



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

**Appeal Number: IA/00131/2020  
PA/50621/2020**

**THE IMMIGRATION ACTS**

**Heard at Birmingham Civil Justice  
Centre  
On 21<sup>st</sup> July 2022**

**Decision & Reasons Promulgated  
On the 3<sup>rd</sup> January 2023**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**RI  
(Anonymity Direction Made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr G Brown, instructed by CB Solicitors

For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

*An anonymity direction was made by the First-tier Tribunal ("the FtT"). As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. 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.*

## **Introduction**

1. The appellant is a national of Iran. He arrived in the UK on 26<sup>th</sup> September 2017 and claimed asylum. The appellant's claim was refused by the respondent for reasons set out in a decision dated 29<sup>th</sup> June 2020.
2. The appellant's appeal against the respondent's decision was dismissed by First-tier Tribunal Judge Athwal for reasons set out in a decision dated 21<sup>st</sup> January 2021. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Martin on 12<sup>th</sup> February 2021. The appeal was heard by Upper Tribunal Judge Owens and the decision of the First-tier Tribunal was set aside for reasons set out in a decision promulgated on 9<sup>th</sup> December 2021. Upper Tribunal Judge Owen preserved some of the findings made by First-tier Tribunal Judge Athwal, to which I shall return shortly. She directed that the decision will be remade in the Upper Tribunal and identified that the issue in the appeal will be limited to the risk to the appellant on return "from perceived anti-regime opinion as evidenced by his sur place activity and Facebook pages". The appeal was listed for a resumed hearing before me to remake the decision.
3. The background to the appellant's claim for international protection was summarised by Upper Tribunal Judge Owens in her error of law decision in the following way:

"3. The appellant claims there is a real risk of serious harm to him if he is returned to Iran. He is of Kurdish ethnicity and lived in a border area. His father was involved in smuggling. The basis of his account was that his father was shot by the Iranian Pasdar at the border whilst moving goods in 2016. His mother died of cancer in 2017. After that he moved in with his paternal uncle who was also involved in smuggling. His uncle stored illegal satellite dishes and alcohol in the

appellant's family home. The appellant assisted his uncle by unloading and loading goods.

4. The appellant also claims that his uncle was a KDPI member who held meetings at his home and that he was the look-out when his uncle held meetings. He claims that the Iranian authorities raided his family home, confiscated the smuggled goods, found KDPI leaflets and were looking for him.

5. The respondent accepts that the appellant is an Iranian Kurd; that his father was killed; that his mother has died; that his father and uncle were involved in smuggling and that smuggled goods were held in the appellant's family home. It is also accepted that the appellant was involved in smuggling. It is not accepted that political leaflets were stored in the appellant's home because of his initial failure to mention that he had been involved in any political work, internal inconsistencies in his account and inconsistencies with the background evidence. The respondent's view is that Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 also applies because the appellant failed to take a reasonable opportunity to claim asylum in Italy. The respondent does not accept that the appellant has come to the adverse attention of the Iranian authorities, nor that he will be at risk on return."

4. Upper Tribunal Judge Owens said at paragraph [26] of her decision that the findings from paragraphs [46] to [65] of the decision of the First-tier Tribunal Judge in relation to the appellant's activities in Iran are preserved. She also preserved the following findings:

- (a) The appellant is of Kurdish ethnicity.
- (b) The appellant was of no adverse interest to the authorities before he left Iran.
- (c) There is no risk of serious on account of his illegal exit or the fact that he is a failed asylum seeker.
- (d) He is not a credible witness and does not have a political profile.
- (e) He attended at least one anti-regime demonstration in the UK.
- (f) With the assistance of others he has posted anti-regime comments and photographs on a Facebook page under his own name.
- (g) His profile on Facebook is a means to bolster a patently weak asylum claim.
- (h) The Iranian authorities have not seen his posts.
- (i) It is unknown whether the posts are public or private

5. It is useful at this juncture to also record the preserved findings from the decision of First-tier Tribunal Judge Athwal set out at paragraphs [46] to [65] of that decision. Judge Athwal said:

"Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

46. The Appellant did not claim asylum in Italy where he was fingerprinted. In his screening interview he stated that he did not know what a finger-print was or what Italy was. In his statement he recorded that, "I mention that I did not claim asylum in Italy because I was under the control of an agent - who told me not to claim asylum anywhere until he told me to do so. The agent was mistreating other migrants who refused orders. He told me that my uncle had paid for him to take me to a safe country and that he would tell me once I was somewhere safe. As I did not know where I was, I listened to the instructions of the agent ." The Appellant has not explained why he was unable to provide this account in 2017 when he was first asked the question.

47. The Appellant would have been with an official when he was being fingerprinted and would have had a reasonable opportunity to claim asylum, as he would not have been under the agent's control at that time. The Appellant failed to explain why he did not do so.

48. I therefore find that in accordance with section 8, I must approach the Appellant's evidence with caution.

The Appellant's Perceived Political Opinion

49. It is the Appellant's case that the Iranian authorities believe that he was in possession of KDPI leaflets, as a result of this he will be of interest to the authorities if returned to Iran. I have carefully considered all of the Appellant's evidence on this issue. In his screening interview, which took place in September 2017 the Appellant stated, "*I went work with my uncle, he wanted me to transport illegal goods. He bought the goods inside my house, the Iran forces found out. My uncle sent me away to this country. If I return I will be executed.*" The Appellant did not mention the KDPI leaflets or that he was at risk because of his uncle's political activities.

50. At question 71 of the asylum interview, which was held on 30 July 2019, the Appellant was asked what goods were kept at his family home. He stated that it was satellite dishes and alcohol. At question 72 he provided further details about the items stored. He stated that, "*Approximately, he left about 20 to 30 boxes, there were 15 to 20 satellite dishes also. In addition to that there was a box that was about a metre long. He would not let me open it or let me go back into my own home.*" At question 93 the Appellant was asked again whether his uncle dealt in any other goods, other than alcohol and satellite dishes. The Appellant stated, "*No, but I don't know what was inside the box.*" He was asked whether he enquired about the box and he said no. When asked why not, he said, "*Because he told me not to ask as it was a party related matter.*" The Appellant stated later in the interview that his uncle distributed papers for the KDPI. At question 132 when he was asked what were the papers that were being distributed, he said "*I don't know I am illiterate.*" At question 150 the Appellant was asked whether he came to any adverse attention due to his uncle's affiliation with the Democratic Party, the Appellant said no. The Appellant was asked whether his uncle came to any adverse attention due to his affiliation with the party the Appellant replied, "*No, I was not aware of it , as my uncle would not tell me about anything if I was not with him.*"

" I find that the Appellant was provided with several opportunities to tell the interviewer that KDPI leaflets were being stored in his home by his uncle, but he failed to do so.

51. In his witness statement at paragraph 11, the Appellant provided an account about the KDPI leaflets. He stated that after his aunt told his uncle about the Ettela'at raid, the uncle, "*explained to me that he had been storing KDPI media and illegal goods he had smuggled in my parents house*". He gave a detailed account in his asylum interview about his conversation with his uncle after his aunts call, and he did not say that his uncle told him them about the KDPI leaflets. His answer at question 150, (as set out above in paragraph 50) contradicts the explanation provided in the witness statement. In oral evidence the Appellant was asked why he did not mention this in his interviews. He told me that he did know that there was alcohol and papers in the boxes. He asked his uncle to explain what the papers were, but his uncle refused to do. The Appellant was reminded of his initial evidence and he stated that "he did not know," he then stated that the boxes were sealed and when he asked his uncle about them, his uncle became angry. The only reasonable conclusion that I can draw from the Appellant's failure to mention an essential part of his case until his witness statement, which was drafted three years after he came to the UK, is that this is an embellishment that the Appellant has subsequently added to his claim.

52. The Appellant stated that his uncle was a member of KDPI from between three to five years and during that time he had never been suspected of being a KDPI member by the authorities. When asked to explain how this was possible, he stated that it was because his uncle was extremely careful and avoided detection. This is credible, as the Appellant in the asylum interview described the warning system that was in place for when he acted as a lookout. However, in response to question 1.8 of the screening interview the Appellant stated that the Iranian intelligence service took his passport from his family home. It is not credible that the Appellant would leave his identification documents in the same house as smuggled goods and a box of KDPI leaflets. Furthermore, it is inconsistent with his account that his uncle was extremely careful and cautious. It is not plausible that his uncle would have allowed the Appellant's identity documents to remain in that house, when the Appellant was living in his home, in the same village. It is also not credible that such a careful man would store KDPI leaflets with smuggled goods in the Appellant's home. The Appellant was asked to explain why this was allowed to happen when his uncle was so careful. The Appellant stated that he did not know what his uncles intentions were, but it was possible that his uncle left the leaflets in the Appellant's home so that they would be connected to the Appellant and not the uncle. That answer was in complete contradiction to everything the Appellant had said to date. The Appellant was asked why his uncle would pay for an agent and help the Appellant leave the country if he was trying to implicate the Appellant. The Appellant said it was because his uncle was worried that the Appellant would disclose his name to the authorities. That answer is neither credible nor plausible; if the uncle was worried about being implicated, he would not have linked the leaflets to the Appellant,

especially when the Appellant was living with the uncle in the same village as that house.

53. At question 170 the Appellant stated that the uncle “told me that I was at risk and that I had to leave the country. He told me that if I was to be arrested then I would be executed by hanging. My uncle was worried for his own well being and to avoid me giving his name to the authorities, he did that because he was scared that I would tell the authorities about him under duress .” For the reasons set out at paragraph 60 to 61 below, it is not credible that in this situation the uncle was not a suspect too. However even if I take the Appellant’s case at its highest, it is not consistent with the background information.

54. The January 2019 CPIN at 10.5.1 states

“The Landinfo report stated: ‘Asked about the consequences for family members of political activists, an international organization in Ankara informed that ‘If a person is deemed to be affiliated to a separatist party, he would be at risk. Family members could be regarded as oppositional as well. In the Kurdish regions, families are larger and links are closer. If a person is affiliated to the KDPI, one would expect to find other activists [sic] within the family. It is the general trend of the authorities to seek out family members in the event that an activist is a fugitive. Going after families also creates an example of fear as well.’”

55. The CPIN at 10.5.4 states:

“The FFM report also stated ‘...According to Ziryan Roj Helaty (Tanupo Magazine), the Iranian regime is highly sensitive to the Kurdish population in Iran, and the regime always reacts disproportionately towards activities conducted by Kurds. As a result, if the Iranian regime for instance catches a sympathizer carrying out an activity against the government, the consequences for him and his family will be serious.’”

56. I have taken into account the findings of the Danish Refugee Council and Danish Immigration Service’s joint publication on Iran set out at 10.5.6 of the CPIN which states:

“The Danish Refugee Council and Danish Immigration Service’s joint publication on Iran, ‘Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs,’ March 2018, stated: ‘An associate professor said that it is not possible to confirm whether family members of former or current Kurdish activists with a political conflict will be targeted by the authorities, nor is it possible to tell if there is a systematic targeting of family members by the authorities. While one security agency can act systematically in this regard, another would not. In Iran, there are a number of different intelligence services; those affiliated with the Ministry of Interior, those affiliated with the military and those affiliated with the Revolutionary Guard. Furthermore, the intelligence agencies play different roles and follow different chains of command. Family members of former or current Kurdish activists will be monitored, but it depends on the profile of the active family member and the level of his/her political activities. Furthermore, if a Kurd is not politically active and does not have a

politically active family member with a significant profile, it is less probable that he/she would be targeted.”

57. The Appellant was found with KDPI leaflets in his home which would indicate to the authorities that he is a member of a separatist movement and is politically active. It is not credible that in this situation, there would not have been repercussions for his uncle too. Mr Madanhi submitted that the Appellant assumed that his uncle returned to his village and he could not be certain of what happen to him after they separated in Sardasht. I do not accept that submission for the following reasons. At question 25 of the asylum interview the Appellant was asked what he said to his uncle when he last spoke to him in the jungle in France. the Appellant stated, “he asked for about 2 to 3 minutes I told him my problems, what happened on route. I asked about the situation in Iran, and he said that it was unstable, he told me to look after myself and that was it .” In his witness statement at paragraph 14 the Appellant stated that, “I asked him what was happening back home and he advised that the situation was unstable. He could not discuss with me in detail over the phone as he seemed concerned with his safety considering he was still in Iran. This is the last contact I've had from Iran.” The Appellant stated in oral evidence that his uncle returned to his village, he had nowhere else to go and that was his home. The Appellant spoke to his uncle and he did not tell the Appellant that he was unable to return to his village or that he was hiding from the authorities. The term ‘unstable’ does not suggest that the uncle was at risk. The Appellant later stated that the uncle seemed to be concerned with his safety but he has not explained whether that was a general fear for his safety, or whether there was a specific threat. Furthermore, the Appellant’s account is not consistent with the background information set out above, even if the uncle was not a KDPI member, he and the aunt would have been at risk from the authorities, and it is unlikely the uncle could have simply returned home if the situation described was true.

58. For all of the reasons set out above, I do not find even to the lower standard that KDPI leaflets were stored in the Appellant’s family home. I therefore do not find that the Appellant was perceived to be involved in any political activity in Iran that would bring him to the attention of the Iranian authorities.

Whether the Appellant was perceived to be a smuggler by the Iranian authorities

59. It is the Appellant’s case that the authorities raided his family home and as a result he is perceived to be a smuggler and will be of interest to them if returned to Iran. From question 111 to 118 of the asylum interview, the Appellant stated that the smuggled goods were stored at his own house where ‘customers’ would come during the night. The Appellant would load the goods into their vehicles. He did not speak to these people because there was no need for him to do so, his uncle was present when these deals took place and he discussed the price and took the money.

60. The Appellant was asked in oral evidence why in these circumstances only the Appellant was associated with the recovered smuggled goods and not his uncle. The Appellant stated that he did not know how the authorities knew that the goods were being kept at his

home, but they must have thought it belonged to the Appellant and not his uncle. The authorities had not linked him to his uncle. The Appellant was asked if that was true, why did they go to his uncle's house to establish his whereabouts. The Appellant contradicted himself by saying, "because he was my closest relative and they thought that they knew where I had gone."

61. The Appellant was asked to explain why in his interview, when asked how he believed that Ettela'at found out about the goods in his house, he had provided a different answer. At question 178 the Appellant had stated, "In my view, they would have started to know because of the number of people who came to take goods from there. Or someone could have told on us. Maybe someone may have not liked my uncle and they told on him." The Appellant denied saying that in interview and stated that it must have been a misunderstanding on the part of the interpreter. He was asked why he did not record this misunderstanding in his letter dated 15 August 2019 along with the other corrections. He stated that he "did not know but maybe at that time I did not remember about this point ." The Appellant corrected any mistakes in the interview in his letter, I do not accept that he would not have corrected such a material error as this if really was an error. I find the Appellant's account to be lacking in credibility, he provides inconsistent answers and when challenged, falsely denied that the answers were correct.

62. This is not the only inconsistency in the Appellant's account. In response to question 120 the Appellant stated that he and his uncle were at his uncle's friend's house. His aunt telephoned his uncle and told him that the Etela'at had raided and confiscated the goods from the Appellant's home. However in his witness statement at paragraph 11 the Appellant stated that his uncle received this phone call as they were driving to Sardasht.

63. Mr Hussein raised a further inconsistency in the Appellant's evidence. At question 120 the Appellant stated that the Ettela'at found his ID papers and started to look for him. They went to the uncle's home and asked where the Appellant was because they were looking for him. Once the authorities left, his aunt telephoned his uncle. His uncle called one of his friends to confirm that this had indeed happened. When answering question 161 the Appellant provided further detail about what happened. He stated that the Ettela'at came to his uncle's home and "enquired about me and she told them that he is not here and doesn't live with us ." In response to question 165 the Appellant stated that, "people in the village told her that the Ettela'at had confiscated things for my house. The reason I knew that other people knew is that my uncle phoned one of his friends in the village which confirmed this. He told my uncle not to take me back to the village ." However at question 168 the Appellant stated, "they told her [aunt] my name and asked where I was. But my uncles wife hung up the phone call very quickly. " Mr Hussain stated that this was an inconsistency in the Appellant's evidence. I have carefully considered the rest of the response to question 168 and I find that the Appellant was referring to the telephone call made by his aunt to his uncle, not to a call from Ettela'at to his aunt. The appellant did however say in oral evidence that Ettela'at informed her that they had raided the Appellant's home. The Appellant was asked why his account in



interview was different (see question 165 above). The Appellant denied saying this in his interview, so I read aloud his answer to question 165 in full. The Appellant stated that when he referred to 'some people' he was referring to Ettela'at. It was put to him that he clearly stated that people in his village told his aunt. The Appellant stated that he did not say this and he clearly remembered what he said in his interview. The Appellant submitted corrections to his asylum interview on 5 August 2019, he did not state that the answer to question 165 was incorrect. I again find that if there was such a material error in the interview record, the Appellant would have corrected it.

64. The Appellant in response to question 50 stated, "Once the Iranian regime finds smuggled goods in your home they will execute you by hanging ." This is not consistent with the background information. The August 2019 CPIN states at 4.2.1:

"Article 703- Importing alcoholic beverages into the country shall be considered as smuggling and the importer, regardless of the amount (of the beverages), shall be sentenced to six months to five years' imprisonment and up to 74 lashes and a fine ten times as much as the usual (commercial) value of the aforementioned object. This crime can be tried in the General Courts ."

65. For all of the reasons set out above, I do not find even to the lower standard that the Ettela'at raided the Appellant's family home and discovered smuggled goods. I find therefore that the Appellant is not of interest to the Iraqi authorities.

### The appellant's evidence before the Upper Tribunal

6. The appellant attended the hearing before me and gave evidence with the assistance of a Kurdish Somali interpreter. At the outset, Mr Brown confirmed that the evidence now relied upon by the appellant is set out in the appellant's bundle comprising of 273 pages. I was provided with a copy of that bundle which includes the appellant's skeleton argument, a witness statement dated 14 July 2022, extracts from the appellant's Facebook account and relevant authorities and background material.
7. In his oral evidence before me the appellant adopted his witness statement dated 14<sup>th</sup> July 2022. He confirmed that the statement has been signed by him and the content is true. He confirmed that he has provided evidence of his 'Facebook' profile, and a 'friend list'. He was reminded that the respondent accepts he left Iran illegally. He said that assuming he is required to go to the Iranian Embassy to obtain an 'Emergency Travel Documents' ("ETD"), if asked whether he has

attended demonstrations in the UK, he will tell them that he has. He said that if asked whether he has a Facebook account, he would “say the same”. He said that assuming he is returned to Iran and asked similar questions at the airport, he would tell them that he has attended demonstrations and has a Facebook account.

8. In cross-examination, the appellant confirmed that he has not already applied for an ETD. Mr Williams referred the appellant to the extracts from his Facebook account. He said that, at page [11] of the appellant’s bundle, there is a picture that was posted on his account of his attendance at a demonstration, in London outside the Iranian Embassy on 9<sup>th</sup> June 2019. He said “a lot of people .. more than 100” attended that demonstration. The appellant confirmed he did not have any role in arranging or leading the demonstration but he “only attended the demonstration against the regime”. He confirmed the same applies for all the demonstrations he has attended. The appellant was referred to the photograph that is at page [12] of the appellant’s bundle and it was suggested to him that in those photographs he appears to be facing a different direction to the rest of the crowd. He accepted that was a fair observation to make, but denied he was posing for photographs. He explained that during the demonstration he was looking all around and looking at other people as well. When asked how many demonstrations he has attended in the United Kingdom, the appellant said “3 - 4”. He confirmed that at each of those demonstrations, there was a crowd of more than about 100 people. He was asked whether his attendance at the demonstrations has ever been on the news, either here in the UK, or in Iran. He replied; “I am not aware. If a demonstration takes place at the Embassy, I am sure the Embassy will report that to the Iranian government”. The appellant was reminded that the First-tier Tribunal Judge had previously found that the appellant was not being truthful about the reasons he left Iran. He was asked why he could not similarly lie when he returns to Iran. He replied: “You cannot do that in Iran because there is evidence of my attendance at demonstrations”. It was

suggested to the appellant that he could delete his Facebook account before returning to Iran. He replied; *“yes you can, but they still know”*. The appellant said that even if the account were deleted and there was no evidence of his attendance at demonstrations, he would still tell the authorities that he had attended demonstrations because *“They know I am out of Iran”*.

9. By way of clarification, I asked the appellant what the demonstration on 9<sup>th</sup> June 2019 was about. He said; *“to support the Kurds and our rights”*. He said that in June 2019 there were executions going on in Iran. He said that the photographs that he posted on Facebook were taken by other people that were at the demonstration. There were people from Birmingham and the photographs were taken on the appellant’s own phone. The people there, then helped him upload the photographs to his Facebook account. He said that he was unable to do it himself because he is illiterate. The text that appears was included by a Kurdish person. The appellant said that he told the individual what to put, and the individual wrote it. The appellant did not know what the text actually states, but he was happy that the individual was writing what he had been told to put. The appellant confirmed that the posts include text that is in English and in Kurdish. He confirmed that he cannot read or write in English or Kurdish. I referred the appellant to page [10] of the appellant’s bundle. He confirmed that his Facebook account was created and registered on 9<sup>th</sup> June 2019. He confirmed that at pages [39] to [143] he has provided a list of his ‘friends’ on ‘Facebook’.
10. There were no further questions from Mr Williams and there was no re-examination by Mr Brown.

#### The parties submissions

11. On behalf of the respondent, Mr Williams refers to the preserved findings of First-tier Tribunal Judge Athwal and Upper Tribunal Judge Owens. He submits the issue is whether the appellant will be at risk upon return

because of his perceived anti-regime opinion, based upon his *sur-place* activity and what appears on his Facebook account. As for the appellant's attendance and demonstrations, Mr Williams submits the appellant is simply a 'face in the crowd' and appears to do nothing more than pose for photographs. The appellant is not aware of the demonstrations having been reported in the Iranian media and Mr Williams submits, the appellant's attendance at those demonstrations is unlikely to have come to the attention of the authorities in Iran.

12. Mr Williams refers to the decision of the Upper Tribunal in XX (P/IAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC), and in particular headnotes [2] and [3]:

"2) 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. In the case of such a person, this would mean that any additional risks that have arisen by creating a Facebook account containing material critical of, or otherwise inimical to, the Iranian authorities would not be mitigated by the closure of that account, as there is a real risk that the person would already have been the subject of targeted on-line surveillance, which is likely to have made the material known.

3) Where an Iranian national of any age returns to Iran, the fact of them not having a Facebook account, or having deleted an account, will not as such raise suspicions or concerns on the part of Iranian authorities."

13. Mr Williams submits one of the preserved findings is that the Iranian authorities have not seen the appellant's Facebook. The first 'pinch-point' is at the point the appellant makes an application for an ETD. The appellant's evidence is that he has not applied for an ETD in the UK. There are preserved findings that the appellant was of no adverse interest to the authorities before he left Iran, and that he does not have a political profile. Similarly, there is a preserved finding that the appellant's profile on Facebook is a means to bolster a patently weak asylum claim. Mr Williams submits the appellant has no genuinely held political beliefs, and there is no reason why he cannot delete his

Facebook account before applying for an ETD and therefore before that first potential pinch-point. The country guidance confirms the fact of the appellant not having a Facebook account, or having deleted an account, will not as such raise suspicions or concerns on the part of Iranian authorities.

14. Mr Williams submits the appellant will not be at risk upon return simply because of his illegal exit, and as someone that has never come to the adverse attention of authorities previously, there is no reason why he will be asked about attendance at demonstrations in the UK, particularly when there is no evidence of his attendance at the demonstrations because it is reasonably likely that the Facebook posts will no longer exist.
15. Mr Williams submits that in XX, the Upper Tribunal considered, at [98] to [102], the extent to which a person can be expected not to volunteer the fact of having previously had a Facebook account, on return to his country of origin. Mr Williams submits the same must apply to volunteering the fact of having attended demonstrations. Mr Williams submits the Tribunal held that the law does not prevent a decision maker from asking if a person will volunteer to the Iranian authorities the fact of a previous lie to the UK authorities, such as a protection claim made on fabricated grounds, or a deleted Facebook account. At paragraphs [100] to [102], the Tribunal said:

“100. ... in deciding the issue of risk on return involving a Facebook account, a decision maker may legitimately consider whether a person will close a Facebook account and not volunteer the fact of a previously closed Facebook account, prior to the application for an ETD: HJ (Iran) v SSHD [2011] AC 596. Decision makers are allowed to consider first, what a person will do to mitigate a risk of persecution, and second, the reason for their actions. If the person will refrain from engaging in a particular activity, that may nullify their claim that they would be at risk, unless the reason for their restraint is suppression of a characteristic that they have a right not to be required to suppress, because if the suppression was at the instance of another it might amount to persecution. It is difficult to see circumstances in which the deletion of a Facebook account could equate to persecution in this sense, because there is no fundamental right protected by the Refugee

Convention to have access to a particular social media platform, as opposed to the right to political neutrality.

101. The second part of our answer relates to Lord Kerr's concern about whether an analysis of what a person will do is too speculative or artificial an exercise. We accept Mr Jaffey's submission that there may be cases where the exercise is too speculative, particularly in the context of a volatile militia. That is not the case here.

102. We consider that it may be perfectly permissible for a decision maker to ask what a returnee to Iran will do, in relation to a contrived Facebook account or fabricated protection claim. Whether such an inquiry is too speculative needs to be considered on a case-by-case basis, but factors which may point to that question not being impermissibly speculative include: where a person has a past history of destroying material, such as identification documents, or deception or dishonesty in relation to dealings with state officials; whether the government has well-established methods of questioning (in the Iranian state's case, these are well-documented and therefore predictable); and whether the risks around discovery of social media material, prior to account deletion, are minimal, because a personal's social graph or social media activities are limited."

16. Mr Williams submits I should reject the appellant's evidence that he would inform the Iranian authorities about his Facebook account and attendance at demonstrations. He submits it is unlikely the appellant would tell the truth. There have already been a number of adverse credibility findings made against him regarding the core of his account and there is a preserved finding that the appellant was of no adverse interest to the authorities before he left Iran. He has been found not to be a credible witness. He has therefore sought to deceive the authorities in the United Kingdom in his dealings with state officials, and as he has no genuinely held political belief, he is unlikely to volunteer the information to the Iranian authorities on return. Mr Williams submits that taking the appellant's profile as a whole, he will not be at risk upon return and the appeal should be dismissed.
17. In reply, Mr Brown adopted the supplementary skeleton argument that has been filed. The appellant submits that the issue is whether the appellant could be perceived as a supporter of the opposition due to his *sur place* activities and that the appellant's activities in the UK place him at increased risk upon return to Iran.

18. Mr Brown referred me to the extracts from the appellant's Facebook account that are to be found in the appellant's bundle. At pages 11 and 12, there are pictures posted of the appellant attending a demonstration on 9<sup>th</sup> June 2019. At page 12, the appellant is holding a picture of the religious leader with a cross through it. At page 13, there are pictures of the appellant at a demonstration on 21<sup>st</sup> July 2019, and at page 17, there are pictures of the appellant attending a demonstration on 1<sup>st</sup> October 2019. There are also pictures posted on the appellant's Facebook account of his attendance at demonstrations on 13<sup>th</sup> January 2022 (page 30), and 13<sup>th</sup> and 17<sup>th</sup> April 2022 (page 36).
19. Mr Brown also drew my attention to several 'posts' on the appellant's Facebook account. The Facebook account is 'public' and accessible widely. There is a 'post' on 28<sup>th</sup> May 2020 with a picture of the religious leader described as "devils leader". He accepts there is no translation of the text that appears in Kurdish. He also drew my attention to a 'post' on 19<sup>th</sup> January 2022 that is at page 31 of the bundle. The text there is in English, and refers to human rights breaches and the call for a moratorium on the use of the death penalty by MEP's.
20. Mr Brown submits the question for me is whether the Iranian authorities will perceive the appellant's *sur place* activities as being critical of the regime. Here, the respondent accepts the appellant is an ethnic Kurd and it is accepted the appellant's father had been killed, and that his mother has died. Importantly, it is accepted the appellant, his father and uncle had smuggled goods. The respondent also accepts the appellant illegally exited Iran. Mr Brown submits there is evidence before the Tribunal of the appellant's attendance at a number of demonstrations. He submits the evidence shows more than the appellant simply posing in front of a camera. The appellant's *sur place* activities demonstrate his objection to the way Kurds are targeted in Iran. The appellant will be considered as a perceived sympathiser of the Kurdish cause and that is likely to lead to arbitrary detention and ill treatment.

21. Mr Brown submits the appellant would have to apply for an ETD, and he is likely, based on his ethnicity and illegal exit, to be of interest on return. The appellant is likely to be asked whether he has a Facebook account and that would be checked. In any event, having regard to what is known from the background material, the authorities are likely to have filmed the demonstrations and it is likely the appellant's *sur place* activities will be known. The appellant's evidence is that he will tell the authorities that he has attended demonstrations and has/had a Facebook account.
22. Mr Brown submits that in XX, the Tribunal said, at [84], that even if a Facebook account is closed, that may be reversed within 30 days. At paragraph [87], the Tribunal accepted that the risk that an individual is targeted will be a nuanced one. Whose Facebook accounts will be targeted, before they are deleted, will depend on a person's existing profile and where they fit onto a "social graph;" and the extent to which they or their social network may have their Facebook material accessed.
23. Mr Brown submits that if the appellant were asked to apply for an ETD immediately, there is a possibility that any data on his Facebook account would be retrievable during that 30-day period. At paragraph [90], the Tribunal confirmed the visibility of Facebook material will, in part, depend on whether an account has been closed more than 30 days prior to any search by the Iranian authorities. At paragraph [91], the Tribunal accepted that when an application for a laissez-passer or ETD is submitted to the Iranian Embassy, while social media details are not asked for, the point of applying for an ETD is likely to be the first potential "pinch point", referred to in AB and Others (internet activity – state of evidence) Iran [2015] UKUT 00257 (IAC). The Tribunal accepted that it is not realistic to assume that internet searches will not be carried out until a person's arrival in Iran. Applicants for ETDs provide an obvious pool of people, in respect of whom basic searches (such as open internet searches) are likely to be carried out. The Tribunal accepted as a



matter of common sense that the Iranian authorities will carry out any searches at this stage, as they will be aware that in the period between applying for an ETD and arrival in Iran, accounts may be changed or deleted. The timeliness of a search therefore has a particular value. At paragraph [92], the Tribunal confirmed 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. The Tribunal said that relevant factors include: the theme of any demonstrations attended, for example, Kurdish political activism; the person's role in demonstrations and political profile; the extent of their participation (including regularity of attendance); the publicity which a demonstration attracts; the likelihood of surveillance of particular demonstrations; and whether the person is a committed opponent. In the case of such a person, this would mean that any additional risks that have arisen by creating a Facebook account containing critical material of, or otherwise inimical to, the Iranian authorities would not be mitigated by the closure of that account, as there is a real risk that the person would already have been the subject of targeted on-line surveillance, which is likely to have made the material known.

24. Mr Brown submits that in XX, at paragraph [98], the Tribunal considered the extent to which a person can be expected not to volunteer the fact of having previously had a Facebook account, on return. The law does not prevent a decision maker from asking if a person will volunteer to the Iranian authorities the fact of a previous lie to the UK authorities, such as a protection claim made on fabricated grounds, or a deleted Facebook account. At paragraph [102], the Tribunal said it may be perfectly permissible for a decision maker to ask what a returnee to Iran will do, in relation to a contrived Facebook account or fabricated protection claim. Whether such an inquiry is too speculative needs to be considered on a case-by-case basis. Finally, Mr Brown refers to paragraph [103] of the

decision in which the Tribunal said that closure of a Facebook account 30 days before an ETD is applied for will make a material difference to the risk faced by someone returning to Iran, who has a “critical” Facebook account. However, the Tribunal went on to say that where a critical account has not been closed, the application for an ETD is likely to prompt a basic Google search of a name; and may prompt more targeted surveillance of that Facebook material. Discovery of material critical of the Iranian regime on Facebook, even if contrived, may make a material difference to the risk faced by someone returning to Iran. The extent of the risk the individual may face will continue to be fact sensitive. The Tribunal recognised that an Iranian person of Kurdish ethnic origin may face a higher risk than the wider population.

25. Mr Brown submits the appellant has a genuinely held political belief on the basis that he is a Kurd and sees what is happening to Kurds in Iran. The appellant cannot reasonably be expected to delete his Facebook account and it is likely that he will tell the truth about his account and his attendance at demonstrations. He submits that in XX, the Tribunal accepted the guidance given in previous country guidance decision still stands. He submits that taking into account those matters that are accepted by the respondent, together with the preserved findings, the Tribunal should accept, as the Tribunal did in XX that the appellant would be at risk upon return to Iran.

### Remaking the decision

26. The appellant has appealed under s82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent to refuse his claim for asylum and humanitarian protection. The appellant claims to be a refugee whose removal from the UK would breach the United Kingdom’s obligations under the 1951 Refugee Convention.
27. The appellant bears the burden of proving that he falls within the definition of “refugee”. In essence, the appellant has to establish that

there are substantial grounds for believing, more simply expressed as a 'real risk', that he is outside of his country of nationality, because of a well-founded fear of persecution for a refugee convention reason and he is unable or unwilling, because of such fear, to avail himself of the protection of that country. Paragraph 339C of the immigration rules provides that an applicant who does not qualify as a refugee will nonetheless be granted humanitarian protection if there are substantial grounds for believing that if returned, they will face a real risk of suffering serious harm and they are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country.

### Findings and Conclusions

28. It is uncontroversial that the appellant is an Iranian national, of Kurdish ethnicity. The appellant's claim regarding the events that caused the appellant to leave Iran has already been considered and the adverse findings previously made, are preserved. There is nothing in the evidence before me that undermines the findings made by Judge First-tier Tribunal Judge Athwal 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.
29. In considering the evidence of the appellant, I recognise that there may be a tendency by a witness to embellish evidence. I also remind myself that if a Court or Tribunal concludes that a witness has lied about one matter, it does not follow that he/she has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, panic, fear, distress, confusion, and emotional pressure.
30. As set out in the decision of Upper Tribunal Judge Owens, the issue is whether the appellant, as a national of Iran of Kurdish ethnicity, would be at risk on return by virtue of his *sur place* activity. For the avoidance of doubt, I have considered the appellant's *sur place* activities in the UK,

that also include his attendance at demonstrations outside the Iranian Embassy.

31. In reaching my decision I have had regard to all the evidence before me, whether or not it is referred to. I have had regard, in particular to the evidence set out in the bundles before me regarding the appellant's Facebook activity, and his attendance at demonstrations. I have heard oral evidence from the appellant, and I have had the benefit of seeing his evidence tested in cross-examination. The appellant is himself illiterate and it is clear that the appellant has, with the assistance of friends, 'posted' comments on his Facebook account and 'posted' photographs on that account of his attendance at demonstrations.

#### The appellant's political opinion

32. It is useful to begin by considering the appellant's claim that his *sur place* activities represent his genuinely held beliefs. The evidence before me is very limited. I remind myself however that there are preserved findings set out in the decision of Upper Tribunal Judge Owens, that includes a finding that the appellant's profile on Facebook is a means to bolster a patently weak asylum claim, and that the Iranian authorities have not seen his posts. I have considered the further and more up-to-date evidence relied upon by the appellant for myself.
33. I have considered the evidence of the appellant as set out in his witness statement and his oral evidence before me regarding his Facebook account and his attendance at demonstrations. The appellant claims that he has become politically active in the UK and uses his Facebook account, which is public, to call out the Iranian regime in an attempt to raise awareness of their violations. He sometimes notifies people of demonstration dates as he learns about them, and what they will be about. He states that he posts different stories of people that have been abused and targeted by the regime. I accept the appellant has attended demonstrations outside the Iranian Embassy and that he has posted

photographs of his attendance at the demonstrations on his Facebook account. There is however no reliable evidence before me as to the what the demonstrations were about or why the appellant had chosen to attend those particular demonstrations. The appellant's evidence about the demonstrations is very general. When pressed about the demonstrations he attended, all he was able to say that he attended the demonstration on 9<sup>th</sup> June 2019 "*against the regime*" and that the demonstration was "*to support the Kurds and our rights*". There are very vague references in his Facebook posts to opposition to the Iranian regime. I do not accept the appellant's oral evidence that the individuals that assist him, only post what they are told to. I accept the appellant can be seen in the photographs that he has posted of his attendance at demonstrations holding a picture of the religious leader with a cross through it and that the appellant posts pictures of 'hangings' and other material that highlights human rights violations by the regime.

34. In XX (PJAK, sur place activities, Facebook) (CG), the Upper Tribunal provided some general guidance on social media evidence:

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

128. 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.

35. I have had regard to all the extracts from the appellant's Facebook account that are relied upon by the appellant. The production of the material in the format that it appears in the appellant's bundle is unhelpful, and I cannot be satisfied that the extracts I have been provided with, are a complete and accurate reflection of the appellant's

Facebook account. Some of the posts are in English and some are in Kurdish without any certified translation. I find the appellant's evidence regarding his support for the 'Kurdish cause' is very vague and in the most general terms. Although I am prepared to accept that some of the material posted on the appellant's Facebook account is critical of the Iranian authorities, I find, as Judge Athwal did previously, that the appellant's *sur place* activities are an attempt to bolster a weak international protection claim.

36. There is scant evidence before me as to how the appellant operates his Facebook account. On his own account, the appellant is illiterate and he has to rely upon others to 'post' material on his Facebook account. Those that the appellant relies upon have not come forward to provide evidence to support the appellant's claims. Many of the extracts that I have been provided with from the appellant's Facebook account establish that the appellant only shared pages and did not create them. He had asked friends to read them to him. The appellant does not explain how he decided what he wanted to post, or the articles that he would 'upload', 'like' or 'share'.
37. Furthermore, the appellant has failed to disclose the relevant 'metadata' including his 'locations of access to Facebook' and 'full timeline of social media activities', which would be readily available. The extracts from the appellant's Facebook account do not in themselves assist me with when the relevant articles were posted or whether the posts, likes, or shares, are permanently visible to the public. It is hard to discern the meaning of some of the 'posts' that have not been translated and the pictures/photographs are not always self-explanatory. There remains no evidence to suggest that the Iranian authorities have seen the appellant's posts.
38. Although I accept there are photographs of the appellant having attended demonstrations, in my judgment the simple fact of attendance at

demonstrations does not on its own demonstrate a real commitment to the Kurdish cause. I find the appellant attends demonstrations and simply takes the opportunity to be photographed by others attending, to bolster his claim.

39. Taking all the evidence before me in the round, the appellant has in my judgement failed to establish, even to the lower standard, that his posts on Facebook and his attendance at demonstrations reflect his genuine political opinion or his political beliefs. They are in my judgement a cynical attempt by the appellant to bolster his claim for international protection.

#### The risk upon return

40. The ultimate question is whether the behaviour of the appellant, no matter how cynical or manufactured, would result in a risk of persecution on return; if so then he may establish his right to protection. Having established the particular behaviour, the next question to be asked is whether that behaviour does place the appellant at risk. The conclusions reached by the Upper Tribunal in XX (PJAK, sur place activities, Facebook) (CG) are summarised in the headnotes:

“The cases of BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC); SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC); and HB (Kurds) Iran CG [2018] UKUT 00430 continue accurately to reflect the situation for returnees to Iran. That guidance is hereby supplemented on the issue of risk on return arising from a person’s social media use (in particular, Facebook) and surveillance of that person by the authorities in Iran.

#### Surveillance

1) There is a disparity between, on the one hand, the Iranian state’s claims as to what it has been, or is, able to do to control or access the electronic data of its citizens who are in Iran or outside it; and on the other, its actual capabilities and extent of its actions. There is a stark gap in the evidence, beyond assertions by the Iranian government that Facebook accounts have been hacked and are being monitored. The evidence fails to show it is reasonably likely that the Iranian authorities are able to monitor, on a large scale, Facebook accounts. More focussed, ad hoc searches will necessarily be more labour-intensive and are therefore confined to individuals who are of significant adverse

interest. The risk that an individual is targeted will be a nuanced one. Whose Facebook accounts will be targeted, before they are deleted, will depend on a person's existing profile and where they fit onto a "social graph;" and the extent to which they or their social network may have their Facebook material accessed.

2) 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. In the case of such a person, this would mean that any additional risks that have arisen by creating a Facebook account containing material critical of, or otherwise inimical to, the Iranian authorities would not be mitigated by the closure of that account, as there is a real risk that the person would already have been the subject of targeted on-line surveillance, which is likely to have made the material known.

3) Where an Iranian national of any age returns to Iran, the fact of them not having a Facebook account, or having deleted an account, will not as such raise suspicions or concerns on the part of Iranian authorities.

4) A returnee from the UK to Iran who requires a laissez-passer, or an emergency travel document (ETD) needs to complete an application form and submit it to the Iranian embassy in London. They are required to provide their address and telephone number, but not an email address or details of a social media account. While social media details are not asked for, the point of applying for an ETD is likely to be the first potential "pinch point," referred to in AB and Others (internet activity – state of evidence) Iran [2015] UKUT 00257 (IAC). It is not realistic to assume that internet searches will not be carried out until a person's arrival in Iran. Those applicants for ETDs provide an obvious pool of people, in respect of whom basic searches (such as open internet searches) are likely to be carried out.

Guidance on Facebook more generally

5) There are several barriers to monitoring, as opposed to ad hoc searches of someone's Facebook material. There is no evidence before us that the Facebook website itself has been "hacked," whether by the Iranian or any other government. The effectiveness of website "crawler" software, such as Google, is limited, when interacting with Facebook. Someone's name and some details may crop up on a Google search, if they still have a live Facebook account, or one that has only very recently been closed; and provided that their Facebook settings or those of their friends or groups with whom they have interactions, have public settings. Without the person's password, those seeking to monitor Facebook accounts cannot "scrape" them in the same unautomated way as other websites allow automated data extraction. A person's email account or computer may be compromised, but it does not necessarily follow that their Facebook password account has been accessed.

6) The timely closure of an account neutralises the risk consequential on having had a "critical" Facebook account, provided that someone's Facebook account was not specifically monitored prior to closure.



Guidance on social media evidence generally

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

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

9) In deciding the issue of risk on return involving a Facebook account, a decision maker may legitimately consider whether a person will close a Facebook account and not volunteer the fact of a previously closed Facebook account, prior to application for an ETD: HJ (Iran) v SSHD [2011] AC 596. Decision makers are allowed to consider first, what a person will do to mitigate a risk of persecution, and second, the reason for their actions. It is difficult to see circumstances in which the deletion of a Facebook account could equate to persecution, as there is no fundamental right protected by the Refugee Convention to have access to a particular social media platform, as opposed to the right to political neutrality. Whether such an inquiry is too speculative needs to be considered on a case-by-case basis."

41. On my finding that the appellant's *sur place* activities, including the material on his Facebook account, do not reflect his genuine political opinion or his political beliefs, there is, in principle, no reason the appellant should not delete his Facebook account and not volunteer the fact of a previously closed Facebook account, prior to any application for an ETD. As the Tribunal confirmed in XX, at [103], the closure of a Facebook account 30 days before an ETD is applied for, will, make a material difference to the risk faced by someone returning to Iran, who has a "critical" Facebook account. The timely closure of an account neutralises the risk consequential on having had a "critical" Facebook account. For reasons that I will return to, there is no credible evidence before me to establish, even to the lower standard, that the appellant's Facebook account has been specifically monitored, or will be, prior to closure.

42. The deletion of the appellant's Facebook account, would not on the findings I have made, equate to persecution. As the appellant's *sur place* activities do not represent any genuinely held beliefs, the appellant would not be expected to lie when questioned. The deletion of the Facebook account will not therefore contravene the principles established and set out in HJ (Iran) v SSHD [2011] AC 596. The closure of the Facebook account will have the effect of removing all posts he has created.
43. I have considered whether, to the lower standard, the appellant's Facebook account might already have already come to the attention of the Iranian authorities. I have considered whether the appellant's Facebook account might, to the lower standard, have been targeted and whether that may place the appellant at risk before his Facebook account is deleted. In XX, the Tribunal concluded 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. In such a case, any additional risks that have arisen by creating a Facebook account containing material critical of, or otherwise inimical to the Iranian authorities, would not be mitigated by the closure of that account. There is a real risk that the person would already have been the subject of targeted on-line surveillance, which is likely to have made the material known.
44. I have had regard to 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. There is no evidence before me that even begins to suggest the appellant's Facebook account has previously been hacked. The appellant has not applied for an ETD and so there will have been no cause for a search to have been conducted for any social media activity. If his appeal is dismissed the appellant will

have sufficient opportunity to delete his account before any application for an ETD. I accept some of the material posted on the appellant's Facebook account is critical of the Iranian authorities. The appellant has provided extracts of his 'posts' on his Facebook account and what appear to be the photographs that he has shared on his Facebook account. At pages 39 to 143 of the appellant's bundle, the appellant has provided a list of the appellant's Facebook friends, but he has not provided evidence of his timeline of his 'activities', 'posts', 'comments' and 'likes'.

45. There is no evidence before me to establish whether the appellant's 'friends' have 'public' or 'private' settings. The appellant does not identify any post or photograph connecting the appellant to any individual that is of interest to the Iranian authorities or that has some form of official role, or profile. I find therefore 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.
46. In BA (Demonstrators in Britain - risk on return) CG [2011] UKUT 36, the Tribunal said it was persuaded that the Iranian authorities attempt to identify persons participating in demonstrations outside the Iranian Embassy in London. However, the Tribunal held:
  - "1. 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.
  2. (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.

3. 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.

4. The following are relevant factors to be considered when assessing risk on return having regard to sur place activities:

(i) 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)?

(ii) 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?

(iii) 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)?
- (iv) Consequences of identification
- Is there differentiation between demonstrators depending on the level of their political profile adverse to the regime?
- (v) 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?

47. Although I am prepared to accept the appellant has attended demonstrations outside the Iranian embassy, the photographs of the appellant show him alongside a number of other individuals. In the photographs, he can often be seen facing away from the Iranian Embassy. His evidence is that he did not have any specific role at the demonstrations and he simply attended. I find his role in the demonstration was no more than as a member of the crowd holding a small picture/sign/flag 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.

48. All that the appellant is left with is his exit from Iran. The appellant's account of the events that caused him to leave Iran has been rejected by the First-tier Tribunal, and there is in my judgment no reason why the appellant should have left Iran illegally. There is a preserved finding that the appellant is not at serious risk of ill treatment on account of his illegal exit or the fact that he is a failed asylum seeker. The appellant has now been out of Iran for a number of years, and if he is returned to Iran with an ETD, he will be considered by the Iranian authorities to be someone that illegally exited.

49. In SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) (in which the appellants were also Kurds) the Upper Tribunal held:

“1. 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;

2. 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.”

50. The Upper Tribunal said that it was not suggested to them that an individual faced a 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.

51. On a proper application of the country guidance set out in HB (Kurds) it is clear that those of Kurdish ethnicity are reasonably likely to be subjected to heightened scrutiny on return to Iran. 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.

52. I accept that 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, I 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 will lead to a discovery that the appellant has taken part in any *sur place* political activity.

53. I have had in mind throughout the “pinch point” at which the appellant will be brought into direct contact with the authorities in Iran and is likely to be questioned. Having carefully considered the appellant’s profile and the relevant risk factors, I find that the appellant has failed to establish, even to the lower standard 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. I 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. The appellant will not have to lie if asked if he is opposed to the Iranian government; he is not. If he chooses to say he is opposed to the government, that itself is a lie and a matter for him.
54. The appellant has no reason to inform the Iranian authorities that he has been involved in anti-government activities because any social media activity and attendance at demonstrations is not predicated upon any genuine political involvement. To assert otherwise would be inaccurate. At its very highest, the appellant has demonstrated an interest, at the lowest possible level in the ‘Kurdish cause’ but, I find, he is not an individual that has engaged in even ‘low-level’ political activity or activity that is perceived to be political.
55. I find the appellant will not be required to reveal to the Iranian authorities he previously had a Facebook account. I reject his evidence that he would nevertheless inform the authorities on return that he has attended demonstrations outside the Iranian Embassy. He would not reveal his *sur place* activities in any case, as his beliefs are not genuine; the ‘truth’ is that he has no genuine beliefs. I have found he can reasonably be

expected to close his Facebook account. I am not satisfied, even to the lower standard that the Iranian authorities have the capacity or ability to access a Facebook account once it has been closed down. As the Tribunal said in headnote [6] of XX, the timely closure of the appellant's account will neutralise any risk consequential on having had an account, provided that it was not specifically monitored prior to closure. I have found the appellant's Facebook account will not have been monitored and that the appellant has not already come to the adverse attention of the authorities in Iran.

56. Standing back and having considered all the evidence before me, I 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. It follows that I find the appellant would not be at risk upon return and his appeal is dismissed.

### **Decision**

57. The appeal is dismissed.

58. I make an anonymity direction.

Signed **V. Mandalia**

Date:

16<sup>th</sup> December 2022

**Upper Tribunal Judge Mandalia**