IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004430

First-tier Tribunal No: PA/53638/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

30th January 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

AHMED ALI ASSI
(no anonymity order requested or made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr A Heeps, of McGlashan Mackay, Solicitors, Glasgow
For the Respondent: Mrs R Arif, Senior Home Office Presenting Officer

Heard at Edinburgh on 23 January 2024

DECISION AND REASONS

1. The appellant appeals to the UT against the decision of FtT Judge Young-Harry dated 13 July 2023.

2. In his grounds of appeal, the appellant insists that he gave a true and clear account, which ought to have been accepted. Apart from that, he complains that the Judge did not "address the documentation issue" or explain how he can return to the IKR (Independent Kurdish Region) without his CSID card. He refers to country guidance case law and to the respondent's June 2021 CPIN (Country Policy and Information Note).

3. On 27 November 2023 Deputy UT Judge Zucker granted permission:

> The grounds … contend that (i) the judge erred in not recognising that it was "doubtful" that the appellant would be able to obtain a CSID card in order that he might return to the IKR, with reference made to the guidance in the case of *SMO and KSP* (Civil status documentation, article 15) (CG) [2022] UKUT 00110; and (ii) the judge should have accepted the appellant's account of being politically active in the United Kingdom, criticising the Kurdish government.
>
> The judge did not find the appellant to be a reliable witness, explaining her reasons from paragraph 14 to paragraph 25. The judge has given adequate reasons for not accepting the appellant's account and has specifically stated at paragraph 24 that she does not accept that the appellant has lost contact with family members. Self-direction … to … *SMO* … appears at paragraph 24.
>
> Despite the judge appearing to find the appellant to be an unreliable witness it is nevertheless arguable that she has failed to make a clear finding with respect to the ability of the appellant to obtain the necessary documentation needed to effect return and so arguably erred in law.

4. Mr Heeps said that the Judge's consideration of documentation was only at [24], one brief paragraph, which erred by citing *SMO* [2019] UKUT 00400, although the correct reference should have been as above. The Judge said the appellant could be returned "directly to his home area, or where his family resides, in the IKR", but the appellant is from Kirkuk, which lies outside the IKR. The refusal letter suggested removal to Baghdad, although Mr Heeps accepted that matters had moved on since then in terms of removal destinations. The Judge did not engage with the possibility of having to travel within Iraq to be re-documented. He accepted that the Judge was entitled to reject the appellant's claim to have lost contact with his family, to find that his family might assist with identity documents, and to find him not credible, but that was not enough of a foundation. There was an absence of findings on documentation, such that the conclusion could not stand.

5. Mrs Arif accepted that there were slips in the decision, by an out-of-date citation, and by overlooking that Kirkuk is not in the IKR. However, she said those were immaterial, because the appellant failed to establish anything from which it followed in terms of country guidance and background information that he would be at risk either from having no documents or from inability to replace them. The evidence indicates that he has family in his home area. He has been found to be in touch with them. There was no reason to think that he did not have a passport or an identity document, or that those were not available to be sent to him if he chose. The decision at [24] was an adequate resolution of the issue.

6. Mr Heeps in reply said that the last sentence of [24], "… his family can assist with securing his identity documents on return", implicitly accepted that he would not have documents at the removal stage and would have to obtain them afterwards; and so there was an issue yet to be resolved.

7. I reserved my decision.

8. It is common ground that returns are now made to the IKR in appropriate cases, not to Baghdad.

9. Mr Heeps has made the most that could be made of the grounds. He correctly identified the Judge's slips in her case citation and on whether the appellant's home area is in the IKR. On the last sentence of [24], however, I do not agree with the analysis that this is an implicit acceptance that the appellant could only return undocumented. That reads in too much. The starting point is that he has been found to be an unreliable witness. There is no legal error in that finding. It was for him to achieve, to the lower standard, positive findings from which it might follow that he is at risk through documentation difficulties. In the absence of any such findings, it was not for the respondent or the tribunal to conjure up what the true situation might be. There was no reason to find the appellant entitled to protection because of documentary problems.

10. Other than that issue, Mr Heeps (rightly) did not seek to press anything else in the grounds (which were prepared before he was instructed). The rest of the grounds are only insistence and disagreement on the facts.

11. The appellant has not shown the decision to err materially on any point of law. His appeal to the UT is dismissed.

12. The decision of the FtT stands.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
26 January 2024