IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002326

First-tier Tribunal No: PA/00350/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of November 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AOA

(Anonymity direction made)

Respondents

Representation:
For the Appellant: Ms Young, Senior Presenting Officer
For the Respondent : Mr Cole, Solicitor advocate instructed on behalf of the respondent

Heard at (IAC) on 4 October 2023

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Brannan (hereinafter referred to as the "FtTJ") who allowed the appeal of AOA on human rights grounds but dismissing his asylum claim against the decision of the Secretary of State dated 12 April 2022 having determined the appeal "on the papers."

2. Permission to appeal the decision of the FtTJ was sought and on 30 May 2023 permission was granted by FtTJ Boyes.

3. For the purposes of this decision, I refer to the Secretary of State for the Home Department as the respondent and AOA as the appellant, reflecting their positions before the First-tier Tribunal.

4. The FtTJ made an anonymity order, and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve what amount to a protection claim.

5. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

6. The background to the appeal is set out in the decision of the FtTJ, the decision letter and the bundles provided.

7. The appellant is a national of Iraq. He entered the UK on 28 March 2019 an claimed asylum. On 10 July 2019, the respondent refused his claim. The appellant appealed and the appeal was dismissed by a decision of First-Tier Tribunal Judge Moran promulgated on 23 September 2019. FtTJ Moran accepted the factual account given by the appellant as to why he had left Iraq, "partly because he wished to escape the humiliation he had been subjected to and partly because he was hoping to access effective treatment in the UK" (paragraph 21) and that he had been harassed as he had been perceived as intersex. The FtTJ considered his claim against the background of the country materials and concluded that the material was consistent with what had happened to the appellant ; he was 31 when he left Iraq and had faced problems since late adolescence but that despite that significant period of time he had not been subjected to violence or threats of violence. Whilst the FtTJ accepted that he had received persistent abuse that had caused him distress, the FtTJ found that she saw " no basis for finding that the treatment of AOA might be any more severe than it was for the period of over 10 years when he was living in Iraq." The FtTJ concluded that what the appellant had described and what he might face in the future did not meet the threshold of serious harm or persecution (paragraph 26). The FtTJ also noted that the appellant's case did not rely on the lack of medical treatment in Iraq but in any event the endocrinologist had said that it was available(at paragraph 24). The FtTJ further noted that whilst the medical evidence had stated that by the end of the year the appellant would have completed treatment and would be indistinguishable for any other adult man, the FtTJ had to assess the evidence as at the date of the hearing although it was relevant to take that into account that if returned to Iraq he could continue treatment in Iraq and had the prospect of the treatment being effective in a short period of time. The FtTJ did not consider Article 8 of the ECHR as it not been raised.

8. The appellant sought permission to appeal but permission was refused, and his appeal rights were exhausted on 3 December 2019.

9. On 13 November 2021, the appellant made further submissions. The claim made was based on the private life he had established in the UK and that he would be at risk of harm if returned to Iraq. The appellant relied upon his medical condition and that he claimed that he would be perceived as inter-sex or be part of the LGBTQ community as result of his condition. It was also said that he feared the Shia militia's and that he would be unable to relocate to Baghdad or another area in the IKR because he would suffer from the same treatment as a result of his medical condition and the current humanitarian and security situations in those areas (see paragraphs 8-17 of the decision letter).

10. The respondent refused the claim in a decision taken on 12 April 2022. This was a comprehensive decision which took into account the basis of the claim made and addressed the claim by reference to the earlier decision of FtTJ Moran and by reference to the relevant country materials. At paragraph 26 of the decision letter, it was noted that Judge Moran had accepted his factual claim as credible and that he had given an honest account. The decision addressed the further submissions made as a protection claim an also on the basis of the appellant's private life (Article 8) and medical grounds (Article 3).

11. The appellant appealed the decision, and the appeal came before FtTJ Brannan at a case management review on 20 July 2022. It is unnecessary to set out the contents of the reviews that took place between the parties as directed by FtTJ Brannan in detail at this part of the decision as they will be referred to later in the decision.

12. It is not clear from the FtTJ's decision, but it appears that the case management reviews were conducted on the papers rather than by the parties attending before him. The FtTJ sets out the procedural chronology between paragraphs 10-19 of his decision. The FtTJ stated that he gave written directions to the respondent to review her decision and to consider the current and medical condition of the appellant and the issue of very significant obstacles to integration in light of the findings of FtTJ Moran and the appellant's current and correct medical condition. It is of note that the appellant, who was representing himself, had provided his medical records from 2019 but had not provided any current medical evidence as to his condition. The decision letter had referred to the medical evidence that had formed the appeal before FtTJ Moran. The FtTJ directed a further case management review.

13. On 23 August 2022, the respondent filed her review.

14. On 21 September 2022, a further case management review hearing was held and the FtTJ directed the appellant to send evidence from his endocrinologist to the Tribunal and the other party by reference to a set of questions. The FtTJ directed the respondent to conduct a review by 23 January 2023.

15. The FtTJ observed that the parties had complied quicker than expected. However as noted the appellant did not provide evidence from his endocrinologist but a letter from his GP answering the questions. There is no copy letter in the CE File, but Mr Cole confirmed that the contents of the GP's letter was summarised by the FtTJ at paragraph 16. That letter confirmed the earlier medical evidence that had been before FtTJ Moran.

16. On 28 November 2022, the respondent field a further review and asked that the appeal be listed as an oral hearing.

17. The FtTJ reviewed the papers on 25 January 2023, and sent out his direction to the parties as set out at paragraph 18 of his decision. The appeal was then listed before him " on the papers." Whilst the FtTJ referred to the direction which had given the parties the opportunity to send representations for an oral hearing, having been cut off the decision that had been sent , he considered that it was not necessary to give the parties any further opportunity to make representations because both parties had been notified and that he had considered that the appeal could be justly determined.

18. In a decision promulgated on 29 March 2023, the FtTJ allowed the appeal under Rule 276ADE(1) (vi) on the basis that there were very significant obstacle to the appellant's integration to Iraq. The relevant paragraphs of the decision are set out at paragraphs 24-26. The FtTJ found that the appellant was not an insider when he lived in Iraq. He was treated as an outsider because of his lack of masculine appearance and had left because of his treatment. He could not form a romantic family life because of his infertility. The FtTJ considered the argument that he outwardly appeared as a man, but this ignored that he is already known to his community as a Neramok and that he would not shed the stigma simply because of looking at more masculine on return and would still require medical treatment and would be infertile.

19. The FtTJ did not accept that he could relocate to another area in Iraq and that as he still required medical treatment he would not be able to within a reasonable time form a variety of human relationships to give substance to his private or family life without being close to his own family in Iraq a choice between being an outsider in a community that knows him as a she-male, an outsider in a community that does not know him but where he will have no support nor opportunity to develop a normal family life because of his medical condition. He therefore allowed the appeal.

20. It also right to note that he dismissed the appellant's protection claim on the basis that there was no new evidence to depart from the findings of FtTJ Moran (see paragraph 27).

21. The respondent sought permission to appeal the decision and permission was granted on 30 May 2023 permission was granted by FtTJ Boyes.

The appeal before the Upper Tribunal:

22. Ms Young appeared on behalf of the respondent and Mr Cole appeared on behalf of the appellant. Ms Young relied upon the written grounds of challenge which are set out below.

23. It is submitted on behalf of the respondent that the FtT Brannan has made a material error of law in the decision reached by making a material misdirection in law/ Irrational findings and failing to give adequate reasons for findings on material matters.

24. It is submitted that the only issue with this appeal is whether the appellant succeeds as there would be very significant obstacles to his integration.

25. Whilst it is accepted that the judge directs himself to the correct legal tests set down in Kamara and Parveen [para's 22 & 23], Ms Young submitted that he did not apply the correct legal test.

26. When looking at the decision, FtTJ Brannan has dismissed the asylum/ protection claim as did the FtT previously (Judge Moran).

27. The FtTJ finds that the appellant was treated as an outsider [24] given his lack of masculine appearance but is not satisfied that the appellant would shed the stigma simply by looking more masculine on return. The judge notes that the appellant requires lifelong testosterone and remains infertile (see paragraph[25]). At paragraph [26] the FtTJ finds that he would "not be able to

within a reasonable time a variety of human relationships to give substance to his private or family life without being close to his family in Iraq." As he would be an outsider in a community that knows him as a shemale, an outsider in a community that does not know him but where he will have no support nor opportunity to develop a normal family life because of his medical condition. Thus, the appeal is allowed seemingly with reference to 276ADE (1) (vi).

28. It is submitted that the judge has materially misdirected himself to the tests that he sets out at paragraphs 22-23 by failing to properly consider the stringent and elevated threshold tests leading him into a finding that is plainly wrong (*Volpi & Volpi* EWCA Civ 464 [2022]) paragraph 2 (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.

29. It is submitted that it is clear from the facts that the appellant is in regular contact with his family x province (see para's 3 (i) & (x)) and even accepting that he faced some discrimination from his local community this discrimination did not take the form of physical assault on his person that could not be protected from the authorities. His family members would offer support both financial and emotional. There is no indication that the appellant would be unable to access the drugs/ medication that he currently enjoys in the UK and as stated in the decision letter, after treatment in the UK the appellant now has the appearance of a male thus any "appearance" discrimination would cease.

30. The appellant is now a 37 year old male having left Iraq when 31 years of age. Whilst he may be unable to have children the FtTJ fails to explain why he would be unable to marry and enjoy family life or his private life in Iraq.

31. When considering internal relocation it is submitted that the FtTJ fails to adequately reason why this would be impossible for this appellant as he now seems to have what is described as a normal appearance, knowledge of the language and culture of Iraq and a family that would be able to support him emotionally and financially while he relocates. It is respectfully submitted that being infertile is an irrational reason/ no reasonable judge could have reached for finding that there are very significant obstacles to integration.

32. In her oral submissions she submitted that the FtTJ erred in law by allowing the appeal as the obstacles do not reach the high threshold for very significant obstacles to integration.

33. Whilst it is accepted that the judge set out the correct test at paragraphs 22 and 23 of decision, he did not apply the test and that is the thrust of the respondent's grounds.

34. Ms Young submitted that this was not a disagreement with the decision but that the FtTJ failed to give adequate reasons as to how the elevated threshold had been met.

35. It was not disputed that the appellant could receive the required treatment, but the judge failed to engage with that. It was further not in dispute that the appellant was in regular contact with his family.

36. She submitted that when looking at paragraph 26, where the FtTJ stated that it was not a choice he should be forced to make, was not sufficient to meet the elevated threshold of very significant obstacles.

37. Mr Cole relied upon his Rule 24 response. It submits that the grounds have no merit. By reference to the grounds of challenge, it is submitted that the respondent accepted that the judge directed himself to the correct legal tests set out in Kamara and Parveen.

38. It is further submitted that whilst the respondent relied on the decision of the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 4642 argue that the decision is "plainly wrong", what the grounds assert is that the judge made perverse or irrational findings. It is submitted that such an argument represents a very high hurdle and a demanding concept. There is no suggestion that the judge has failed to consider all the relevant materials although it may said the decision is generous, it is not possible to categorise the judge's decision is irrational or perverse.

39. It is further submitted the grounds are no more than a disagreement with the decision of the FtTJ and failed to identify any material legal error.

40. In his oral submissions, Mr Cole submitted that this was not a reasons challenge, and this was not set out in the grounds but was a perversity challenge. This was a high threshold to meet was not met on the facts of this case. The respondent accepted that the judge directed himself to the correct case law and principles and therefore to suggest he misapplied the law is a difficult submission to make.

41. Mr Cole submitted that in reality this was just a disagreement with the decision and the respondent had failed to articulate their case before the FtT and were now trying to appeal the decision made.

42. He submitted that the judge highlighted that the refusal letter did not engage with the very significant obstacles issue, and this was why the FtTJ "case managed" the appeal via reviews.

43. When looking at the 18 August 2022 review, there are 2 parts as to "very significant obstacles" and paragraph 11 is the substantive part which states, "In the previous findings made by First Tier Tribunal Moran the issue of very significant issue appears to have been dealt with at paragraph 25 of the determination: that the appellant could continue to receive treatment in Iraq and the treatment and the prospect of being effective in a short period of time." However this was incorrect as Judge Moran did not deal with this issue at all.

44. Mr Cole referred to a further review completed by the respondent dated 28 November 2022, at paragraph 6 where a quote from Judge Moran was provided. However Judge Moran was referring to the issue of persecution and finding that it did not reach the article 3 threshold which was not relevant to this appeal. That was also set out at paragraph 8 of the review where the respondent invited the tribunal to follow the decision of Judge Moran.

45. Mr Cole submitted that Judge Brannan stated that Judge Moran decided the appeal solely on protection grounds and therefore the legal conclusions reached by Judge Moran were not relevant. Mr Cole accepted that the factual findings were relevant, and that Judge Brannan set out the findings which Judge Moran found as credible and they were facts that were not in dispute; the appellant's problems in Iraq, and that he had leave Iraq due to the mistreatment of him.

46. Mr Cole submitted that this was not a perverse decision and that whilst it might be a generous one, and even if a different judge might take a different view, the FtTJ correctly applied the elevated threshold, looking at the accepted facts and reached a decision within a reasonable range of responses. He submitted that it was the appellant's position that the grounds amounted to no more than a disagreement with what she considers to be an overgenerous decision but not one that is unlawful therefore the decision should stand.

47. Ms Young made no reply.

Discussion:

48. This was a decision reached by the FtTJ "and the papers" based on his review of the points raised by the parties and on the material available.

49. When considering whether the respondent's grounds are made out, it is necessary to consider the procedural background and the material that was before the FtTJ.

50. There is no issue that the decision reached by FtTJ Moran was the starting point of the present appeal applying the well-established principles in Devaseelan as the FtTJ accepted at paragraph [9]. The FtTJ set out the summary of the evidence accepted by FtTJ Moran at paragraph 3 and at paragraphs [4] and [5] summarised the reasons why FtTJ Moran dismissed the appeal. Those reasons were set out in the respondent's decision letter at paragraph[25] which recited in full Judge Moran's assessment between paragraphs [20 – 27]. Those findings, which are not set out in detail in the present FtTJ's decision, were of importance to the present appeal. Judge Moran accepted the appellant's evidence as to the treatment he had experienced in Iraq as a result of his condition congenital Hypogonadotropic Hypogonadism ("CHH") which included having been "looked down on and mocked by people in the community he was repeatedly called a "neramok" and had felt humiliated (set out set out at paragraph [13]).

51. At paragraph [21] Judge Moran he accepted the entirety of the appellant's account and that he left his family reluctantly, partly because he wished to escape the humiliation he was subjected to and partly because he was hoping to access effective treatment in the UK. "He was despondent in Iraq and isolated himself to avoid public humiliation. He was understandably particularly distressed and not being able to have a family of his own."

52. Judge Moran considered the background country evidence making the observation that there was "little direct evidence as to how people with this particular condition are treated in Iraq (at paragraph [22]) and at paragraph [23] also observed that whilst most of the background material related to gay people outside the IKR that was not the appellant's claim he did not claim that he been referred to as gay or ill-treated on the basis that he had been perceived to be gay but that he had been perceived as being intersex and harassed as a result. Judge

Moran found that it was clear from the background evidence that whatever category of LGBTI a person is the problems for them are less severe in the IKR, but that this is all relative and there are significant problems for LGBT people in the IKR. Judge Moran went on to find at paragraph [23] that the appellant was 31 when he left the country and he had faced the problems he has had since late adolescence but that despite the significant period of time he had not been subjected to violence or threats of violence. The judge accepted that he had been on the" receiving end of persistent abuse and that this had caused a lot of distress."

53. Judge Moran addressed the issue of medical treatment, and that the appellant's representative was not relying on the lack of available treatment in Iraq, and that whilst it was not entirely clear what medical treatment the appellant had in Iraq, the evidence did not show that he could not receive the necessary treatment in Iraq based on the evidence of the appellant's endocrinologist that it was available in Iraq (see paragraph [24]).

54. At paragraph [25] the FtTJ addressed the medical evidence from the endocrinologist that by the end of the year the appellant would have completed puberty and be externally indistinguishable from any other adult man therefore no longer get teased about looking like "a child or like a woman". Judge Moran accepted that evidence but noted that the assessment of the claim should be at the time of the hearing. Nonetheless the judge concluded that it was relevant to take into account that if the appellant were returned now he could continue treatment in Iraq and that" the treatment had the prospect of being effective in a short period of time."

55. Judge Moran concluded at paragraph [26] that the case turned on the severity of the treatment that he may be subjected to on return but found that there was no basis for finding that the treatment of the appellant might be any more severe than it was during the period of over 10 years when he was living there with those problem in Iraq. The judge considered the evidence whether it amounted to persecution but that it was important feature of the appeal that there was no physical violence and that whilst it was upsetting to have been treated as he was it did not meet the elevated threshold of persecution, serious harm or a breach of Article 3.

56. Judge Moran therefore dismissed the appeal in a decision promulgated on 23 September 2019. Following the dismissal of his appeal, he applied for permission to appeal to the First-tier Tribunal but that was refused on 18 November 2019, and he became appeal rights exhausted on 3 December 2019. Further submissions were provided by the appellant in or about November 2021 which led to the decision letter of 12 April 2022.

57. When deciding the present appeal, FtTJ Brannan noted that there had been no argument based on Article 8 and in particular the issue of whether there were very significant obstacles to his integration (see paragraph 6 of his decision).

58. The FtTJ considered the decision letter and took the view that when considering the issue of very significant obstacles the respondent only considered the issue in the light of the appellant's language ties and his length of residence in Iraq, and the assistance of his family but did not consider the appellant's medical condition.

59. Whilst that is correct when looking at paragraphs [62 – 63] of the decision letter, when reading the decision letter as a whole it demonstrates that there were a number of other issues raised which were relevant to the issue of whether there were very significant obstacles to integration, albeit not in that particular section of the decision letter.

60. For example, paragraphs [29 -30] made reference to the appellant's medical condition and that the treatment should now been completed and that his appearance would be indistinguishable from any other male. Reference was made to similar treatment being available in Iraq as he claimed to have already received treatment (paragraph [29]. At paragraph [30] the decision letter stated that by reference to his medical condition where it had been claimed that this would mean that he would continue to be perceived as an indication that he was intersex, the appellant provided no evidence to show that the treatment that he had received in the UK had not worked or not been completed and therefore as the endocrinologist had set out, he would be indistinguishable to any other male and that had been achieved. It referred to other aspects of his condition, whilst it states "infidelity" that is plainly a misprint and should read "infertility" and in this regard, the respondent concluded "this would not be known to many individuals outside your family who you claim to be very supportive of your struggles." At paragraph [36] the respondent assessed the appellant's own personal circumstances noting that whilst he had medical conditions, and he stated that this restricted him from working in Iraq, he had stated in his evidence that he was able and willing to work in the UK. The respondent concluded "you have also shown great fortitude undertaking an arduous journey halfway across the world to a foreign land where you did not speak the language and did not know anyone. This resilience and adaptability stand you in good stead for returning to your home area." At paragraph [41], the decision letter referred to him as an "adult male with genuine family support" and whilst it was accepted that he had a disability, the condition would have improved after treatment in the UK which could be continued in Iraq meaning that any disabilities would not be distinguishable, nor would they lead to serious ill-treatment as found in the previous determination."

61. Therefore whilst the FtTJ was correct to say that the previous decision was decided solely on protection grounds and that human rights were not considered, the respondent was entitled to rely on the factual findings made by Judge Moran and as set out in the decision letter including the medical evidence which was not just relevant to the protection claim but also was central to the relevance of the issue of very significant obstacles. The assessment also relied on the family support available to the appellant.

62. I do not accept the submission made by Mr Cole that because Judge Moran decided the appeal solely on protection grounds that the legal conclusions reached were irrelevant to human rights grounds. Although it is fair to say Mr Cole did accept that the factual findings were relevant. The findings made as to the appellant's medical condition and the evidence that was before Judge Moran was relevant in the light of the circumstances from the updated evidence that now confirmed what had been the position before Judge Moran.

63. As can be seen from the FtTJ's decision, it was case managed via the issue of directions and for the filing of reviews by the respondent. The appellant was not represented before the FTT.

64. Between paragraphs [11 – 18] the FtTJ set out a summary of reviews. Not all matters raised in the respondent's reviews are set out in the FtTJ's decision. For example when summarising the August 2022 review (see paragraph [11]), that review set out the previous medical evidence in some detail. They formed part of the factual findings of Judge Moran, which confirmed that at the end of the treatment the appellant would have completed puberty and made the point that there was no current evidence from his endocrinologist.

65. The August 2022 review at paragraph [9] quoted paragraph 30 of the decision letter, and to the failure to provide evidence to show that the treatment he received in the UK had not worked or not been completed thus relying on the previous evidence of the endocrinologist that the treatment had been achieved and that he would not be indistinguishable from any other male upon return. Also that whilst he had claimed difficulties as to fertility, that this would not be known to many individuals outside his family, who he claimed to be very supportive of his struggles.

66. Whilst the respondent accepted she had not addressed very significant obstacles by reference to the medical condition of the appellant in the original decision letter, it is plain that that was because the appellant had not provided any up-to-date medical evidence but importantly at paragraph 11 of the August 2022 review the respondent stated "In the previous findings made by First Tier Tribunal Moran the issue of very significant issue appears to have been dealt with at paragraph [25] of the determination: that the appellant could continue to receive treatment in Iraq and the treatment and the prospect of being effective in a short period of time".

67. When looking at the content of that review it demonstrates that the respondent was relying on the medical evidence that was before Judge Moran and that the prospect of being effectively treated both in the UK and in Iraq was relevant to the issue of very significant obstacles, not just in the context of the treatment he had received in the UK and its effectiveness but also based on the other medical treatment available to him in Iraq.

68. Thus the respondent was plainly setting out how the previous findings of judge Moran, albeit as a protection claim, were relevant to the issue of very significant obstacles. That is not readily apparent when reading paragraph [11] of the FtTJ's decision.

69. The final review was undertaken by the respondent in November 2022 following the receipt of the medical evidence which the FtTJ summarised at paragraph [16] which in essence confirmed the previous evidence given by the endocrinologist.

70. The FtTJ summarised the November review at paragraph [17] in short terms, namely that she relied upon the findings of Judge Moran to say the tribunal should make findings in line with the earlier determination. This is a reference to paragraph 8 of the November review.

71. However this again is a very brief summary of the review. The position of the respondent set out in the review was that the previous review on 18 August 2022 should be read in conjunction with the decision letter, and that the medical evidence which was considered at paragraph 3 should be seen in the context of the findings of Judge Moran. At paragraph 5 of the review it stated, "It is noted that in answer to question (d), whether the Appellant is now indistinguishable

from any other adult man, Dr K's answer to the question is 'yes.' This confirmed what the Consultant Endocrinologist said in the letter of 16th July 2019 (see paragraph 16 of the earlier determination)."

72. The review also set out the Judge Moran had considered the appellant's medical evidence and the respondent considered that there had been no new evidence.

73. Whilst the respondent asked the tribunal to consider paragraph [26] of Judge Moran's decision and cited this , on the face of it this looks to be in error. The factual context is that of the medical evidence which is set out at paragraphs [23 – 25] of Judge Moran's analysis of the evidence and it is likely that the reference to paragraph 26 is in error. But even if the respondent was not an error in citing that particular paragraph, on any fair reading of the reviews alongside the decision letter, it is plain that the respondent relied upon the findings made by Judge Moran in relation to the medical evidence and this was a significant part of their case and also the family support available.

74. There was little evidence from the appellant, and none is mentioned by the FtTJ save for that which was before Judge Moran. There was medical evidence from the endocrinologist that by the end of the treatment he would have completed puberty and would be externally indistinguishable from other adult men and would no longer be teased. It was also stated that he was infertile and that specialist treatment to restore fertility was possible (see report p93RB).

75. That is the background from which the assessment was carried out with the relevant paragraphs being paragraphs [24 – 26].

76. There is no dispute between the parties that the FtTJ set out the correct test for whether there are "very significant obstacle to integration" between paragraphs [22 – 23]. The issue raised in the respondent's grounds is that the FtTJ did not apply the test by applying the elevated threshold that was necessary. The threshold test is a high one and the burden is on the appellant to show that it is met.

77. The respondent submits that by failing to properly apply or appreciate the stringent and elevated threshold that this led the FtTJ to make an assessment that was "plainly wrong" citing Volpi v Volpi .

78. Ms Young, in her submissions did not go as far as to assert that no reasonable judge could have reached the decision and as identified earlier such a submission would be inconsistent with the earlier parts of the grounds which refer to inadequate reasoning as to the overall analysis.

79. Whilst Mr Cole characterises the grounds as a "perversity challenge" I do not consider that the grounds base their submissions on that but that by not appreciating or applying the high threshold, that had led the FtTJ to a flawed assessment on the issue of very significant obstacles. This is indicated by the rest of the grounds which set out parts of the evidence which did not form part of the FtTJ's analysis but was relevant to whether there were very significant obstacles to integration.

80. Having considered the grounds of challenge, I am satisfied that they are made out and that whilst the FtTJ set out the reference to the elevated threshold when reading the analysis, that threshold was not applied. The reasons are as follows.

81. The FtTJ at paragraph [24] considered the past circumstances of the appellant, stating that "he was not insider when he lived in Iraq. He was treated as an outsider because of his lack of masculine appearance" and he left Iraq because of this treatment. His private life is clearly hampered by this. He could not form a romantic family life because of his infertility." Whilst he did not cite any evidence in support it is consistent with paragraph [13] of Judge Moran's decision.

82. However at paragraph [25], the FtTJ sought to address the main thrust of the respondent's argument which centred on the medical evidence which had not altered from that which had been before Judge Moran but importantly now confirmed what the endocrinologist had said as to the effectiveness of the treatment but also that continuing treatment would be available in Iraq. The FtTJ found that the submission made by the respondent ignored that he was already known to his community as a Neramok and that he was not satisfied that the appellant would shed the stigma simply because of looking more masculine on return. Reference was made to the appellant still requiring treatment and that he remained infertile.

83. However, the FtTJ did not assess whether the appellant would be able to access the treatment that he had obtained in the UK, and which was also relevant to the issue of infertility. That was also relevant to the assessment made a paragraph 26 where the FtTJ considered whether the appellant could live in a different part of Iraq. The FtTJ again returns to the point made as to the appellant's infertility but does not adequately reason as the grounds contend why that would mean he could not build up within a reasonable time human relationships in Iraq. The grounds make the point also that in this context the FtTJ did not consider the relationships that he had maintained with his family which also provided support to him and properly considered were relevant to establishing a private life.

84. Whilst the FtTJ later in paragraph [26] found that if the appellant lived in a different part of Iraq he would have no support or the opportunity to develop a normal life because of his condition, the findings did not explain or adequately reason why he would not be able to marry or enjoy a private life in Iraq. Whilst the guidance in Kamara demonstrated integration is not simply about an understanding of the way in which society work but is also about the ability to build up and continue human relationships, the challenge to this issue is that the FtTJ did not and adequately reason why this would not be possible. The assessment of whether there are very significant obstacles to integration generally consider the proposed country of return and the country information relevant to it as forming part of the assessment. There is no reference in the analysis of the country material, which was set out in the decision letter although directed to the situation generally.

85. Whilst Mr Cole submitted that this was not a "reasons challenge," the respondent's grounds do expressly refer to such a challenge to paragraph [26] and that the FtTJ failed to adequately reason why the appellant could not return to Iraq and integrate in the light of the medical evidence as it stood and as relevant to re-establishing himself.

86. Further the grounds refer to the failure to adequately reason and take account of other material facts, such as the appellant's knowledge of language, and culture, the extent of family support he previously had, which had been raised in the decision letter at paragraphs [62 – 63]. I also observe at paragraph 36 that the

respondent set out the appellant's personal circumstances referring to his resilience and adaptability as demonstrated by establishing himself in the UK which would stand him in a better position upon return.

87. Those matters were raised the decision letter and when undertaking an assessment of whether there were very significant obstacles to integration, all relevant factors would require an analysis.

88. Ms Young succinctly summarised the respondent's position that this was not a disagreement with the decision but that the FtTJ failed to adequately reason as to how the elevated threshold had been met and that it was also not adequately reasoned why the appellant's medical condition or infertility would be an obstacle or a very significant obstacle in the light of the medical evidence or in conjunction with the family support available to him. Thus the conclusions to which the FtTJ came to were irrational in the sense discussed in *R(Law Society) v Lord Chancellor* [2019] 1 WLR 1649 at [98] due to " a demonstrable flaw in the reasoning……for example, that significant reliance was placed on an irrelevant consideration, or that there was no evidence to support an important step in the reasoning, or that the resonating involved a serious logistical or methodological error."

89. For those reasons, the decision of the FtTJ involved the making of an error on a point of law and the decision is set aside.

90. In reaching a decision as to the remaking of the appeal and the venue for the hearing, I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. Having considered the practice statement and the recent decision of the Court of Appeal in *AEB v SSHD*[2022] EWCA Civ 1512 and that of the Upper Tribunal in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 46, I am satisfied that the correct and fair course is for the appeal to be remitted to the First-tier Tribunal. The appellant was not represented before the FtTJ, and he now has the advantage of representation in presenting his evidence. Mr Cole referred to further relevant evidence which would be sought on his behalf namely medical evidence and when considering paragraph 7.2(b) it will be necessary to undertake an assessment of all the factual evidence when reaching a decision. The appeal was decided as a " paper appeal" before the FtT but matters have changed; both parties sought an oral hearing for these proceedings and the appellant is now represented, and further evidence and argument is likely to be advanced.

Notice of Decision

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 shall be remitted to the First-tier Tribunal for a hearing.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

16 November 2023