IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003474

First-tier Tribunal No: PA/52430/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7th of November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

MRZ
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Saifolahi, counsel, instructed by NMH Solicitors Ltd
For the Respondent: Ms S McKenize, Senior Home Office Presenting Officer

Heard at Field House on 16 October 2023

ORDER REGARDING ANONYMITY

PURSUANT TO RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008, THE APPELLANT IS GRANTED ANONYMITY.

NO-ONE SHALL PUBLISH OR REVEAL ANY INFORMATION, INCLUDING THE NAME OR ADDRESS OF THE APPELLANT, LIKELY TO LEAD MEMBERS OF THE PUBLIC TO IDENTIFY THE APPELLANT. FAILURE TO COMPLY WITH THIS ORDER COULD AMOUNT TO A CONTEMPT OF COURT.

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Iran. Shortly after his arrival in the UK in 2016 he claimed asylum on the basis of his claimed sexuality. That claim and his subsequent appeals failed on the basis that his claim to be gay was not credible.

2. He now seeks asylum (or other international protection) on the basis that he is at risk on return to Iran because he has converted to Christianity. That claim was rejected by the Respondent on 14 June 2022 and his appeal to the First-tier Tribunal ("the FTT") was refused by First-tier Tribunal Judge Moffatt ("the Judge") in a decision dated 27 February 2023 ("the FTT Decision"). The Appellant now appeals to this Tribunal against the FTT Decision with permission granted by FTT Judge Landes on 5 April 2023.

3. Given the nature of the claim, I have decided that it is appropriate to anonymise the Appellant's identity notwithstanding the importance of the open justice principle. My anonymity order is set out above.

The FTT Decision

4. As already noted, the Judge rejected the Appellant's claim to be at risk on return. Given the nature of the Grounds on which it is said that the Judge erred in coming to that conclusion, set out below, it is necessary to consider her reasoning in some detail. However, in broad terms the appeal was dismissed on the basis that, first, the Appellant was not credible and it was therefore not accepted that he was a Christian convert as claimed, and second, that his *sur place* activities, in particular the online activities in which the Appellant had engaged to try to show that he was a Christian convert would not put him at risk at what is described in the Country Guidance as the 'pinch point' of being interviewed immediately on return to Iran.

5. After having set out the nature of the parties' respective cases, the legal framework and other introductory matters, the Judge, at para. 41 noted (uncontroversially) that the approach she had to take was, in accordance with PS (Christianity – risk) Iran CG [2020] UKUT 00046 (IAC), first, to decide whether it was reasonably likely that the Appellant was a Christian. At para. 43, she noted that the answer to this question turned on the Appellant's credibility. The Judge considered the issue of the Appellant's professed Christianity and credibility of his evidence at paras. 44-62.

6. At para. 44, the Judge noted the previous "very clear findings about the reliability of the appellant's evidence" which had been "vague and unreliable".

7. At para. 45, the Judge considered a text message purportedly received from the Appellant's father threatening to kill him on return. She noted that there were no contextualising material to the copy of the original, it was not possible to say from which mobile number it was sent, which year it was sent or who owned the number from which it was sent. The Judge was accordingly unable to attach any weight to this document. There is no challenge to this.

8. At paras. 46-53, the Judge considered a blog on which the Appellant sought to rely. She noted the following features of the copy in the Respondent's bundle:

a. the first monthly post appeared to have been in November 2019, the same month that the Appellant was baptised;
b. the posts were primarily religious images with slogans or phrases;
c. above many of the images the Appellant's name and the date were shown with an option to leave a comment;
d. other than showing the Appellant as the poster, there was little to indicate that it was the Appellant who was the creator or editor of the blog;
e. later passages of text did not credit the author of the text at all;
f. the first post with a comment was made on 30 September 2021 headed "We are Iranian Christians";
g. no individual was attributed as the author and no-one was identified as being an Iranian Christian; and,
h. of the posts in the Respondent's bundle, only three had comments and the greatest number of comments was five.

9. At para. 48, it was noted that there was also a version of the blog contained in the Appellant's bundle. Compared to the printout in the Respondent's bundle, these were to a greater scale (i.e. larger) and appeared to show the whole of the page, they had a photo of the Appellant on the right-hand side of them, there were no translations of the posts; and the copies of the posts showed the "Blog Stats" (20,351 views). These blog stats did not appear in the copy in the Respondent's bundle and on the copies in the Appellant's bundle, there was no url shown or date of printing.

10. At para. 50 the Judge noted the Appellant's oral evidence about the blog. She records the Appellant as having stated that he had 26,000 followers (though there was no dispute before me that in fact it had been said that he had 26,000 views). This, the Judge noted, did not accord with the documents in the bundle, given that the blog appeared to have had 20,351 views when looking at the copies in the bundle. She noted too that the same number of views appeared against all the individual posts for 11 January 2022, 11 July 2022, 22 June 2022, 20 December 2021 and 30 September 2021. She considered that from this it could be inferred either that the blog had not been viewed since 30 September 2021, or that over the lifetime of the blog since 2019, there had been a total of 20,351 views.

11. At para. 51, the Judge expressed concern that the printouts contained within the two separate bundles were not identical although they purport to demonstrate the same posts. The Judge then referred to the guidance given headnotes 7 and 8 in XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 00023 (IAC). For reference, these provide that:

> "7) Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person's locations of access to Facebook and full timeline of social media activities, readily available on the "Download Your Information" function of Facebook in a matter of moments, has not been disclosed.

> 8) It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value."

12. At para.52, the Judge considered that the disparities between the two copies of the posts suggest that the weight to be attached to them as evidence of the Appellant's conversion should be limited.

13. She then stated that, at best, the cumulative number of posts which had been engaged with since the blog's inception suggested that the blog did not have the high profile which the Appellant suggested it did. Over the course of 3.5 years, the posts had been viewed no more than 21,000 times, if reliance was placed on the copies found in the Appellant's bundle.

14. At para. 53, the Judge concluded by considering that she could not rely solely on the copies within the Appellant's bundle in the absence of any evidence explaining why the printouts differ from one another whilst purporting to show the same thing.

15. At paras. 54-57 the Judge assessed the witness statements and oral evidence adduced. At para. 55, she considered that the statement of Mr Soleimanian was important because he was the person who was said to have brought the Appellant together with his mother. He had stated that he had met the Appellant in person for the first time in 2018, having known him for a period of time through on-line chat in a computer game. He stated that the Appellant told him that he was a Christian and that he attended church on a regular basis to pray, that the Appellant told him about this parents' divorce and his separation from his mother and that he had met the Appellant's mother in June 2019 and suspected that the Appellant was her missing son and showed her a photograph of the Appellant. The Judge noted that Mr Soleimanian did not attend the hearing for cross-examination.

16. The Appellant's evidence was, the Judge set out at para. 56, that he went to a church for the first time in April 2019 when he was taken there by a friend. He had not met Yusef and had not started going to church regularly until 23 June 2019 and it was not until 8 July 2019 that the Appellant stated he started calling himself a Christian.

17. At para. 57, the Judge considered that there was a key inconsistency between a letter provided to the Tribunal from a Mr Azer, who had stated that the Appellant had only attended church occasionally since he moved to London to live with his mother in 2019, and the Appellant's evidence in which he had stated that he had been travelling regularly to Luton to attend church and assist with their activities.

18. At para. 60, the Judge disagreed with the Appellant's submission that she could disregard the adverse credibility findings made by the previous FTT Judge because this case was based on new evidence. While the nature of the claims were different, the earlier findings were based on the Appellant's vague and inconsistent evidence, witness statements from witnesses who had not attended the Tribunal hearing to be cross-examined and on the Appellant's evasiveness. The previous Judge had made reference to a witness statement purportedly sent from Iran but bearing the same date of signature and handwriting on the

endorsements as all the other statements. The previous adverse credibility findings accordingly "transcended disparities in fact" between the two asylum claims.

19. At para. 61, the Judge considered that the Appellant was in a very similar position in this appeal. The witnesses dealing with the key points impacted upon the Appellant's own credibility. His professed interest in the Luton Christian Fellowship, the Judge noted, coincided with the month in which he re-established contact with his mother, who had been granted refugee status as a Christian convert.

20. Having considered all the evidence in the round, the Judge did not find the Appellant's evidence to be credible and he had not demonstrated that he was a Christian convert.

21. At paras. 63-66, the Judge went on to consider whether nonetheless the Appellant would be at risk on return because of his claim to be Christian. At para. 63, the Judge considered it reasonably likely that the Appellant would divulge to the authorities that he had claimed to be a Christian on return when interviewed and that it was likely that he would then be transferred for further questioning. Given the evidence advanced in relation to the Appellant's blog, there was, the Judge stated at para. 64, potential for his detention to become prolonged. However, given the disparities between the two versions of the blog, the Appellant had not demonstrated that the public facing blog had had any meaningful public engagement since its inception in November 2019 or that he could personally be linked to it as its creator. There had been, the Judge noted, a very limited number of comments made in response to the posts on it and the Appellant had not demonstrated where those who had viewed it were geographically located. The Judge stated that she was not directed towards any Facebook, TikTok or other social media platforms on which it was said the Appellant had posted. The blog was, the Judge said, a platform which could be taken down and deleted very easily.

22. At para.65, the Judge noted the Country Guidance in XX, cited above, stating that the risk an individual will be targeted is a nuanced once. Given the limited engagement with the blog and lack of evidence of any further risk factors being adduced, the Judge found that the Appellant was not likely to be a person of significant interest to the authorities.

23. In light of these findings, and taking account paragraphs 113 and 115 of PS (Iran), the Judge concluded at para.66 that the Appellant would not be at risk of prolonged questioning or detention on return, and that the Appellant had not demonstrated that he had a well-founded fear of persecution.

24. At paras. 68-69, the Judge considered the Appellant's claim for humanitarian protection as a result of fear of his father. The Judge rejected this. At paras. 70 she rejected the Appellant's Article 3 ECHR claim for the same reasons as his asylum claim. At para. 71, the Judge noted that Article 8 was not pursued at the hearing. The Judge went on to find that the Appellant's family life with his mother was not such as to engage Article 8.

25. The appeal was accordingly dismissed.

Appeal to the Upper Tribunal

26. The appeal to this Tribunal is brought on five grounds, as follows:

a. Ground 1: The Judge's attribution of little weight to the Appellant's blog was based on a material mistake of fact.

b. Ground 2: The Judge's failure to put her concerns to the Appellant in relation to the discrepancies between different printouts of the blog was procedurally unfair.

c. Ground 3: The Judge failed to take into account the letter of 9 October 2022 from LCF.

d. Ground 4: The Judge misread Ms Soleimanian's witness statement.

e. Ground 5: The Judge erred in finding that there were no other social media accounts, when there was evidence of an Instagram account in the Respondent's bundle.

27. Permission to appeal was, as noted above, granted FTT Judge Landes on 5 April 2023. So far as relevant, she stated as follows:

> "2. I consider that grounds 1, 2 and 5 are arguable. If it were only that the judge placed limited weight on the blog posts then this may not have been an arguable error; after all it is not evident from the posts in the appellant's bundle when they were printed out and following XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC), only limited value can be given to simple printouts. However
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> the judge also considered that what she thought of as the different versions of the blog posts impacted on the appellant's credibility [61] and in this context the judge's arguable misunderstanding about the blog posts is significant. In this context it is also arguable that the judge should have put her concerns about the apparent discrepancies between the versions to the appellant; whilst not every concern has to be put to an appellant, it is arguable this one should have been as a point going to credibility which the judge considered to be important.
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> 3. The judge did not write that the appellant had not posted on any other social media platforms, she wrote that she was not directed towards any other social media platforms on which it was said that the appellant had posted [64]. There is no reference in the appellant's witness statement to Instagram or Facebook, but these posts were referred to in the appellant's skeleton argument (referred to as Facebook posts rather than Instagram) and accordingly it is arguable that the judge should have considered them at least in the context of return to Iran (ground 5).
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> 4. There is nothing to suggest the judge failed to take into account evidence as alleged at ground 3. She plainly considered all the evidence [54]. The witness statement referred to is more recent but it does not suggest a change, it says "he has been a regular attender all along" which is inconsistent with the other evidence from the church.
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> 5. So far as ground 4 is concerned, there does appear to be a key inconsistency which the judge notes at [55]. The appellant must have told the witness about his becoming a Christian before the witness met the

> appellant's mother in June 2019. Yet the appellant said he only became a Christian in July 2019.
>
> 6. Despite my comments above, as I am granting permission I do not intend to restrict the grounds which may be argued."

28. On 20 April 2023, the Respondent filed a response to the appeal under rule 24 of the Tribunal's Procedure Rules. It states:

> "2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
>
> 3. The grounds are a disagreement with the findings of the First Tier Tribunal. The key question is if the findings made by the FTT were open to them on the evidence. It is for the appellant to put their evidence in a clear manner and deal with any issues that may be apparent in that evidence. With respect to the Facebook posts if there was any error by the FTT, given the nature of the evidence and the conclusions in XX, it would not have been material. The skeleton argument does not refer to any Instagram posts and it is not at all clear that the documents in the bundle relied on in the grounds can be identified as originating from Instagram. The FTT should not therefore be criticised for failing to identify them and concluding that there were no other social media accounts. There is no material error."

29. At the hearing of this appeal, I heard oral submissions from both Ms Saifolahi and Ms McKenzie, to both of whom I am grateful for their assistance. During the hearing, I raised two authorities of which I was aware on the question of procedural fairness that arises in relation to grounds 1 and 2 of this appeal. In the interests of fairness, I gave the parties an opportunity to put in further written submissions on these. Ms Saifolahi did so, in written submissions dated 18 October 2023. Ms McKenzie indicated at the hearing that she did not wish to put in anything further.

30. This is the basis on which the appeal came before me to determine whether the FTT Decision contained any material error of law.

Discussion

Ground 1

31. This ground is pleaded (not by Ms Saifolahi) as a mistake of fact of the sort described in E v Secretary of State for Home Department [2004] EWCA Civ 49. For such a ground to succeed, the fact must be uncontentious, objectively verifiable, the appellant or his advisers must not have been responsible for the mistake, and the mistake must have played a material part in the tribunal's reasoning. The fact in relation to which the Judge is said to have erred here is that the two versions of the blog contained respectively in the Appellant's and the Respondent's bundles were not identical. That seems to me untenable as a mistake of fact for the simple reason that the Judge was not mistaken in this regard. The printouts of the blog in the Appellant's and Respondent's bundle *are* different.

32. What this ground is in my judgment really seeking to show is that the inference drawn from that difference – that the weight to be placed on them should be limited - was perverse in light of what the Appellant now says is the obvious

explanation for the differences, namely, that the version in the Respondent's bundle was a single printout of the landing page, whereas the printouts in the Appellant's bundle were of the individual blog posts which had been clicked through to from the landing page.

33. I have not found this issue wholly straightforward, but I have ultimately reached the clear conclusion that the view taken by the Judge as to the weight to be ascribed to the blog was one that she was entitled to reach. This is for the following reasons.

34. First, it is important in considering this ground to keep well in mind both the "very high hurdle" that a perversity challenge must overcome (see *R (Iran) v SSHD* [2005] EWCA Civ 982; [2005] Imm AR 535 at [11]-[12]) and the proper, limited, role of an appellate tribunal in considering weight given and inferences drawn by a trial judge.

35. Second, the Judge was plainly entitled (and Ms Saifolahi did not contend otherwise) to "bear in mind" (indeed, to apply) the guidance given in XX in relation to these printouts, as she did in para. 51. While XX refers to printouts from social media, its reasoning seems to me equally applicable in principle to all websites, such as the blog in this case, over which an appellant has editorial control.

36. Third, it is clear that the Judge in fact assumed the very distinction between the two printouts of the website which the Appellant now asserts to be the case. At para. 48 she recognised that the version in the Appellant's bundle "appeared to show the whole of the page". It is tolerably clear that, by that, she meant that the version in the Appellant's bundle appeared to show the whole of each of the blog posts clicked through from the landing page. It is notwithstanding that assumption that the Judge decided that the blog merited little weight as evidence of the Appellant's professed Christianity.

37. Fourth, it does not necessarily follow from the fact that one version was a printout of the landing page and one was a printout of the individual blog posts that the individual blog posts were able to be relied upon. While that *might* account for the differences, or some of them, it does not necessarily do so, and the guidance in XX applies to them in any event. The Judge's particular concerns were as to the presence in the version in the Appellant's bundle of "Blog stats", which were indicative of a number of views of the site, and the appearance of the Appellant's photograph on the pages of the blog. Those concerns are not in my view perverse in light of the ease of manipulation of a website discussed in XX. While it could be that those matters appear on the blog posts when displayed as individual pages, but not on the landing page, there is nothing inherent in a website that would make that so and the Judge was entitled to be sceptical, particularly when taking the evidence in the round, including his previous negative credibility findings, in considering whether those apparent aspects of the site were reliable or not.

38. Fifth, it is also clear from para. 53 of the FTT Decision that the Appellant did not offer any explanation for the differences between the versions of the blog in the two respective bundles. Given that both the burden of showing that he is reasonably likely to be a Christian and of displacing the previous adverse credibility findings lay on the Appellant, and given the guidance given in XX, this

was in my judgment a matter calling out for explanation. The Judge was accordingly well entitled to take its absence into account.

39. Ground 1 therefore fails.

Ground 2

40. By this ground, the Appellant argues that the Judge acted in a procedurally unfair manner in failing to put her concerns in relation to the discrepancies between the two versions of the Appellant's blog to him. I do not accept that submission for two reasons.

41. First, this argument is predicated on what the grounds assert occurred before the First-tier Tribunal. There is however no evidence before me as to what was said or not said before or by the Judge. Grounds of appeal do not prove themselves and no transcript of the hearing or witness statement from someone in attendance was adduced. Neither the drafter of the grounds (Mr Youssefian) nor Ms Saifolahi appeared before the First-tier Tribunal and it is therefore wholly unclear to me on what evidential basis the submission is properly able to be made. In the absence of any evidence of whether the Judge put her concerns as to the discrepancies between the version of the blog, this ground necessarily fails.

42. Second, even on the assumption that the grounds are correct in asserting that the discrepancies were not put to the Appellant by the Judge, I do not consider that that was procedurally unfair.

43. In her post-hearing submissions, Ms Saifolahi addressed the two cases I adverted to at the hearing on this issue: Maheshwaran v Secretary of State for the Home Department [2002] EWCA Civ 173; [2004] Imm AR 176 and HA v Secretary of State for the Home Department (No 2) [2010] CSIH 28; 2010 SC 457.

44. These cases in my judgment establish (or perhaps more accurately reiterate) that (a) the requirements of fairness are very much conditioned by the facts of each case; (b) whether a particular course is consistent with fairness is essentially an intuitive judgment which is to be made in the light of all the circumstances of a particular case; and (c) while there is no general obligation on the Tribunal to give notice to the parties during the hearing of all the matters of which it may rely in reaching its decision, fairness may require the Tribunal to disclose concerns about the evidence to provide an opportunity to address them.

45. I would note that Maheshwaran at [3] also gives guidance as to relevant factors that may indicate whether it is unfair to put a point to a party in the FTT: (a) that a burden of proof lies on an appellant; (b) facts to be proved may be in relation to matters which no one before the Tribunal is in a position to corroborate; (c) the Tribunal frequently has several cases listed in front of it on the same day; (d) FTT Judges cannot be expected to be alive to every possible nuance of a case before the hearing starts; (e) decisions are generally reserved and during the process of considering and writing the decisions points will sometimes assume a greater importance than they appeared to have at the hearing; (f) FTT Judges will generally be cautious about intervening in case it is said that they have descended into the ring or otherwise give an appearance of bias.

46. In HA, the Inner House (Lord Reed giving the judgment of the Court) also emphasised (at [8]) that it was important whether, by virtue of the nature of the evidence adduced, an appellant could reasonably proceed on the basis that there was no need for him to adduce further evidence on a particular point. This point was demonstrated by reference to an earlier case in which a letter had been adduced from Amnesty International and it was noted that "in the particular circumstances of that case, the applicant could reasonably proceed on the basis that there was no need for him to adduce evidence on this vital point besides the letter, given that the letter was unchallenged and came from a source which was generally treated as reliable (and had recently been treated as reliable in relation to that very letter [in separate proceedings]), unless he was put on notice of the adjudicator's concern." Later, at [31] the Court held that "The parties can be taken to anticipate that the immigration judge will consider the contents of the documents and may attach significance to differences or inconsistencies which are to be found there. The fact that such differences or inconsistencies were not raised during the hearing will not therefore usually result in unfairness".

47. Ms Saifolahi in her written post-hearing submissions correctly pointed out that in HA at [7], Lord Reed noted that it will ordinarily be unfair for the FTT to base its decision on an issue it has identified and which has not been raised by the parties without first giving the parties an opportunity to address it. The example given was a judge who had rejected the credibility of a witness' account his claimed partner's pregnancy on the basis of a lack of evidence of what precautions were taken to avoid that, an issue which had never previously been raised. A further example of this occurring is the decision of YHY (China) [2014] CSOH 11 on which reliance was placed in the grounds, where in the decision of the FTT on an appeal by a Chinese national resisting deportation on family life grounds the FTT raised the issue of the appellant's child's paternity for the first time.

48. It is important however to distinguish, as the Inner House did, between genuinely new issues and matters that arise as a result of the evidence filed by the parties in relation to issues that have already been raised in the case.

49. The issue in this case, well known to the parties in advance, was whether the Appellant was a genuine Christian convert. Likewise, the reliability of documents adduced in support of the Appellant's position on that issue was always something that the Appellant was going to have to demonstrate. All appellants are required to demonstrate the reliability of documents on which they rely in protection and human rights appeals: Tanveer Ahmed [2002] UKAIT 439, [2002] Imm AR 318. This was particularly so here where (a) the guidance given in XX was specifically relied on by the Respondent prior to the hearing in the Respondent's review (para. 5(v)); and (b) the starting point for the FTT's assessment of the Appellant's evidence was the prior negative credibility findings of the previous FTT decision. The issue of the reliability of the printouts of the blog was not therefore an issue identified by the Judge, but one which was required to be dealt with in any event. It should with respect have been obvious that any documents submitted in this appeal would be scrutinised carefully. In choosing to adduce a printout of a version of the blog that was different to that in the Respondent's bundle, presumably so as to include the number of views and the Appellant's photo, the Appellant cannot but have known that this difference would need to be explained. There is accordingly in my judgment no unfairness in the Judge not "putting" this to him.

50. For both of these reasons, ground 2 fails.

Ground 3

51. Ground 3 relates to what the Judge saw as a key inconsistency between a letter of 31 May 2022 from a Mr Azer and the Appellant's evidence as to how frequently he attended church in Luton. Whereas the Appellant's evidence was that he attended regularly, the letter stated that he only occasionally attended. This, the Appellant submits, overlooks a further letter dated 9 October 2022, in which the Pastor's Assistant states that he "has been a regular attender".

52. I do not accept that this letter was overlooked or otherwise left out of account. An appeal court is bound, unless there is compelling reason to the contrary, to assume that a trial judge (which includes an FTT Judge exercising a fact-finding jurisdiction) has taken the whole of the evidence into consideration and that the fact that a judge does not mention a specific piece of evidence does not mean that they overlooked it: see Volpi v Volpi [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2(iii)] and the many cases cited for that proposition at [3] thereof. There is no compelling reason to depart from this assumption in this case. The fact that there was a later letter which was consistent with the Appellant's account does not mean that there ceased to be the earlier letter from someone else that was inconsistent with it. The latter letter did not remove the discrepancy which the Judge identified between the earlier letter such that the Judge not referring to it indicates that it was left out of account.

53. Ground 3 is therefore rejected.

Ground 4

54. This ground relates to the timeline of the Appellant's claimed conversion and suggests that the Judge took an impermissibly speculative approach to Mr Soleimanian's witness statement. This ground is in my view based on a mischaracterisation of para. 55 of the FTT Decision. That paragraph states,

> "…[Mr Soleimanian] states that he met the appellant in person for the first time in 2018, having known him for a period of time through the on-line chat within a particular computer game. Mr Soleimanian states (paras 4-5) that the appellant told him that he was a Christian and that he attended church on a regular basis to pray. He continues that the appellant then told him about his parents' divorce and his separation from his mother. The witness does not meet the appellant's mother until June 2019 when he suspects that the appellant may be the missing son and shows her the photograph of the appellant. Mr Soleimanian did not attend the hearing and has not been cross-examined about the discrepancies."

55. The grounds assert that according to the Judge, Mr Soleimanian had stated that the Appellant had told him that he was a Christian at the time he met Mr Soleimanian. That is not what this paragraph of the FTT Decision says. Rather, the point being made by the Judge was that, working backwards, Mr Soleimanian saw the Appellant's mother in June 2019 and showed her the photograph of the Appellant. It is before that that the Appellant told Mr Soleimanian about his parents' divorce and that he has lost contact with his mother, and it is before that that the Appellant discloses his Christianity to Mr Soleimanian. By contrast, the Appellant's evidence was that he called himself a Christian for the first time in July 2019, i.e. after he had already disclosed this fact to Mr Soleimanian. It was

not the point in time of the disclosure that mattered here but the order of event. I can see nothing in this remotely approaching an error of law.

56. The grounds also assert that not putting this discrepancy between Mr Soleimanian's account and the Appellant was unfair. This is an example of an inconsistency that the Appellant could reasonably have anticipated and was therefore not unfair to put.

Ground 5

57. This ground relates to the Judge's failure to take account the Instagram profile provided in the Appellant's bundle in assessing whether at the 'pinch point' of return, the Appellant would be subject to prolonged questioning.

58. As Judge Landes noted when granting permission, these documents – wrongly referred to as Facebook – were referred to in the Appellant's skeleton argument before the FTT and the Judge does appear from her statement that "I was not directed towards any…social media on which is it [sic] suggested that the appellant has posted" in para. 64 to have overlooked them. This is in my view an error of law.

59. Ms McKenzie for the Secretary of State however submitted that, even if I were to find that this was an error, as I have, it is immaterial. Ms Saifolahi submitted that this was crucial evidence because it went to both credibility and risk and that it was therefore material.

60. I am conscious of the high hurdle, particularly in the credibility context, before an error of law can be said to be immaterial (see Detamu v Secretary of State for the Home Department [2006] EWCA Civ 604 at [14] and [18]). Nonetheless I am not persuaded that this error is material. In the context of the previous negative credibility findings, the unreliable text message purportedly from the Appellant's father, the lack of reliability of his blog and the inconsistencies between the Appellant's and others' evidence given to the Tribunal, I cannot see that the consideration of the Instagram posts in the bundle could have possibly made any difference to either the Judge's assessment of the Appellant's credibility or her assessment of risk.

    a. As to credibility, the printout of the home screen of the Instagram profile is incomplete and, save for what may be a picture of the Appellant, all of the pictures on that screen are of cartoons or other memes about Christianity and (I assume from the picture – the text is in Arabic and untranslated) Iran. Some of the posts then show the Appellant in church, including his baptism as well as further Christian cartoons. Those posts that show dates are either dated a few days prior to whenever they were downloaded (as to which the Appellant has not given evidence), March and April of that same year (which I think must be 2022 given when the statements and bundle were lodged) or from late 2019. There is one 'story' from 31 weeks prior to its download, which would put it either in early 2022 or possibly late 2021. There is nothing from 2020 or at least the vast majority of 2021. On any view this document raises more questions than it answers and the FTT would have been bound in my view to have attached no real weight to it when applying Tanveer Ahmed principles in assessing whether the Appellant was a genuine Christian convert.

b. As to its relevance to the assessment of risk at the 'pinch point', there is nothing about the Appellant's Instagram (in so far as it is faithfully replicated in his bundle) that would increase his risk of having been the subject of targeted surveillance by the Iranian state. As an insincere claimed Christian convert the Appellant can be expected to delete this profile (which he can readily do) to avoid any risk that may arise on return, and PS makes clear that a returnee who is not a genuine Christian will be expected to sign an undertaking renouncing his claimed Christianity and that the questioning of him will accordingly be short and not entail a real risk of ill-treatment. I accordingly find that, had these printouts from Instagram been considered by the Judge, she would have been bound to have reached the same conclusion on risk as she did in any event.

61. While the Judge's failure to consider the Instagram posts in the bundle did amount to an error of law, it is not in my judgment material and I therefore decline to set aside the FTT Decision on that basis.

Notice of Decision

The Decision of the First-tier Tribunal does not involve the making of a material error of law and shall stand.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 October 2023