



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

Appeal Number: PA/12042/2019

THE IMMIGRATION ACTS

**Birmingham Civil Justice Centre
On 29 March 2022**

**Decision & Reasons
Promulgated
On 12 May 2022**

Before

**UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

Between

**S I
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam, Burton & Burton Solicitors
For the Respondent: Mr C Williams, Senior Home Office Presenting
Officer

DECISION AND REASONS

Background

1. The appellant is a national of Iran of Kurdish ethnicity born on 1 January 1998. He arrived in the United Kingdom on 24 April 2016 and claimed

asylum on 28 April 2016. His claim was refused by the respondent for reasons set out in a decision dated 26 November 2019. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Thapar for reasons set out in a decision promulgated on 18 March 2020. Essentially, Judge Thapar found the appellant not to be credible and rejected the core of his claim that he is at risk upon return to Iran because of his political activity both whilst in Iran and since being in the UK.

2. Permission to appeal was granted by First-tier Tribunal Judge Bird on 7 April 2020. The appeal to the Upper Tribunal was heard on paper by Upper Tribunal Judge Gill on 2 September 2020, having had the benefit of written submissions from the parties. In her decision promulgated on 18 September 2020, she said:

“22. As I have explained above, the grounds do not challenge the Judge's finding that the appellant's evidence concerning his *sur place* activities had been produced solely in order to bolster his claim and that his activities in the United Kingdom, including his Facebook posts, were not motivated by any genuine political opinions or views. Nothing in the grounds challenges the Judge's assessment at para 16 of her decision.

23. I agree with both the appellant's submissions and the respondent's submissions that the Judge was nevertheless obliged to proceed to consider whether, notwithstanding his non-genuine *sur place* activities, the appellant would be at real risk of being perceived to be anti-regime and therefore at real risk of persecution in Iran on return. She failed to do so. As any such assessment is material in any protection claim, I am satisfied that the Judge materially erred in law.

24. In the alternative, the judge's failure to consider whether the appellant's non-genuine *sur place* activities exposed him to a real risk of persecution as someone who is perceived as anti-regime has resulted in her erring by failing to give adequate reasons for reaching her finding that he would not be at real risk of persecution on return, as contended at para 9 of the appellant's skeleton argument.

25. I am therefore satisfied that the Judge materially erred in law.

26. I therefore set aside the Judge's decision to dismiss the appellant's appeal.

...

30. ...the fact is that the ambit of the re-making is narrow. Given that the grounds did not challenge the Judge's adverse credibility assessment at paras 11-15 or her finding that the appellant's *sur place* activities were not genuinely motivated, the scope of the re-making on the appellant's appeal

is limited to whether or not his *sur place* activities nevertheless expose him to a real risk of being perceived as anti-regime.

31. There is no challenge to the Judge's assessment of the appellant's Article 8 claim.

33. For the reasons given at paras 29-32 above, I have concluded that the decision on the appellant's appeal should be re-made in the Upper Tribunal; that the Judge's findings and assessment, set out at para 11-16 of her decision and as summarised at paras 10(i) and 10(ii) above, shall stand; and that the re-making of the decision on the appellant's appeal is limited to whether he is at real risk of being perceived to be anti-regime on account of his *sur place* activities."

The issues

3. The appeal was listed for hearing before us on 29 March 2022 to remake the decision. Since the decision of First-tier Tribunal Judge Thapar, and the decision of Upper Tribunal Judge Gill, the Upper Tribunal has provided further country guidance in XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 00023 (IAC) which we shall refer to as "XX".
4. At the outset of the hearing before us, Mr Mohzam sought to adduce further evidence in the form of an Appellant's addendum bundle containing printouts of the Appellant's Facebook history and posts together with a copy of XX. Mr Williams did not object and we allowed the evidence. Both parties acknowledged that we must apply the most recent country guidance set out in XX, and that we needed to consider the risk arising from the appellant's Facebook account and whether that risk would be mitigated in its entirety by that account being closed.
5. The appellant did not challenge the previous findings made by Judge Thapar regarding the core of the appellant's claim but, relying upon what is said in XX, the appellant claims that closure of the Facebook account will not erase all evidence of his *sur place* activity such that some/all of the content from his posts will still be accessible and therefore traceable by the Iranian authorities and it is likely to have come to their attention already in any case. He also claims that upon return to Iran, being of Kurdish ethnicity, he would attract higher attention than other returnees and be questioned by the authorities, during which questioning he cannot

be expected to lie about his Facebook activity such that it would be revealed.

The decision of First-tier Tribunal Judge Thapar

6. As Judge Gill said in her ‘error of law’ decision, there are a number of findings by Judge Thapar which do not need to be disturbed and it is helpful for us to record those findings. She said:

“10(i) The Judge made an adverse credibility assessment and rejected the appellant’s accounts of his alleged experiences in Iran (paras 11-15 and paras 17 of the Judge’s decision).

10(ii) In relation to the appellant’s alleged *sur place* activities, the Judge said that she did not accept that the appellant had been threatened by the Iranian authorities or that he has come to the attention of the Iranian authorities through his activities in the United Kingdom. She found that he had failed to establish that his Facebook account was accessible by the public or that his posts have come to the attention of the Iranian authorities. She found that the photographs and posts that the appellant had produced had been created post-refusal in an attempt to bolster his claim. She did not accept that the appellant had been genuinely involved in political activities in the United Kingdom for the KDPI (para 16 of the judge’s decision).

7. We can consider and make our own assessment of facts that have occurred since the decision of Judge Thapar. At the resumed hearing before us, we heard oral evidence from the appellant with the assistance of an interpreter.

The evidence before the Upper Tribunal

8. At the outset of the hearing, the parties agreed that the evidence before us was as follows:
- i) The respondent’s bundle sent on 23 December 2019
 - ii) The respondent’s skeleton argument dated 13 November 2020

- iii) The appellant's consolidated bundle sent on 6 May 2021 comprising of Sections A and B (B being the bundle before the First-tier Tribunal) running to 355 pages
 - iv) The appellant's skeleton argument
 - v) The appellant's Rule 15(2A) application and supplementary bundle sent on 25 March 2022 comprising 42 pages
 - vi) The appellant's addendum bundle sent on 25 March 2022.
9. A full account of the evidence and the submissions made before us is set out in our record of proceedings. At the end of the hearing before us, we reserved our decision. We informed the parties that our decision would follow in writing, and this we now do. In reaching our decision we have fully considered all the evidence that was before the Tribunal, whether it is expressly referred to in this decision or not.

The appellant's evidence

10. The appellant gave evidence with the assistance of an interpreter using the Kurdish Sorani language. Both the appellant and interpreter confirmed that they understood each other without any difficulty. The appellant adopted his supplementary witness statement dated 12 October 2020 (*page 1 to 4 of the appellant's supplementary bundle -'ASB'*).
11. In that statement, the appellant confirms that, since his appeal was dismissed by the First-tier Tribunal, he has attended two demonstrations against the Iranian regime in front of the Iranian Embassy in London in order to show solidarity with Kurds in Iran. He has attended one KDPI meeting but no further meetings have been arranged since March 2020 due to the pandemic. Even if he deletes his Facebook account, his posts have been shared by many of his friends and the Iranian authorities monitor everything on social media. He has spoken to his parents who have told him the authorities are still looking for him and have threatened to kill his parents if it is discovered that they have been assisting the appellant in hiding. His parents have denied knowledge of his whereabouts. He longer contacts his parents as it is too risky but rather speaks to them after contact is made by his maternal uncle. As he is

wanted by the authorities, he will be located and killed anywhere in Iran; the authorities have a no-tolerance attitude towards Kurds connected to political activities against the government. All failed asylum seekers who are removed to Iran are arrested and treated as the enemy; they are interrogated and asked why they claimed asylum in Europe. He would be persecuted, subjected to inhuman or degrading punishment and killed due to his previous activities and his *sur place* activities.

12. At the hearing, there was no examination in chief. In cross examination, the appellant said he created his Facebook account in 2018; he is still largely illiterate but is learning some English, he cannot read or write in any other language. The posts he has shared on his account which are not in English were written by his maternal uncle with whom he lives. His account is set to 'public' which means everyone can see his posts; most of what he has shared he has seen and 'liked' himself, being posts against the regime in Iran; he does not know if his friends have shared his posts.
13. As to the demonstrations he has attended, he said most of them were at the Iranian Embassy. He was initially unclear about how many he had attended in the UK then said around ten to fifteen, twelve since the last court hearing. He found out about them from Facebook. Most involved around 300-400 people. He has appeared in media reporting of the demonstrations, he did not know the name of the media outlet but there is footage on his Facebook account and people took photos of him there too. As to why he could not delete his account, he said his account is on 'public' and he is certain they (the Iranian government) have information about the account and pictures of him attending demonstrations.
14. In re-examination he said he now has more than 2000 friends on Facebook; he does not know all of them but knows most from attending the demonstrations. He was unclear on how he decided whether to make a friend or not. He said not all of his friends are from the demonstrations, others send a request to him which he accepts, before accepting a request, he checks their profile and if it is mostly against the regime in Iran, he accepts it.

15. Given there was no examination in chief and the appellant had been vague in some of his answers, we asked some questions for clarification to ensure we fully understood the appellant's case and evidence in light of XX.
16. He said the number of friends he has shows when he opens his account. As to why his profile (*page 1 ASB*) said he was female, he said he did not know, he is illiterate.
17. He was asked what his correct date of birth is, as his Facebook account said 19 December 1997, a letter dated 16 July 2019 from his solicitors said 2 August 1999 and his notice of appeal said 1 January 1998 (which is the date found to have been correct by First-tier Tribunal Judge Thapar). He said the correct date is 2 August 1999, but when he came to the UK, they did not accept him as a minor and put him as 18, which is why they put 1 January 1998.
18. As to why his uncle would set the Facebook account up to say he was female with an incorrect date of birth, he said he did not know, his uncle's English is also not good. As to why it also says he was born in Sari, Iran when his supplementary witness statement said he came from Dolatwo, he said his uncle said Dolatwo village was small so couldn't be found by Facebook, so he put Sari which is bigger.
19. As to who wrote the English words in the Facebook account extracts contained in the ASB, he said his friends and his uncle; the other language used in the posts in Kurdish Sorani. The English words are a translation of what is written in Kurdish Sorani and not additional/different comments. As to why not all of the text had been translated, as a certified translation is required under the Tribunal procedure rules, he said no one has asked him to do this. Mr Mohzam said it would be prohibitively expensive to translate all of the posts; the posts in the ASB have not been translated and certified fully, but some in Section A of the consolidated bundle have been translated and certified.

20. He said he decides when and what to posts even though his uncle writes them; unfair killings in Iran prompt him to post; he always posts on 'public'; he does not know what his friends privacy setting are; he does not belong to any groups on Facebook. He was unclear as to whether he had received any comments or responses indicating that the Iranian authorities may have seen his account. His account has not been hacked but he has been reported, meaning "they were trying to burn down my Facebook".
21. He said, as a result of his Facebook activity, in 2019 "they have been to my family's home and they said your son is demonstrating against our regime".
22. As to whether he had applied for an emergency travel document from the embassy or any kind of document that would allow him to travel to Iran, he said "I am not allowed by any way to go back to Iran".
23. Mr Mohzam confirmed he had no questions arising. The appellant gave answers to Mr Williams' further questions as follows. He said that his family have not been threatened due to his Facebook activity but people have gone to their home looking for him. He was unclear as to why he had not mentioned that in his previous appeal in 2020.

The parties' submissions

24. We heard submissions from both parties, which are recorded in the record of proceedings and which we have carefully considered in reaching our decision. It serves no purpose to burden this decision with a lengthy recital of those submissions.
25. Broadly put, Mr Williams adopted the reasons for refusal letter and relied on the skeleton argument of his colleague Mr Bates dated 13 November 2011. He asked us to review the evidence through the lens of the appellant having been found not to be genuine and to have undertaken sur place activities to bolster his claim. He said from the papers in the

ASB, all of the appellant's posts appear to be only viewable by his friends, of which it shows there are 974, his account has not been hacked, his friends are a receptive audience having been accepted after meeting at demonstrations rather than being people hostile to his views; the appellant could delete his account before retuning, which would be consistent with his not being genuinely motivated politically. He relied on para 20 of the unreported Upper Tribunal decision in LKIK PA03758 [2016] ('LKIK') in saying that shared posts are not accessible after the original account is deleted and will also vanish from friend's timelines such that they would not be viewable by anyone, including his friends. If his account is deleted, that is therefore the end of it. He relied on XX in saying the evidence does not show it is reasonably likely that the authorities monitor Facebook accounts on a large-scale but conduct focussed ad hoc searches confined to those of significant adverse interest. The appellant is not such a person, he did not come to adverse attention whilst in Iran and has had very limited involvement in any political activities in the UK; there is no evidence that his account has come to their attention. As regards the demonstrations, he relied on headnote 4 of BA (Demonstrators in Britain -risk on return) Iran CG [2011] UKUT 36 (IAC) in saying we must assess the appellant's role in the demonstrations and whether he could be described as a leader, mobiliser or organiser or simply a member of the crowd. He submitted the appellant was the latter, having played no role in organising any events, only attended when funds permitted and being one of hundreds in all events attended; any photos taken appear to have been by others supporting the demonstration and there is no evidence that the appellant's attendance has been reported in the media. This is in contrast to the appellant in BA who was recorded in a video that was publicly accessible on YouTube and in photos appearing in an opposition magazine. He invited us to find the appellant was not at risk and to dismiss the appeal.

26. On behalf of the appellant, Mr Mohzam submitted that the appellant has provided copious evidence of activity on Facebook; he is politically active, he has been to demonstrations and has some public profile. He does not

know all of his Facebook friends personally and so some may be members of the Iranian authorities; there is no need for them to have hacked his account in order to view it; his account is also 'public' such that anyone can view it and his posts are likely to have been viewed. He relied on XX in saying that, depending on someone's 'social graph' their posts may not always be deleted but can be retained on other people's profiles. He relied on HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) ('HB') in saying that even if he does have a low profile, he is still politically active and, as a Kurd, would be at risk on return. Kurdish people are viewed as highly suspicious and even a low level of activity can trigger mistreatment. If it is accepted that he has been politically active, at the "pinch point" of arrival on return, he will be asked why he left illegally and what he has been doing in the UK, which could trigger further investigation and harsh consequences. Even if he was not the leader at demonstrations, given the suspicion he would attract, simply having participated would be sufficient. The date of his last post is 15 March 2022, his posts are significant in content (anti-regime) and number so there would be interest in him.

Findings and conclusions

27. We say at this point that LKIK is not country guidance nor a reported case. Paragraph 11 of the Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal states:

"A determination of the Tribunal which has not been reported may not be cited in proceedings before the Tribunal unless:-

(a) the person who is or was the appellant before the First-tier Tribunal, or a member of that person's family, was a party to the proceedings in which the previous determination was issued; or

(b) the Tribunal gives permission."

28. We note that LKIK has been referred to by the respondent in this appeal prior to the decision of Upper Tribunal Judge Gill and that no issue has

been taken with it being cited. We therefore considered it unfair to deny permission to cite it before us such that we did not raise this at the hearing. Having said that, its contents have now been overtaken by XX which, as country guidance, we are bound to follow, and so this is the case to which we shall refer as regards the nature and use of Facebook.

29. It is uncontroversial that the appellant is an Iranian national, of Kurdish ethnicity. Judge Thapar did not find the appellant's account of distributing political leaflets in Iran to be credible. The appellant did not challenge the findings made by Judge Thapar that were later preserved by Upper Tribunal Judge Gill. There is nothing in the evidence before us that undermines the finding made by Judge Thapar that, even to the lower standard, the appellant has failed to establish that he is at risk as claimed as a result of events that took place whilst he was in Iran.
30. As regards his sur place activity in the UK, we also find there is nothing in the evidence before us that undermines the finding made by Judge Thapar that the appellant has undertaken this activity for any reason other than to bolster his protection claim. The appellant maintains that this is not correct and that he has undertaken his activities in the UK because it is only since arriving here that, through the unrestricted use of social media, he has become fully aware of how the Iranian regime treats Kurdish people. We do not accept this explanation for two reasons.
31. First, he arrived in the UK on 24 April 2016 and claimed asylum on 28 April 2016 based on his alleged fears arising from the regime's treatment of Kurdish people involved in political activity such that he was aware of it at that stage. Second, he did not mention any sur place activity in his substantive asylum interview conducted on 15 July 2019, more than three years after he arrived in the UK. At question 209 of that interview when asked whether, since coming to the UK, he had done anything to support the Democratic Party, he said "No, I have not done such a thing. But my father is all the time helping them." He does not mention at that point that he has set up a Facebook account, whereas at the hearing before us, he

said he set it up in 2018 such that he could reasonably have been expected to mention it in his interview.

32. Overall, we have no hesitation in finding, as did Judge Thapar, that even to the lower standard, the appellant is not a credible witness. He was vague in the evidence that he gave before us, on several occasions not answering the question put to him, and his evidence as a whole lacks any detail and clarity and is not corroborated by the documents produced, as we shall go on to discuss.

33. The appellant's witness statement of 27 January 2020 merely says:

[14] *"Since being in the UK, have [sic] been posting Anti-Iranian material on my Facebook page. I have not been able to attend any KDPI meetings, as I do not have the money to do so. My uncle is active on social media, and he lets me know when the demonstrations are. My uncle has given me tickets to attend the demonstrations".*

34. His supplementary statement of 12 October 2020 says:

[2] *"...I created my Facebook account at the end of 2018. Since February 2019, I have been posting Anti-Iranian material on my Facebook page.*

[5] *I was extremely angry with the regime and wanted to express my feelings. Initially I was not aware of how to post on Facebook, however my maternal uncle [AM] and also two of my friends called [A] and [H] taught me about the Facebook as I am illiterate.*

[6] *Since my last appeal I have attended two demonstrations against the Iranian regime in front of their embassy in London...to show our solidarity with the Kurds in Iran...*

[7] *...I have been able to attend one KDPI meeting, however since March 2020, they have not arranged any meetings due to the Covid-19. My uncle is active with the political activities and he informs me when the*

demonstrations are taking place. My uncle has given me tickets to attend the demonstrations.

[9] even if I delete my Facebook account, my posts have been shared by many of my friends..."

35. We note his first statement said that he did not attend KPDI meetings due to money, but his second statement said it was because there were no meetings to attend due to the pandemic, which is inconsistent. We appreciate that by the time of his second statement, measures had been introduced due to the pandemic to prevent social gatherings, but he has not mentioned attendance at any further meetings despite the easing of restrictions.
36. We note the appellant has been inconsistent about how he found out about demonstrations, saying in both statements that his uncle told him about them but at the hearing saying he learned about them from Facebook. Despite saying his uncle bought tickets, these tickets have not been adduced as evidence. The only evidence of the appellant's attendance at demonstrations beyond his own word are the photos appearing on his Facebook account, which appear to be on three or four separate occasions as different clothing is worn. We note that the photos adduced alongside his supplementary statement from October 2020 are the same as those adduced alongside his initial statement of 27 January 2020. There is a further photo in the Facebook posts in the AAB (*page 92*) but this appears to be a different location and it is unclear whether it is a demonstration or not. There is therefore no corroborative evidence of his having attended ten to fifteen demonstrations as he said he had at the hearing. He has never confirmed the dates or details, in terms of who organised them or why, or who he attended with, of any of the demonstrations he says he has attended.
37. He has not provided any witness statement evidence from his uncle and his uncle did not attend the hearing. Given the role the appellant says his uncle has played in assisting with his *sur place* activity, it is reasonable to

have expected to see evidence from his uncle and we find its absence undermines the credibility of the appellant's account.

38. As to the contents of his Facebook account, the appellant said he had over 2000 'friends' but has provided no corroborative evidence of this. The printout of his account activity in the ASB (page 5) states that he has 974 friends. No breakdown of these friends has been provided, nor of his timeline of activities/posts/comments/likes even though (as XX confirms - see below) this is easily available to an account holder. Those printouts consist of partially translated posts between 25 February 2019 and 29 November 2019 (pages 5 to 23 ASB) and translated posts between 25 February 2019 and an unknown date (pages 24 to 42 ASB). The two sets of printouts are not the same and we are without an explanation for this. The AAB (pages 1 to 96) provides printouts of posts concerning the period 29 November 2019 to 15 March 2022, some of which appear to have been translated into English but there is no certificate of translation.
39. The appellant himself has not set out in any coherent manner what posts were made on what date, what they say, and who they were shared with and when. It is hard to discern the meaning of the majority of the posts that have not been translated and the pictures/photos are not always self-explanatory. We do not know, for example, who the men are with 'terrorist' or 'killer' written across their photographs. The appellant was vague as to what prompted him to post or respond to items. He said his settings were such that all of his content could be seen by the wider public and not just limited to his friends but he has not disclosed documentary evidence of his privacy settings or those of his friends. As per headnote 7 of XX:

"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".

40. We have no statements from any friends as to how or why they and the appellant connected or what the nature of their relationship is. As above, there is no list of friend's names. We are therefore in the dark about who any of them are, albeit we accept that simply knowing their names would not take us much further.
41. We accept that the posts contain content critical of the Iranian regime, some of it very explicitly so such as 'Down with the Islamic Republic of Iran' (*page 37 ASB*), 'Newspapers say: Iran is looking for the slightest excuse for executing people' (*page 39 ASB*), and 'Fuck Iran' (*page 7 AAB*) although much of it appears to simply be comment on events such as the killing of a Kurdish shepherd (without naming the perpetrator) (*page 41 ASB*), border shootings (*page 40 ABS*) and Kurdish students being detained (*page 32 ASB*).
42. We reject his explanation that, although he set up his account in 2018, he did not start posting until February 2019 because he did not know how to post initially. This does not correlate with his saying he set up the account specifically because he wanted to express his feelings.
43. As per headnote 8 of XX, *"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."*
44. As raised at the hearing, the account printout (*page 1 Appellant's addendum bundle - AAB*) states that the account holder is female with a date of birth of 19 December 1997 and from Sari, none of which features apply to the Appellant. His explanation for this was that his uncle had put this for unknown reasons but probably because his English was not good. We reject this explanation as he said later in the hearings that his uncle sometimes helps him with some of the English words that appeared on his posts, such that he could expected to know more basic words such as male or female, and if he managed to put one location within Iran and a

date of birth, we see no reason why he could not have put the correct ones. We also note that Sari was added as the hometown on 29 November 2019 (*page 2 AAB*), and not when the account was originally set up. It is also unclear how the appellant can be so certain in saying that his settings are set to 'public' when he admits that such basic details about his identity are incorrect. We have also rejected the Appellant's explanation for why he only started posting from February 2019 having set up the account in 2018 and that the first time he mentions having a Facebook account is in his second witness statement of October 2020. As above, he did not mention the account at his substantive asylum interview on 15 July 2019.

45. Overall, taking everything into account, we consider that the Facebook account before us was not set up by the appellant or his uncle and was an existing account which he has adopted for the purpose of providing evidence to bolster his weak claim. This is also supported by the dated of the first post under 'Your Posts' (*page 7 AAB*) being 29 November 2019, three days after the Respondent's Refusal decision on 26 November 2019.
46. As per XX with reference to HJ (Iran) v SSHD [2011] AC 596, there is, in principle no arguable defence to a suggestion that a person in the United Kingdom with a Facebook account cannot be expected to delete that account if the material on it does not represent a genuinely held belief or opinion. Further, if an account is deleted, it will cease to exist and any posts created or sent by the account holder will be deleted and not accessible.
47. As we have found the appellant not to be genuine in his activities, we find it is reasonable in all the circumstances, and will not contravene the HJ (Iran) principle, for the appellant to close down his Facebook account which will have the effect of removing all posts he has created.
48. As regards any lasting legacy of his account, he confirmed he was not aware of being hacked and had not applied for an emergency travel document such that there will have been no cause for a search to have yet

been conducted for any social media activity. We now address whether his account could have already come to the attention of the Iranian authorities in any case.

49. Pursuant to XX, we need to analyse the appellant's existing profile and where he fits onto a "social graph;" and the extent to which he or his social network may have their Facebook material accessed. XX held that the likelihood of Facebook material being available to the Iranian authorities is affected by whether the person is or has been at any material time a person of significant interest, because if so, they are, in general, reasonably likely to have been the subject of targeted Facebook surveillance and any additional risks that have arisen by the creation of a Facebook account would not be mitigated by the closure of that account.
50. We remind ourselves of the preserved finding of Judge Thapar that the appellant was not politically active or of adverse attention when he was in Iran. This leaves his activity in the UK. We refer to our above findings concerning his Facebook account and activity and his attendance at demonstrations in further finding that the appellant does not have a profile that would put him at greater risk than any other Kurd returning to Iran as a failed asylum seeker.
51. In BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) the Tribunal held that:

(i) Given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain;

(ii) (a)Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of

documentation are made. Students, particularly those who have known political profiles, are likely to be questioned as well as those who have exited illegally.

(b) *There is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain. The conclusions of the Tribunal in the country guidance case of SB (risk on return -illegal exit) Iran CG [2009] UKAIT 00053 are followed and endorsed.*

(c) *There is no evidence of the use of facial recognition technology at the Imam Khomeini International airport, but there are a number of officials who may be able to recognize up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might well be picked up for questioning and/or transferred to a special court near the airport in Tehran after they have returned home.*

(iii) *It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed.*

(iv) *The following are relevant factors to be considered when assessing risk on return having regard to sur place activities*

(a) Nature of sur place activity. Theme of demonstrations - what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime? Role in demonstrations and political profile - can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive (e.g. does he carry a

banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime. Extent of participation - has the person attended one or two demonstrations or is he a regular participant? Publicity attracted - has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?

(b) Identification risk. Surveillance of demonstrators - assuming the regime aims to identify demonstrators against it how does it do so, through filming them, having agents who mingle in the crowd, reviewing images/recordings of demonstrations etc? Regime's capacity to identify individuals - does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?

(c) Factors triggering inquiry/action on return. Profile - is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable? Immigration history - how did the person leave the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated (overstayer; forced return)?

(d) Consequences of identification. Is there differentiation between demonstrators depending on the level of their political profile adverse to the regime?

(e) Identification risk on return. Matching identification to person - if a person is identified is that information systematically stored and used; are border posts geared to the task?

52. Overall, based on the photos mentioned above and lack of corroborative evidence, we find that the appellant has attended no more than a maximum of four demonstrations and his role in these was no more than a

member of the crowd holding a small sign with no genuine belief in the cause such that, in the absence of any evidence that his presence was noticed or publicised, no risk will have arisen from this attendance.

53. As to the appellant having left Iran illegally, in SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) (in which the appellants were also Kurds) it was held that:

(i) An Iranian male whom it is sought to return to Iran, who does not possess a passport, will be returnable on a laissez passer, which he can obtain from the Iranian Embassy on proof of identity and nationality;

(ii) An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.

54. In that case, the Upper Tribunal said that it was not suggested to them that an individual faced risk on return on the sole basis of being Kurdish. Being Kurdish was relevant to how the returnee would be treated by the authorities, but no examples had been provided of ill-treatment of returnees with no relevant adverse interest factors other than their Kurdish ethnicity. The Upper Tribunal concluded that the evidence did not show a risk of ill-treatment to such returnees, though they accepted that it might be an exacerbating factor for a returnee otherwise of interest.

55. We accept that, as per SSH, even low level activity, if discovered, involves a risk of persecution or Article 3 ill-treatment and that the Iranian authorities demonstrate a 'hair-trigger' approach to those suspected or perceived to be involved in Kurdish political activities or support for Kurdish rights. However, we find the appellant has failed to prove, even to the lower standard, that he is a prominent individual in Iran or that there is

anything in his profile that increases the risk of his being identified on return, or discovered to have taken part in any political activity.

56. Due to his lack of profile, we do not find it proved that the Iranian authorities would have the ability or desire to access the appellant's Facebook account and that, even if questioned at the "pinch point" of return, they would have any knowledge of those matters which the appellant claims will place him at risk. We have found his claimed political views do not represent a view genuinely held by him but are matters created for the purposes of enhancing an otherwise non-existent asylum claim.
57. We find the appellant will not be required to reveal to the Iranian authorities he previously had a Facebook account or if asked, he would not reveal it in any case as his beliefs are not genuine; the 'truth' is that he has no genuine beliefs and the Facebook account is not of his own creation. We have found he can reasonably be expected to close his account. We do not find it proved that the Iranian authorities have the capacity or ability to access a Facebook account once it has been closed down and XX clearly indicates that for individuals and international third parties, such as governments, this task is not feasible. As per head note 6 of XX, the timely closure of his account will neutralise any risk consequential on having had an account, provided that it was not specifically monitored prior to closure, which we find it will not have been due to his lack of profile.
58. We therefore find the appellant has failed to discharge the burden of proof upon him to the required standard to establish he is anything other than a failed asylum seeker.

NOTICE OF DECISION

59. We remake the decision as follows. The appeal is dismissed.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed: **L.Shepherd**

Date: 3 May 2022

Deputy Upper Tribunal Judge Shepherd