



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

Appeal Number: PA/12165/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 14 May 2019**

**Decision & Reasons  
Promulgated  
On 31 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APLEYARD**

**Between**

**N A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs L Brajak, Solicitor.

For the Respondent: Mrs R Petterson, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The Appellant is a citizen of Iran. He made an application for international protection which was refused. He appealed and following a hearing, and in a decision promulgated on 5 December 2018, Judge of the First-tier Tribunal Arullendran, dismissed his appeal on all grounds.
2. The Appellant sought permission to appeal. It was granted by Designated First-tier Tribunal Judge McCarthy on 18 January 2019. His reasons for so granting were: -

*“1. On 5 December 2018, FtT Judge Arullendran dismissed the appellant’s appeal against the refusal of his protection claim because she decided the appellant was not a refugee from Iran or otherwise in need of international protection. The judge also decided the appellant did not benefit from article 3 or 8 ECHR.*

*2. On 14 December 2018, the FtT received an application for permission to appeal to the Upper Tribunal. The application is in time.*

*3. The grounds argue the judge erred in law by: (i) relying on her own internet search for the appellant’s Facebook page rather than the printouts provided, (ii) finding the printouts did not indicate whether the Facebook account was public or private and therefore ignoring the “add friend” button indicated the account was public, (iii) ignoring the fact the appellant’s 4,000 Facebook friends include Christians and non-Christians and not taking this into consideration when assessing the appellant’s evangelical activities since all his friends could read his posts promoting Christianity, (iv) failing to consider the likelihood that the Iranian authorities may have viewed the appellant’s Facebook page and thereby the risk the appellant has been identified as an evangelising Christian, (v) failing to give adequate reasons for disregarding the written testimony of people the appellant has evangelised, (vi) failing to give adequate reasons for disregarding the oral and written evidence of two ministers, and (vii) making inconsistent findings about the appellant’s church activities.*

*4. I find it is arguable the judge should not have engaged in internet research during the hearing because she did not afford the appellant an effective opportunity to rebut that allegation. This may have affected the fairness of the hearing and the judge’s attitude towards the appellant’s other evidence. I also mention that it is unlikely that a person will have 4,300 followers on Facebook if an account is private and this factor appears to have been ignored. The printouts do indicate an “add friend” button which appears to have been overlooked by the judge.*

*5. I find it is arguable that reposting positive information about Christianity might be viewed as evangelising. I think it is arguable that the judge erred when apply the principles in AB because this was a case where the appellant gave an explanation how the Iranian authorities may have been alerted to his activities by his paternal cousin (see [35]) and that has not been considered. I also find it arguable that the judge failed to give adequate reasons for rejecting written evidence from people the appellant says he evangelised and from one of his ministers. It is arguably inadequate reject evidence merely for non-attendance of a witness, particularly when the lower standard of proof applies, and recalling that corroboration is not a requirement.*

*6. I also find it is arguable that the judge gives insufficient reasons for rejecting the opinion of the minister who attended the hearing that the appellant was a genuine convert. The situation had moved on significantly since the earlier judicial decision and the minister had been preparing the appellant for baptism which suggests a close knowledge of his intentions."*

3. Thus, the appeal came before me today.
4. At today's hearing Mrs Brajak sought to rely upon the grounds seeking permission to appeal.
5. Mrs Petterson conceded that the Judge had materially erred with particular reference to the content of paragraph 34 of her decision which, given the way the Judge treated the evidence and found that she herself was unable to locate his Facebook site via google there was procedural unfairness. I find for all the reasons highlighted by Designated Judge McCarthy in his grant of permission to appeal as being arguable the Judge has in fact materially erred. There is no alternative in the circumstances but for this matter to be reheard de novo before the First-tier Tribunal.

### **Notice of Decision**

The making of 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 is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Arullendran.

### **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



2019

Date: 28 May

Deputy Upper Tribunal Judge Appleyard

