



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

Appeal Number: PA/10475/2017

**THE IMMIGRATION ACTS**

**Heard at Newport**

**On 13 April 2018**

**Decision & Reasons  
Promulgated  
On 26 April 2018**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**MR H M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Caseley, Counsel, instructed by Migrant Legal Project (Cardiff)

For the Respondent: Mr D Mills, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. In a decision posted on 21 November 2017 Judge O'Rourke of the First-tier Tribunal (FtT) dismissed the appeal of the appellant. A citizen of Iran, the appellant had brought an appeal against the respondent's refusal of his protection claim dated 1 October 2017. The basis of the appellant's claim was that he would be at risk on return to Iran because he had converted to Christianity. Neither the respondent nor the judge believed he had given a credible account.

2. The appellant's grounds of appeal were essentially three in number. It was submitted that the judge erred in (1) failing to make proper allowance for the appellant's vulnerability and the effect of his drug addiction to opiates on his ability to give coherent evidence; (2) making inappropriate use of the doctrine of judicial notice to deal with the controversial matter not in evidence of the appellant's apparent wish to eat only halal food; and (3) failing to give adequate reasons for not following the findings of the UT in **AB [2015] UKUT 257 (IAC)** as regards the state of the evidence about internet activity. There was a further issue that for convenience I shall call ground (4), namely that the judge failed to take into account post-hearing evidence submitted by the appellant's representatives relating to the appellant's Facebook activities.

3. I received helpful submissions from both representatives.

I shall take ground (3) first.

4. Ground (3) asserts that the judge gave no or no adequate reasons for declining to follow the findings in **AB and Others (internet activity - state of evidence) [2015] UKUT 257 (IAC)**. The simple answer to that ground is that given by Mr Mills. Not only was **AB** not a country guidance case, but, as presaged in the keywords and clarified in the italicised summary, the UT concluded in that case that the material before it was insufficient to warrant giving guidance on country conditions. The UT itself makes very clear in **AB** that it cannot make findings of fact of general application because of the evidential deficiencies. Thus there was no guidance to follow.

5. Shorn of being able to rely on **AB**, the appellant's ground 3 amounts to a series of mere disagreements with the judge's findings of fact that the appellant's case concerned one with "a minimal amount of effectively anonymous Facebook activity for which there is no evidence of widespread viewing ..." The fact that the judge also thought that the appellant would delete his Facebook activity once he learnt his appeal had failed was immaterial to the reasons why the judge found the appellant's internet activity not to pose a real risk of attracting the adverse interest of the authorities.

6. Taking ground (2) next, it alleges that the judge made "inappropriate use of the doctrine of judicial notice". As Miss Caseley acknowledged, this ground as drafted is overbroad. What the judge took judicial notice of was the "common public knowledge ... that halal (meaning 'permissible') is that food which adheres to Islamic Sharia law and is achieved by the method of animal slaughter, by cutting the throat and draining the blood" (paragraph 24(i)(a)). There can be no criticism of that; that is public knowledge. What the grounds effectively object to is the judge inferring from this knowledge that the appellant was "still an observant Muslim". I consider that a close examination of the circumstances in which the judge

reached this finding shows that it was one that was in the range of reasonable responses. First, it was based on the statement the appellant himself had made to his GP. Second, in that statement he was explaining why he had not been eating well in his asylum support accommodation (“most of food not halal so not eating well”). Third, the appellant was afforded the opportunity to explain why he would have continued to be concerned about halal food even though he had converted to Christianity. It seems to me that the judge was fully entitled to find the appellant’s response unsatisfactory in that he did not offer any other religious or cultural explanation for this choice of diet and had reacted to the question by challenging its disclosure, even though it was his own solicitor who had produced the GP record. It must also be borne in mind that although the judge deals specifically with this issue in 24(i)(a) under the heading ‘The Halal Food Evidence’, this was prefaced with the statement that he had “looked at the evidence in the round” and Miss Caseley did not submit that the judge had failed to apply a holistic approach to the evidence as a whole. Part of the surrounding evidence was the oral testimony of the Reverend Rees that if one of the Iranian converts of his church has insisted on halal food that would have been a ‘red flag’ for him, as he “strongly disapproved of halal slaughter practices” (paragraph 21).

7. As regards ground (1) (which alleges a failure to take into account the appellant’s vulnerability when making adverse credibility findings), it is submitted that the judge “had previously acceded to the appellant’s Counsel’s application (for the appellant) to be treated as a vulnerable witness”. Mr Mills’ response was to argue that there was not sufficient medical evidence before the judge to conclude that the appellant was a vulnerable witness. However, it is clear from paragraph 8 that Counsel representing the appellant at the FtT hearing (Mr Neale) made an application that the appellant be treated as a vulnerable witness and Mr Mills does not dispute that the judge did in fact accede to that application. Even if the fact was that the judge did not accede to the application, it was one regarding which he should have recorded his decision. As regards the substance of the application, there was a lack of medical evidence but it was seemingly not in dispute that the appellant had been an opiate addict (or, if it was, the judge should have addressed that and made findings about it). Other than paragraph 8 there is no passage of the judge’s decision which indicates that he made allowances for the appellant’s claimed vulnerability. In my judgment this represents a clear failure to follow the guidance given in the Joint Presidential Guidance Note of 2010 and renders unsafe the judge’s strong reliance on the “confused and contradictory” evidence the appellant gave on the issue of his drug rehabilitation (whose narrative was central to his account of how he converted). It amounts to a material error of law.
8. As regards ground (4), I am not persuaded that there was any procedural error of process. The further documents were sent by Mr Neale on 19 November 2017. The judge signed his decision on 18 November. Miss Caseley seeks to rely on the fact that the decision was re-promulgated on

4 December 2017 but she has not been able to point to any difference between its contents and that signed by the judge on 18 November 2017. There is no basis for concluding the re-promulgation was anything other than an administrative matter not related to the contents of the judge's decision. In any event, the further evidence was not directed by the judge and Mr Neale cannot have had any legitimate expectations it would be dealt with by the judge after the hearing.

9. In the event the issue surrounding ground (4) has been rendered academic by my decision that the judge erred in law in respect of ground (3). As a result this further documentary evidence submitted by Mr Neale will be considered by the next FtT Judge.
10. None of my findings are to be taken to suggest anything about the merits of the appellant's appeal. Both questions of fact and law will be entirely a matter for the next FtT Judge. Nevertheless the appellant has done enough for me to decide to:
  - set aside the decision of FtT Judge O'Rourke for material error of law;and
  - remit it to the First-tier Tribunal.

**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 his 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: 25 April 2018



Dr H H Storey  
Judge of the Upper Tribunal