basis of findings made, it cannot be said the Secretary of State has established legal error in the decision on the basis of the facts as found.
13. So far as the reasons challenge is concerned, I find no merit in the same. The author of the grounds is, in part, seeking reasons for reasons. A reader of the determination is clearly able to understand not only what the Judge has found but also the reasons for the same.
14. Disagreement with the overall conclusion is not sufficient. The grounds fail to establish the Judge's decision to allow the appeal is rationally objectionable, however generous it may appear to the author of the grounds.

Decision

15. No legal error material to the decision to allow the appeal has been made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 March 2024