



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

Appeal Number: PA/04442/2019

THE IMMIGRATION ACTS

**Heard at North Shields
On the 8th January 2020**

**Decision & Reasons Promulgated
On the 17th January 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**RR
(ANONYMITY DIRECTION MADE)**

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Najah, Counsel instructed on behalf of the Appellant
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The background:

1. The appellant is a national of Iran. The appellant arrived in the United Kingdom on the 7 December 2018 and made a claim for asylum on the following day. He provided a screening interview and later provided a statement of evidence (SEF statement) and was interviewed about the factual basis of his claim.
2. The basis of his claim can be summarised as follows. The appellant is a citizen of Iran and is of Kurdish ethnicity. He claimed to work as a smuggler in Iran, transporting goods over the Iran/Iraq border and had been involved in this for approximately 10 years before he left Iran.
3. In May 2019, he stated that he and five others were ambushed by the Iranian authorities whilst smuggling goods into Iran. The appellant fled to the house of a relative of his colleague and whilst in hiding, he learned that his home had been raided by the security services and as they had found materials relating to the PJAK party in the goods he was transporting. They suspected him of being involved with that party.
4. The appellant left Iran a few days later; travelling from Iran to Turkey on foot and remaining in Turkey for around 1 to 2 months. He continued his journey, during which time he claimed to have been arrested and was then put on the back of a lorry and arrived in "the Jungle". After one or two months, via a lorry, he arrived in the United Kingdom.
5. Since arriving in the UK, the appellant stated that he had been supporting the PJAK party and had attended two demonstrations; one on 12 May 2019 and one on 9 June 2019 in front of the Iranian embassy in London, to express his dissatisfaction of the Iranian government. He also posted material on his Facebook account that was also critical of the regime.
6. In a decision letter dated the 26th April 2019, the respondent refused his claim for asylum and humanitarian protection. It was accepted the appellant was an Iranian national of Kurdish ethnicity but did not accept his claim that he had been of interest to the Iranian authorities (see paragraphs 39 - 56). As can be seen within those paragraphs, the Secretary of State set out a number of credibility issues relating to the core aspects of his claim to be of interest to the Iranian authorities as a result of his activities in that country. As to the issue of illegal exit, the respondent applied the relevant country guidance case of SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308. Having done so, it was considered that there was no real risk of persecution or serious harm on the basis of illegal exit alone. Furthermore, as the respondent had rejected his account that the Iranian authorities had any interest in him, it was considered internally inconsistent that he left Iran illegally. Consequently his illegal exit was also rejected. The respondent concluded that he was not at risk of persecution or serious harm upon return to Iran.

7. The appellant sought to appeal that decision and his appeal was heard on the 4th July 2019.
8. In a decision promulgated on the 6 August 2019 the FtTJ dismissed the appeal having concluded that the appellant had not given a credible or consistent account as to his activities in Iran. Furthermore, when considering the appellant's activities in the UK, including his attendance at demonstrations and the postings on Facebook, the FtTJ reached the conclusion that he had "cynically sought to bolster his asylum claim" and made use of the Facebook account to pursue that aim. He found that the Facebook entries were "self-serving". He concluded that the appellant would not be at risk of harm, taking into account his Kurdish ethnicity and his stated activities. The judge therefore dismissed his protection claim.
9. Following the dismissal of his appeal, grounds of appeal were issued for permission to appeal and that application was granted by Judge Loke on the 6th September 2019, 2019 for the following reasons:

"While the judge found the social media posts to be self-serving, it is arguable that, notwithstanding, the judge ought to have gone on to consider whether such activity could be perceived as political in accordance with the country guidance: *Danian* [1999] EWCA Civ 3000.

10. In a decision promulgated on 31st October 2019 I set out my reasons as to why the decision of the FtTJ involved the making of an error of law on a point of law. It is re-produced below.

"Decision on the error of law:

...

32. ... In reaching my assessment of the grounds, I must bear in mind that I should not interfere in the fact-finding of the First-tier Tribunal unless persuaded that it is not within the range of reasonable responses. It is important not to consider specific paragraphs in isolation but to have regard to the decision as a whole.
33. I set out these two well-established propositions because in my judgment the decision of the FtTJ when reaching his decision upon the credibility of the appellant as to events that occurred in Iran is not one that is vitiated by legal error, notwithstanding the submissions made by Miss Mendoza.
34. At paragraph 39 the judge reached the conclusion that he should draw an adverse inference under section 8 of the 2004 Act against the appellant having failed to claim asylum in safe third countries, namely Italy and France. At paragraph 39 he considered the explanation that had been advanced by the appellant for not pursuing asylum and that he was under control of the agent however the judge made reference to the evidence that there was no contract that the appellant was to be taken to the United Kingdom but to a safe country. The judge did not accept that a smuggler, after arrival in a safe European country,

would insist on continuation of the journey. That was a finding that the FtTJ was entitled to reach on the evidence.

35. The FtTJ did not begin his consideration of credibility with the section 8 issue. That is clearly demonstrated by the preceding paragraphs and the judge's assessment at paragraphs 32-37, and also later on at paragraphs 46-47. I therefore reject that submission.
36. The grounds raise no further arguments concerning the findings made by the judge as to the events in Iran beyond that general credibility point raised in relation to section 8. The thrust of the grounds relate to the judge's assessment of his sur place claim and consequent assessment of risk on return.
37. I am satisfied that the FtTJ gave adequate and sustainable reasons set out at paragraphs 32 - 40 and 46 - 47 as to why the appellant had not given a credible account concerning events in Iran. Those findings can be summarised as follows:
 1. The appellant had given an inconsistent account. The most problematic was the inconsistency between the account given by the appellant's claim in a screening interview, the account in his statements and in the substantive interview. He had claimed that he had been stopped by authorities while smuggling goods across the border and that the guards had looked at the goods and told him that he was working for the KDP. He told them that he was not working for the KDP was just transporting unknown goods. They told him that as they now had caught him that he had to work for them. He did not want to do so had to leave Iran leaving after a week or two. However, having stated that, the appellant went on to provide a markedly and significantly different account in the rest of his case. The materials were now said to belong to the PJAK party and not the KDP, he was not apprehended by the authorities at all, there was no conversation with the authorities, and he was not asked to work for them. There was no discussion with the authorities about KTP leaflets (at [33]).
 2. The judge found this to be a significant inconsistency in the appellant's account. He took into account the appellant's explanation and the opportunity to clarify the inconsistencies, but the judge found that he had not taken the opportunity to "categorically state that he was not personally apprehended by the authorities and did not have a discussion with at any stage. The appellant simply states that he was ambushed and left his materials behind" (at [34]).
 3. The judge acknowledged that mistakes could happen during interviews but did not accept that the interviewing officer would note down a detailed answer such as that given at 4.1, unless the broad thrust became from the appellant. The judge did not find that this was a case of mistaken word or one sentence that the appellant sought to distance itself from and had been a detailed paragraph of an account. He

rejected the suggestion that the interviewing officer would have recorded full answer completely inaccurately as suggested by the appellant (at [35-36]).

4. As the appellant's encounter with the authorities as a core element of his claim, the discrepancy is a significant one (at [37]).
 5. A further inconsistency arose in the appellant's account in relation to the discovery of the PJAK political materials in the load that he was carrying. It was the appellant's case that following the ambush did not return home which would mean that he would be unable to transport the load that he was carrying to his home. However, the appellant also stated in his substantive interview (Q118 - 119) that the security services discovered political materials in the load when they raided his home. The judge found that this could only be possible if the appellant are transported and stored the load at home on the night in question. This position was inconsistent with his evidence (at [46]).
38. As stated above, there has been no challenge of any particularity either in the grounds or subsequently concerning those findings. I therefore find that there is no error of law established in relation to those factual credibility findings.
39. I now turn to the thrust of the grounds advanced on behalf of the appellant which relate to the sur place claim. Whilst I am not satisfied that there is any error of law in the FtJ's assessment of the appellant's claim as to events in Iran, I am satisfied that the decision demonstrates the making of an error on a point of law when considering the sur place claim.
- ...
41. As summarised in the earlier part of this decision, the Judge made a number of adverse credibility findings in relation to his claim to have been involved in political activity and having been of interest to the Iranian authorities before he left that country.
 42. Whilst he accepted that the appellant had had attended demonstrations (see findings of fact at [42]) the judge made no further assessment of the sur place issue in the context of risk on return. Whilst Ms Petterson relies upon the adverse findings made by the judge, even if it could be inferred from the general adverse credibility findings made, as set out in Danian [1999] EWCA Civ 3000, even if his credibility might be low, it was still necessary to scrutinise and assess the new claim (sur place claim).
 43. Activities undertaken in bad faith can found a sur place claim but careful attention must be given to whether those activities are likely to come to the attention of the authorities on return - see the reasoning in YB (Eritrea) v SSHD [2008] EWCA Civ 360. The real question in, most cases is would be what followed for an individual claimant if any information reached the authorities. This was a question of fact for the judge to assess on the evidence before him. He accepted that he had attended demonstrations and even if it could be inferred that this was solely to found a sur

place claim rather than any genuine political commitment, he would have to consider whether the appellant in his particular circumstances would, as a result of his activities coming to the attention of the authorities and be at a real risk of serious harm or persecution in Iran and by reference to the CG decision of HB. Part of that assessment would necessarily include the commitment shown in the UK, (and whether he would be likely to continue that political activity on return.). It does not appear that there were any direct questions asked as to his motivation and consequently, there was no assessment of his likely behaviour on return.

44. The second issue relates to the face book posts. The appellant is of Kurdish ethnicity and the judge makes reference to the appellant's "Facebook posts" and that they had been put up to bolster his case. However, in HB (Kurds) Iran CG [2018] UKUT the Tribunal said this at paragraph 116:-

"We are satisfied that the content the appellant's Facebook page would become known to the authorities on return as part of the process of investigation of his background. That is the effect of the expert background evidence before us. It is then, no step at all to the conclusion that this would involve a real risk of persecution and Article 3 ill-treatment in his case"

45. The issue to be determined is whether or not the appellant would on return be viewed or perceived by the authorities in Iran as a person that has been adversely acting against the Iranian government by reason of his Facebook posts at the point of re-entering the country. The issue not being whether or not the appellant was a genuine in his activities, but whether the authorities in Iran on his return would, irrespective of whether he is a genuine, wish to see his face book posts and by reason thereof view him as an individual that had acted adversely against the government and would the appellant in those circumstances be at risk. Paragraph 23 of **SSH and HR** highlighted that a failed asylum seeker will be questioned and that 'if there are particular concerns arising from their previous activities either in Iran or in the United Kingdom or whichever country they are returned from, then there would be a risk of further questioning, detention and potential ill-treatment'.
46. Neither the FtTJ or the advocates before this Tribunal have referred to the decision in AB (internet activity - state of evidence) Iran [\[2015\] UKUT 257 \(IAC\)](#) where the Upper Tribunal considered whether the use of social media and internet activity placed returnees to Iran at risk of persecution on return. Whilst concluding that there was insufficient evidence to issue country guidance, the decision was reported for the Upper Tribunal's findings on the evidence at that time.
47. In summary I am satisfied that the FtTJ did not consider that potential risk on return and has therefore failed to make material findings on the risk on return.

48. Consequently, I am therefore satisfied that the decision involved the making of an error on a point of law and it is set aside.

...

53. In the light of my decision above, the findings of fact set out at paragraphs 33-40 and 46-47 shall be preserved. The issue to determine relates solely to the issue of his sur place claim as identified above in accordance with the evidence relied upon by the appellant and the relevant legal authorities.”

The re-making of the appeal before the Upper Tribunal:

11. The resumed hearing was listed for the 8th January 2020. There were two bundles of documents; the first bundle was that provided at the last hearing containing fresh evidence relating to his face book account and demonstrations attended in the UK, along with a witness statement marked "Bundle 1" and a supplementary bundle marked "bundle 2" which also contained further material relevant to his sur place activities and also copies of the decisions in HB (Kurds) Iran CG [2018] UKUT 430 (IAC) and AB and others (internet activity-state of evidence Iran [2015] UKUT 00257. I confirm that I have considered the contents of those bundles when reaching my decision. The respondent relied upon the original bundle and no further evidence was filed on behalf of the respondent.
12. The appellant gave oral evidence through an interpreter and I am satisfied that both the interpreter and the appellant understood each other and no problems with the interpretation were identified by either advocate or the appellant during the hearing.
13. He adopted the contents of the two witness statements filed on his behalf dated 30/9/19 and 16/12/19. In his evidence in chief he was asked when he had started his Facebook account. He stated that he had begun posting approximately in 2018 whilst he was still in Iran. When asked to describe what the photographs at pages 54 and 55 depicted (respondents bundle) he stated that they were normal photographs showing him in the pictures and that he was a "kolbar" which he described as a job which delivered goods between the border (in essence smuggling goods).
14. In his evidence he stated that the nature of his postings on Facebook had changed when he was in the United Kingdom and that he had posted political messages on his account. He stated he could not do that whilst in Iran as he was not free to do so. As he had freedom in the United Kingdom he was able to make those posts. He stated that he had attended a number of demonstrations in the United Kingdom principally outside of the Iranian embassy. He stated that it was his duty to participate. When asked why, he stated that "In Iran we Kurdish people have been persecuted and not free to express any political views" and that he was "against the regime". When asked to describe why he was not "free" in Iran, he stated that as a Kurd in Iran he had suffered many problems and that they were not free to be citizens. He was a kolbar because he had no right to do any other different job.
15. The appellant was asked to describe the activity in the photographs in bundle one. At page 116 (dated 12/5/19), he stated that this was a demonstration outside the embassy in London protesting against the government hanging and executing people. He was holding a picture of an execution taking place. At page 117, he stated that he was a demonstration expressing his views and opinions about the government and that he had raised the Kurdish flag. In particular he was protesting

against the authorities killing kolbars in Iran. He said that he found out about the demonstrations because he had friends on Facebook who shared comments that they would post the day of the demonstration. At page 120 (demonstration) he was asked to describe the events. He stated it was at the embassy again and that he was burning a picture of the leader of the regime and that he was happy to express his feelings he said the purpose of the demonstration that day was in general to stop young people being the subject of execution and to change the regime. When asked to explain what he meant, he stated that the minorities in Iran had no freedom and that he sought to demand the rights of the Kurdish people and equality between men and women stop page 128 was also photograph a further demonstration in London.

16. In cross examination he was asked who had taken the photographs exhibited. He stated that many people had cameras and he had asked people to take a photograph of him. He stated that he had handed his mobile phone to them so they could take photograph. He confirmed that the photographs were taken with a mobile phone which he then shared on Facebook. At page 121 he confirmed that the photograph on that page was taken before the photograph showing him setting fire to a picture. He was asked a number of questions about who the person was in the photograph which the appellant identified as the "Iranian leader-Khomeini." He was asked if he had commented about setting fire to the picture on his Facebook postings. He said that he had not commented but that on Facebook people had commented and praised him. When asked if there was evidence to show the praise that he had received, he could not show that from the pictures provided in the bundle. However when asked if he had his Facebook open on his phone and when scrolling to the day of the demonstration the same picture was found on his Facebook page and there were a number of comments concerning that picture which were translated as praise and support for the pictures. He had 79 likes and 38 comments.
17. When asked about how he had set up the account confirmed that it had been done by a friend of his, but he knew how to post photographs and share them and also login to Facebook. When asked if he had been shown how to delete the account, the appellant stated that he was unable to delete. When asked if he was aware he could delete it, the appellant stated that he was not. He was asked why he would not if returned to Iran the appellant stated that it was not about deleting his account but that he would still be at risk on return from his activities. Mr Diwncyz read to the appellant paragraph 10 of his second witness statement, and it was put to him that the means existed for him to delete his account and he was asked why he should not do so. The appellant stated that he was in a free country with free speech and that he was able to freely express his views and that he would continue to do so. He stated that even if he was returned he would tell them why he was in the UK and his activities. He was also asked that if the authorities asked him if he had an account and he had said he deleted it, why would that put him at risk? The appellant stated that in Iran there was not a fair system and that he would face ill-

treatment. In his evidence he also stated that when he was demonstrating outside the embassy, there were cameras filming the demonstrators. He said that he could see them in the window looking out at them. It confirmed it was from the buildings in the embassy and that friend commented that they had seen people holding cameras in the windows and that it was expected.

18. At the conclusion of the evidence I heard submissions from each of the advocates. On behalf the respondent Mr Diwncyz made the following submissions. He accepted that there was evidence of the appellant attending demonstrations but that in light of the country guidance decision, it was not reasonably likely that the Iranian authorities would be able to recognise the appellant from his attendance as the objective material stated that there was no facial recognition technology and that he was one of a crowd. As to the Facebook evidence, he made reference to their being unreported decisions of the Upper Tribunal which make reference to the deletion of Facebook accounts. He recognised that there was no expert evidence before this Tribunal but submitted that somebody could delete their account and that it would not be reasonable for them not to do so and that operating a Facebook account was not a “human right” and it would be reasonable for him to take that step. As to his illegal exit, that by itself would not bring him to the attention of the authorities therefore he invited me to reach the conclusion he would not be at risk on return.
19. Ms Najah on behalf of the appellant submitted that there were four issues; what had the appellant taken part in, have the activities come to the attention or with a capable of coming to the attention of the authorities, how those activities will be perceived and then to assess the potential reaction to that information. She submitted that the appellant attended demonstrations and had provided a detailed account as well as photographic evidence and Facebook posts which were anti-regime. She submitted it was therefore likely to come to the attention of the authorities when passing through the airport and that he would be under scrutiny (applying the decision in AB at paragraph 467). She further submitted that there was evidence of Iran monitoring Facebook supported by independent evidence. She was not able to point the Tribunal to that independent evidence in the materials presented however she submitted that in general terms paragraph 116 of the decision in HB (Iran) provided support for this. Overall, she submitted there would be a very significant risk that the information would come to the attention of the authorities and that potentially it could already have done so as monitoring of the Internet does take place.
20. In terms of perception of the Iranian authorities, she submitted that there would be an increased risk given that he would be travelling on a special passport and would have a heightened level of suspicion as a result of his Kurdish background. Given the “hair-trigger” reaction, the multiple postings on Facebook, his Kurdish ethnicity and the heightened political atmosphere presently would give rise to a real risk of harm. Given that it

was an objective test, it is the perception of the authorities and not the motivation that is the relevant aspect.

21. As to the deletion of Facebook, she submitted that he had given reasons as to why he did not wish to do so but if he had told the authorities that he deleted an account it might be seen as an admission. In any event, there was no evidence as to how to delete the account nor could it be assured that the likes, the shares and comments would entirely disappear from other Facebook accounts which could be linked to the appellant's account. She therefore submitted that due to the cumulative factors in the appellant's case, there was a reason the likelihood that his activities when viewed would be seen as anti-regime and would lead to a real risk of persecutory harm.
22. The Upper Tribunal in HB (Kurds) Iran CG [2018] UKUT 430 (IAC) provided as follows as summarised in the headnote:

"(1) *SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC)* remains valid country guidance in terms of the country guidance offered in the headnote. For the avoidance of doubt, that decision is not authority for any proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone.

(2) Kurds in Iran face discrimination. However, the evidence does not support a contention that such discrimination is, in general, at such a level as to amount to persecution or Article 3 ill-treatment.

(3) Since 2016 the Iranian authorities have become increasingly suspicious of, and sensitive to, Kurdish political activity. Those of Kurdish ethnicity are thus regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran.

(4) However, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment.

(5) Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Being a risk factor it means that Kurdish ethnicity is a factor of particular significance when assessing risk. Those "other factors" will include the matters identified in paragraphs (6)-(9) below.

(6) A period of residence in the KRI by a Kurdish returnee is reasonable likely to result in additional questioning by the authorities on return. However, this is a factor that will be highly fact-specific and the degree of interest that such residence will excite will depend, non-exhaustively, on matters such as the length of residence in the KRI, what the person concerned was doing there and why they left.

(7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.

(8) Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.

(9) Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case, however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.

(10) The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme."

Findings of fact and analysis of the evidence:

23. As set out in the error of law decision, I reached the conclusion that there had been no error in the decision of the FtTJ relating to the findings of fact and assessment of the events in Iran. Those findings were to be preserved for this hearing and are summarised earlier in this decision at paragraph 16. It therefore follows that the appellant had no adverse profile nor was he of any interest to the authorities when he left Iran.
24. Paragraph 339P states:

"A person may have a well-founded fear of being persecuted or a real risk of suffering serious harm based on events which have taken place since the person left the country of origin or country of return and/or activities which have been engaged in by a person since he left his country of origin or country of return, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin or country of return."
25. The issue before this Tribunal relates to his activities in the United Kingdom and whether those activities are such as to place him at risk of persecution or serious harm on return to Iran. The FtTJ had formed the view from the evidence before him that the appellant had sought to bolster his asylum claim by his use of his face book account on the basis that he had posted images of the illegal trade of smuggling. The FtTJ did not make any finding as to the nature or motivation of his activities in the UK.
26. I have heard further evidence from the appellant and also viewed the extracts of his face books posts and photographs of his conduct at

demonstrations although there was no cross-examination of his general motivation. He was able within his oral evidence able to give a description of why he had attended the demonstrations to give his actions some context which made reference to his Kurdish ethnicity and the treatment of those he described as “kolbers” who had been subject to serious harm. I am satisfied to the lower standard that he does share these views and that he believes that there has been injustice shown.

27. Even if I were wrong, activities undertaken in bad faith can found a sur place claim but careful attention must be given to whether those activities are likely to come to the attention of the authorities on return - see the reasoning in YB (Eritrea) v SSHD [2008] EWCA Civ 360.
28. The real question it seems to me is what follows for an individual appellant if any adverse information reached the authorities. This is a question of fact for the Tribunal to assess on the evidence.
29. The FtTJ accepted that he had attended demonstrations and the evidence before me demonstrates that he has continued to attend those demonstrations over the past year. He has continued to post material on his face book page which, as Ms Najah submits, could only be viewed as anti -regime in its contents. Even if it could be inferred that this was solely to found a sur place claim rather than any genuine political commitment, I would have to consider whether the appellant in his particular circumstances would, as a result of his activities coming to the attention of the authorities and be at a real risk of serious harm or persecution in Iran.
30. I have assessed the issue in accordance with the country guidance decision of BA (demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 which identified the following factors, the nature of the sur place activity, identification risk, factors triggering enquiry/action on return, consequences of identification and identification risk on return.
31. There is no dispute that the appellant has attended a number of demonstrations outside the Iranian embassy. There is a schedule of those attended at page 114 (bundle 1). Having heard his evidence and viewed that in the context of the photographs, there is also no dispute that the activities undertaken could properly be described as anti-regime.
32. The theme of the demonstrations is to support Kurdish rights in general and to protest against the ill treatment and execution of those described as “kolbers”. The conduct displayed in the pictures also references the appellant setting fire to a picture of the Supreme leader and it can properly said that the authorities would take exception to such demonstrations.
33. Whilst he is present at the demonstrations, he is one of a number of other participants. It has not been stated in his evidence that the appellant has any particular role at the demonstrations, nor do I find him to have such a role as evidenced in the photographs. On some pictures he is holding a

Kurdish flag and other pictures show him holding photographs of executions. It could not be said that the appellant has been responsible for organising any of the demonstrations or taking a prominent role. I am satisfied that he is seen protesting alongside and with a number of other individuals.

34. In the light of the evidence set out in the country guidance decision of BA (as cited) at paragraph 30, and paragraph 65 and that the Tribunal were also satisfied that the Iranian authorities attempt to identify persons participating in the demonstrations outside the embassy in London. I am satisfied that this is reasonably likely to remain the position and accept the Tribunal's assessment where it is stated that there is evidence of direct surveillance of Iranian protests abroad by way of filming and that the Iranian authorities may operate surveillance on demonstrators. That is also the oral evidence of the appellant who stated that he saw people with cameras taking photographs from inside the embassy. It is not easy to assess the nature of the surveillance of this particular appellant, given that the photographic evidence appears to show the appellant some distance away from the embassy itself and in the light of the number of protesters. However, as submitted by Mr Diwnycz, the Tribunal in BA (as cited) concluded that as regards identification of risk back in Iran, the ability of the authorities to identify all returnees who have attended demonstrations, particularly given the numbers of those who do, remain limited by the lack of facial recognition (at [66]). It has therefore not been shown that for this particular appellant that his attendance at the demonstrations in 2019, and who has no particular role, by itself gives rise to any risk of identification.
35. However, this not the extent of his sur place activity and it is common ground that the appellant has an active Facebook account, having posted both in Iran and whilst in the United Kingdom. The posts have been reproduced in part in the bundles of documentation. The Facebook posts in part reproduce the photographs showing the appellant's attendance at the demonstrations and show his conduct. For example, set out in the oral evidence there is a picture of him setting fire to a photograph. This has been shared on Facebook and has been the subject of praise from other individuals and the subject of comments. Again, there has been no dispute that that material could properly be viewed as adverse to the Iranian regime or seen as critical of it.
36. Whilst Ms Najah relies upon the reported case **of AB & Others** (internet activity - state of evidence) Iran [2015] UKUT 257 (IAC) it is not a country guidance case and I have reminded myself that the evidence considered by the Upper Tribunal in that case therefore must not be given any particular weight in the case before me as country guidance cases only are exceptions to the general Rule evidence and one case cannot be relied in another case (see AM (Iran) [2018] EWCA Civ 2706).

37. I have therefore considered the evidence set out in the country guidance decisions which relate to what has been described as the “pinch point” of return.
38. It is common grounds that on return that there is a reasonable likelihood that he will be questioned. The decision in SSH and HR sets out that the duration of initial questioning would be for a “fairly brief period” (at 12]), although I recognise that there is other evidence which demonstrates that questioning may take a few hours (see [58] of HB(Iran)). What is of relevance in terms of assessment of risk is whether during that initial questioning the authorities have any particular concerns arising from activities in the UK then there is a real risk that there would be further questioning accompanied by ill-treatment.
39. It is necessary therefore to consider the individual factors relating to a particular appellant and to consider them cumulatively when making a decision as to risk on return.
40. In terms of risk factors relating to this particular appellant, there is no dispute that the appellant illegally departed from Iran as the journey described by the appellant is that he travelled from Iran to Turkey by foot and crossing the border illegally (see Q3.3 of the screening interview). I would accept that this would provide an additional reason as to why the appellant is likely to be questioned at the point of return. As to the documentation, he arrived without a passport and stated in his screening interview that he had never been provided with a passport (see Q1.8). Notwithstanding the appellant's lack of credibility generally as found by the FtTJ, given the lack of dispute on this issue, I accept to the lower standard that he would be returning without a passport. Although SB (risk on return - illegal exit) Iran CG [\[2009\] UKAIT 00053](#) confirmed that illegal exit is not in itself a significant risk factor, it could be a factor adding to risk if a person otherwise faces difficulties.
41. Therefore it is likely he will be returned without a passport (see paragraph [97] of HB (Iran). There is no dispute that he is of Kurdish ethnicity. He is additionally a failed asylum seeker.
42. Paragraph 23 of SSH and HR highlighted that a failed asylum seeker will be questioned and that 'if there are particular concerns arising from their previous activities either in Iran or in the United Kingdom or whichever country they are returned from, then there would be a risk of further questioning, detention and potential ill-treatment'.
43. The relevance of his Kurdish ethnicity as a risk factor is set out in the CG decision of HB (Kurds) (as cited above). Since 2016 the Iranian authorities have been increasingly suspicious of Kurdish political activities and as a result those of Kurdish ethnicity are regarded with even greater suspicion and subjected to heightened scrutiny on return. The description in HB (Kurds) at [95] sets out that the evidence before the Tribunal indicated that the Iranian authorities demonstrate what could be described as a

“hair trigger” approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. As the Tribunal set out at paragraph 95, that means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.

44. It is submitted on behalf of the appellant that his face book posts can properly be described as anti-regime and also to be in support of Kurdish rights in the light of the photos showing him alongside the Kurdish flag. I would agree. The question is whether the authorities would become aware of those postings.
45. In his cross examination of the appellant Mr Diwnycz asked him if he knew he could delete his face book account. The appellant stated that he did not know that. It was put to him that he could take the reasonable step of deleting his account so that he would not be at risk. In addition it was suggested to him that if he were asked by the authorities if he had a social media account, he could say that he had deleted it and therefore would not be at risk.
46. The appellant stated in his evidence that he did not see why he should delete his account given he is able in the UK to freely state his views and freely express them and that he would continue to do this. This is consistent with his witness statement at paragraph 10.
47. A number of issues arise from that evidence. As Mr Diwnycz stated in his submission, there has been an unreported decision concerning the use of Facebook and the information contained in it. The evidence included expert evidence. That decision was not put before me and no application was made in advance to cite the unreported decision as would be required in the light of the practice direction. It is therefore not possible to ascertain the status and weight of that evidence in this appeal or generally. Furthermore, even if I accepted that it was in general terms possible to delete an account, it has not been explained by way of evidence or otherwise, whether by adopting such a course the shared posts with other individuals and flagging of names would still identify the person involved. On the facts of this particular appeal, the face book posts have been shared by other individuals. I also accept the submission made by Ms Najah that if the appellant stated that he had deleted his account that this may be viewed as an admission that it had contained adverse material and that such conduct would likely be held against him in the light of the other risk characteristics and particularly his Kurdish ethnicity. I conclude that the issue of face book posts and their deletion may in some appeals be an issue which requires full consideration but that this does necessitate evidence in which to make that assessment which is not before this Tribunal.
48. The expert evidence annexed in HB which at paragraph 7 of that decision, the Upper Tribunal confirmed was "essential to the full understanding of this decision that full reference is made to the summarised expert evidence" indicates that the Iranian authorities have a particular interest

in Facebook and that merely sharing and liking posts on social media is risky.

49. In the light of the appellant's evidence and that he is not expected to lie as the Tribunal set out in HB (Kurds) Iran CG [2018] UKUT at paragraph 116:-

"We are satisfied that the content the appellant's Facebook page would become known to the authorities on return as part of the process of investigation of his background. That is the effect of the expert background evidence before us. It is then, no step at all to the conclusion that this would involve a real risk of persecution and Article 3 ill-treatment in his case."

50. That being the case, it is reasonably likely that the nature of the material on this face book account would be such to cause the authorities to view it as anti-regime. The posts do demonstrate pro-Kurdish sympathies and are reasonably likely to be perceived in a negative light and risk the adverse attention by the Iranian authorities. Even if the activities have been undertaken in bad faith, the objective material referred to in the country guidance decisions demonstrate that it is reasonably likely that the Iranian authorities will be less interested in the reasons or motivation for undertaking activities.

51. In my overall analysis of risk, and taking into account the particular factors in this appellant's case, I am satisfied that he has demonstrated to the lower standard of proof that upon return the cumulative effect of the activities undertaken is likely to become known upon questioning and from his posts and when viewed in the light of his illegal exit and his Kurdish ethnicity, it would give rise to a real risk of persecution or Article 3 ill-treatment. I therefore allow the appeal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is therefore set aside. It is remade as follows: the appeal is allowed.

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. 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 Upper Tribunal Judge Reeds

Date 9 /1/2020

Upper Tribunal Judge Reeds