Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03585/2017

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
on 8 January 2018	**on 10 January 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

D Y M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms J McKinlay, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge R L Walker, promulgated on 21 July 2017, dismissing his appeal on all available grounds.

2. The grounds of appeal to the UT may be summarised thus:

> (1) Misdirection in law, in terms of *PJ (Sri Lanka) v SSHD* [2015] 1 WLR 1322. Failure to engage with the fact that the appellant submitted the original of his father's *Al-Fursan* membership card, and to assess whether the respondent had a duty to investigate the authenticity of that document.

(2) Failure to engage with the appellant's evidence. (i) It was incorrect to say that his evidence was that his siblings had no problems: it was that one brother was a refugee in Germany, one sister was in a refugee camp in Iraq, and the whereabouts of the rest was unknown. (ii) The appellant said he worked while in Baghdad only in 2004 – 2006, not in 2014, as the judge appeared to think. (iii) The judge said the appellant acknowledged he had no problems in Baghdad, but he had given evidence of an incident at a checkpoint in 2005. (iv) The judge found that the evidence did not explain why the appellant is an Arabic speaker, but his statement at ¶40 included a detailed explanation. (v) The appellant's explained in his statement the apparent discrepancy over his father dying 2 years before *Al-Fursan* came into existence – the respondent and the background evidence mistook two organisations. The judge at ¶37 said the appellant had not answered the point, when he had.

(3) Failure to have due regard to the expert opinion of Dr Fatah. The judge at ¶31 said the expert should know if the appellant spoke with a Moslawi accent, but that would be relevant when the appellant was speaking Arabic, not a Kurdish language, and the report specified only that they spoke in Kurdish.

(4) Failure to consider objective evidence of abuses against Sunni Muslims in Baghdad.

(5) Failure to consider criteria and guidance in *AA* (in the UT and in the Court of Appeal).

3. Having heard submissions, I indicated my view of the grounds, as follows.

4. There is nothing in ground (1). When the document was sent to the respondent, it was not accompanied by any argument that the respondent had a duty to authenticate it. That point was developed only in the grounds of appeal to the UT, far too late.

5. While I do not seek to pre-empt future debate, it was not shown that this case might fall within the category where the respondent, exceptionally, has a duty to authenticate a document. (I also record Mr McVeety's submission that in any event the opinion of the appellant's expert was that if the appellant's father was a member of *Al-Fursan,* that was not a matter which placed the appellant at risk.)

6. There is nothing in grounds (4) and (5) either. These are generalised disagreements coupled with vague reference to background evidence and country guidance. They do not show that the evidence required the FtT to go beyond guidance, or that he established any case which should have succeeded within the guidance.

7. The judge appears to have largely overlooked that part of the appellant's statement where he responds to points in the refusal letter. Ms McKinlay in submissions identified another slip. The judge said at ¶31 that the expert did not have before him "the most important document which is the appellant's witness statement for this appeal hearing". However, the statement is listed in the report among the

documents which solicitors placed before the expert. I was advised that it was then in substantially the same terms as the final version adopted at the hearing.

8. The evidence from the appellant was undoubtedly confusing about the extent of his command of Kurdish Bardini. However, the judge appears to have misled himself into finding it adverse that the appellant has a good command of Arabic. That was the general language of education and public life. There is nothing in the evidence to make it unlikely that he would be fluent in Arabic.

9. The judge went wrong about whether the appellant said his siblings had experienced any difficulties.

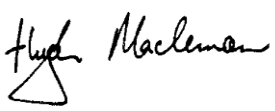
10. The points at ground (2) (ii) and (iii) I find of minor if any significance. However, the rest of grounds (2) and (3), as submitted upon by Ms McKinlay, show error such that the decision cannot safely stand as a resolution of the case.

11. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.

12. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.

13. The member(s) of the FtT chosen to consider the case are not to include Judge R L Walker.

14. The FtT made an anonymity direction, although no reason is stated. The matter was not addressed in the UT, so anonymity has been retained herein.



9 January 2018
Upper Tribunal Judge Macleman