



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/09689/2017

THE IMMIGRATION ACTS

Heard at Liverpool  
On 16 July 2018

Decision & Reasons Promulgated  
On 3 August 2018

Before

DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL

Between

MOHAMMED HOSIEN NAZIF  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss J Mason, Legal Representative, Broudie Jackson & Canter  
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Iran, has permission to challenge the decision of Judge Tully of the First-tier Tribunal sent on 19 March 2018 dismissing his appeal against the decision made by the respondent on 27 May 2017 refusing his protection claim.
2. The grounds are expressed as being confined to the contention that the decision of the judge was procedurally unfair in that she refused to admit "live" material evidence proffered by the appellant on the day of the hearing, namely the Instagram account posts on his phone made whilst still in Iran. This was said to amount to unfairness because the judge herself accepted that this was "significant evidence". The grounds included a record of proceedings which under a heading "x-examination" had the

appellant making clear he could show these posts on his phone and that the judge expressly refused to look at them. The grounds also submitted that in relation to the appellant's Instagram posts from when he has been in the UK (print-outs of some which were produced by the appellant in advance of the hearing), the judge made a "mistake of fact" since these did disclose his real name.

3. I heard helpful submissions from both representatives.
4. I am not persuaded that the judge's decision was marred by procedural unfairness. The appellant has known since the respondent's refusal decision of 13 September 2017 that his claim to have converted to Christianity was not accepted. Given that at his asylum interview the appellant attached very significant importance to his having attended house churches and having become strongly affected by Christianity prior to leaving Iran, the appellant cannot have been unaware of the potential significance of the Instagram evidence and he clearly had no difficulty understanding that this type of communication could be relevant, since his appeal bundle included print-outs of his Instagram postings made since in the UK. These print-outs also demonstrate that the appellant (who was represented during this period) clearly understood that any such evidence if it existed, had to be presented in the form of print-outs. When the appellant was sent notice of hearing he was directed that any evidence he wished to adduce had to be adduced within a specified period of days prior to the hearing. Despite stating in his witness statement of 26 October 2017 (for the first time) that "I started to use my Instagram page to share the news of Jesus Christ". he failed to adduce any such evidence. At the outset of the hearing, the appellant, who was represented, made no application to adduce such evidence and only alluded to this evidence for the first time in cross-examination. Furthermore, the evidence he alluded to was not evidence that had come into existence recently. On his account, it had existed even prior to his asylum interview. In such circumstances the judge was clearly entitled to exercise her discretion not to admit such evidence. She furnished a very careful and properly reasoned account of her refusal to exercise her discretion:

"32. In his account in the witness statement the appellant claims that in March 2017 he started to post information on Instagram regarding Christian messages. He has not produced printouts of any of those posts in the appellants (sic) bundle. At the hearing I asked him why he had not and he offered no explanation. It is submitted to me by Miss Mason that the respondent has not disputed that he posted Christian messages on Instagram in Iran; there was no reason why he would therefore produce this evidence. I accept that there is no obligation to produce specific evidence in any asylum claim but the burden does rest on him to prove his case.

33. I accept that the respondent has not specifically addressed posts in Iran in the refusal decision, however Miss Mason has not drawn my attention to anywhere in the interview conducted in August 2017, or elsewhere in the evidence that was before the decision maker, where the appellant says that he posted messages on Instagram. Having reviewed the documents the first

time he appears to have raised this aspect of his account is (sic) in his witness statement dated 26 October 2017 (after the decision was reached). Even if I am I (sic) mistaken in this, the respondent clearly rejects any assertion that the appellant was a Christian before he came, in the decision. I take the view that the fact that the appellant claims to have a social media profile in Iran is a significant aspect of his case because it would support his claim that he had converted before arrival. It was a matter for the appellant to produce such documentation as he thought would support his claim.

34. He has failed to produce printouts of any Instagram posts and I cannot therefore take them into account. I have however considered what he says in his statement about the Instagram posts; that he posted using a nickname 'R G'. He told me that this had a religious meaning but did not explain what. Even if he produced any such posts, given that they were not in his name, I would have no way of telling whether they had genuinely been posted by the appellant. In the absence of any credible evidence I do not accept that he posted on Instagram in Iran."
5. I would observe that a further shortcoming in the appellant's argument on this matter is that the appellant chose not to adduce in a rule 15(2) response the print-out of the Instagram messages said to have been communicated when he was in Iran, which would at least have shown due diligence.
6. Although misleadingly presented as part of a submission regarding procedural fairness the grounds raise a separate issue about the Instagram evidence that the appellant did produce in the form of print-outs regarding his messaging since being in the UK. It is contended that the judge's assessment betrays a mistake of fact because the print-out at page 21 does contain the appellant's name. I do not consider that this amounts to an error of law. Not any mistake of fact (assuming it to be such) manifests an error of law and in this case what the judge stated is strictly correct: At paragraph 55 the judge wrote:
- "55. The appellant says that he has posted Christian messages on Instagram whilst in the UK and has produced a limited number of printouts in the bundle. I note that these are all under a different name rather than his own. I do not accept that these are credible evidence that he is a genuine Christian in the UK because I take the view that he has, even if he genuinely made this posts, done so in a way that he could not readily be identified. In such circumstances, it is possible that they are simply a cynical attempt to bolster week (sic) asylum claim."
7. The judge is correct to say that the posts are under a different name. The appellant's grounds are right to say that the posts contain a function which enables the Instagram recipients to click on to find the appellant's account name; but it remains that the postings do not feature the name. They feature the appellant's 'handle' name - masihiaan. I consider that the judge's assessment that the appellant's name "could not

readily be identified" was not a mistake, or if not entirely precise, not one of sufficient magnitude as to constitute an error of law.

**Notice of Decision**

8. For the above reasons I conclude that the appellant's grounds are not made out.
9. No anonymity direction is made.

Signed:



Date: 1 August 2018

Dr H H Storey  
Judge of the Upper Tribunal