



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/05150/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 6 February 2018**

**Decision & Reasons
Promulgated
On 9 March 2018**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**A.N
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bonavero

For the Respondent: Mr Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Saudi Arabia born in 1979. He appeals against the decision of the respondent made on 16 May 2017 to refuse his claim for asylum.
2. The basis of his claim is that he acted in January 2016 as an interpreter at an interview for CNN with his cousin who was the brother of a prominent

dissident who had been executed. This was conducted in the presence of a member of the Ministry of Culture and Media who, he thought, might be affiliated to the intelligence system. Subsequently he was called for interview by the Criminal Investigation Department but did not respond because of his previous experience of having been detained for signing an appeal to release detained people in 2011. The family house was raided and he fled. Previously, he had posted on social media videos and tweets criticising the Saudi authorities.

3. The respondent did not believe the claim. Background evidence indicated that he would not have been able to take part in interpreting for a foreign press agency particularly if the interview was perceived as being detrimental to the government. Further, no evidence had been produced to support his claim that he had interpreted at an interview for CNN.
4. He appealed.

First tier hearing

5. Following a hearing at Hatton Cross on 30 June 2017, Judge of the First-Tier Quinn dismissed the appeal.
6. His findings are at paragraph 26ff. As he noted, the nub of the claim revolved around his role in an interview with his cousin and CNN. The interview was about the execution of another relative.
7. The judge took against the appellant's credibility that the CID would have telephoned him after the interview when they would surely have known about him and where he worked [26]. He also found against him the absence of a statement from his mother regarding a visit by the CID when he failed to attend for interview. Further, his failure to claim asylum following the 2011 incident during two previous visits to the UK.
8. He then moved on to consider the appellant's claim that he acted as interpreter for CNN but found it to be "*unsubstantiated*". The judge considered that he would have been paid and have been able to produce an invoice [38]. Whilst the judge accepted that the appellant "*had taken some part in the CNN interview as he was present at it*" he found that "*merely being present at the interview*" [34] did not place him at the risk of being targeted for his political opinion.
9. He went on "*the mere fact that he was present at the CNN interview did not mean he was actually interpreting at that interview*" [40].
10. He considered that photographs produced purporting to be of the interview were "*self-serving*" [41].

11. He also took against the appellant that he had not come to harm after the interview had taken place and was able to exit through the airport on his own passport without problems.
12. He concluded that the appellant had not established that "*he would be unlawfully killed or executed*" on return.

Error of law hearing

13. The appellant sought permission to appeal which was granted on 12 December 2017.
14. The crux of the grounds, repeated at the error of law hearing before me by Mr Bonavero, was that the approach to the CNN evidence was flawed. In particular, that the judge had not had regard to evidence from CNN sent to the appellant's representatives confirming that he had acted as the interpreter in the interview in question. Further, in respect of post interview events the judge failed to engage with the evidence that he had been in hiding and his exit was arranged by his cousin who was able to bribe a border official to allow him through.
15. Mr Nath left the matter for me.

Consideration

16. I agreed with Mr Bonavero that the decision showed error of law such that the decision had to be set aside and the case heard again. As indicated the judge described the appellant's claim to have been acting as an interpreter to be "*unsubstantiated*" and that his presence alone at the interview did not suggest he was acting as an interpreter. In so finding the judge failed to have regard to an email from CNN to the appellant's representatives, which was before him, which appears to support the claim that the appellant had, indeed, acted as the interpreter.
17. Failing to have regard to material evidence was a material error.
18. In addition, the judge gave weight to the fact that the appellant had not come to any harm in Saudi Arabia after the interview had taken place and that he had been able to leave through the airport on his own passport. He erred in failing to give consideration to, and make findings on, the appellant's claims included in his written accounts and in oral evidence that he was in hiding for the brief period between the interview and his departure, and that his exit through the airport was effected when a cousin bribed an official.
19. Further, the judge described the photographs as "*self-serving*". It is unclear to which photographs he was referring. In any event, to dismiss evidence simply as "*self-serving*" without further reasoning is an error of

approach. As the Upper Tribunal said (at [33]) in **MJ (Singh v Belgium: Tanveer Ahmed unaffected) Afghanistan [2013]** UKUT 253:-

“No doubt an appellant will generally, if not always, find it of assistance to put forward evidence that assists his case and to that extent such evidence may be regarded as ‘self-serving’, but that cannot in any sense be said to be a reason for marginalising it”

20. I would add that whilst it would not in itself have been a material flaw had the credibility findings been sustainable, the judge’s comment that the appellant had not established that he would be “*unlawfully killed or executed on return*” was not the right test for persecution (see UNHCR Handbook para 51).

Notice of Decision

The decision of the First-Tier Tribunal is set aside. 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 First-Tier Tribunal for an entirely fresh hearing before a judge other than Judge Quinn. No findings stand.

Direction Regarding Anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 9 March 2018

Upper Tribunal Judge Conway