



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

Appeal Number: PA/03407/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 17 June 2019**

**Decision & Reasons Promulgated
On 16 August 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**HASSAN [N]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jones, instructed by Paragon Law

For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 25 October 1956 and is a male citizen of Yemen. He is currently serving a life prison sentence for the murder of his father. He first entered the United Kingdom in March 1997 as a visitor and then claimed asylum. The appellant appealed on human rights (Article 2/3 ECHR)/asylum grounds against a decision of the Secretary of State dated 5 October 2016. The First-tier Tribunal in a decision promulgated on 6 December 2018, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant claims to fear the authorities in Yemen. He claims that he was a security officer for a state-owned plant in Aden. He claims to become aware of acts perpetrated by the authorities which led to his dismissal from work and threats, made on the part of the authorities, to kill him. The appellant initially gave an account of these matters to the United Kingdom authorities when he claimed asylum in March 1997. He was interviewed again in July 2017. The record of that interview is in the Tribunal file and is referred to extensively by the First-tier Tribunal judge [35-39]. At [36], the judge records the interview record indicates that there had been a break for lunch and that 'after lunch the appellant then claimed he was confronted and accused of being a separatist but not harmed.' Judge considered that this claim indicated an 'evolution' of his account of past events. Use of the word 'then' at [36] clearly indicates that the judge believed that the appellant's account changed or 'evolved' over the lunch break. The judge considered that the changed account showed that the appellant is a 'completely unreliable witness' who had 'invented' his asylum claim.
3. I agree with Mr Jones, who appeared for the appellant at the initial hearing, that this part of the judge's analysis is problematic. I acknowledge that the judge was right to consider that the appellant's evidence should be treated with great caution given the very serious criminal offending which he has been convicted in the United Kingdom. Notwithstanding that starting point, the judge was required to conduct a careful and objective analysis of the appellant's claim. Even though she may have been justified in having a low opinion of the appellant as a witness of truth, I consider that there can be little doubt that the judge's belief that the appellant changed his asylum claim over lunch during an interview in July 2017 weighed heavily in her rejection of that claim as credible. The problem in the judge's analysis is that in the July 2017 interview the appellant was doing no more than to reiterate details of his asylum claim which he had advanced in 1997. Whether or not the account is true, the appellant did not invent or 'evolve' his account over lunch in the course of an interview nearly 20 years later.
4. In the circumstances, I set aside the decision. I preserve the judge's conclusions regarding the notice under section 72 of the Nationality Immigration and Asylum Act 2002; permission to challenge these findings was not given by the Upper Tribunal (see grant of permission, 14 February 2019). None of the findings of fact shall stand. In the circumstances, I do not propose to deal with the remaining grounds of appeal in any detail. However, I find that there is considerable force in Mr Jones's submissions regarding the judge's treatment of the expert witness whose evidence the judge has largely rejected for reasons which are unclear. The will, in any event, need to be a hearing *de novo* in the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal set aside. None of the findings of fact shall stand, save that the First-tier Tribunal's decision to uphold the certificate under Section 72 of Nationality Immigration and Asylum Act 2002 and the consequent dismissal of the appeal on asylum grounds shall stand. The decision in respect of the appeal on Article 3 ECHR grounds shall be remade in the First-tier Tribunal at or following a hearing on a date to be fixed.

Signed

Date 1 August 2019

Upper Tribunal Judge Lane