



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005130
First-tier Tribunal No:
PA/54892/2021
LP/00126/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 July 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

OA
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms F Anthony, instructed by Halliday Reeves Law Firm
For the Respondent: Mr P Lawson, Senior Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 27 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of Iran and of Kurdish ethnicity. He arrived in the United Kingdom on 20 December 2019 and claimed asylum. The claim

was refused by the respondent for reasons set out in a letter that is undated but thought to have been issued on 28 September 2021. The appellant's appeal against that decision was dismissed by First-tier Tribunal ("FtT") Judge Barker for reasons set out in a decision promulgated on 28 July 2022. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Owens on 18 November 2022.

2. The decision of the First-tier Tribunal was set aside by Upper Tribunal Judge Jackson for reasons set out in her decision promulgated on 19 May 2023. She directed that the decision will be remade in the Upper Tribunal. There are no preserved findings.
3. The appellant attended the hearing before me and was assisted throughout by an interpreter arranged by the Tribunal. The appellant and interpreter confirmed they spoke the Kurdish Sorani language and were able to communicate with each other without any difficulty.
4. At the outset of the hearing, Mr Lawson said that he no longer maintains the claim in the respondent's decision that the appellant's claimed attendance at a demonstration on 15 November 2019 is inconsistent with external information that the decision to affect petrol prices did not occur until midnight on 15 November 2019. That is not however a concession that the appellant attended the demonstration as he claims.

The issues

5. The appellant's claim is a simple one and is succinctly summarised in paragraphs [3] and [4] of the appellant's skeleton argument:
 - "3. The Appellant fears persecution in Iran due to his political opinion. The Appellant attended a demonstration on the 15 November 2019 in Mariwan with some friends where the authorities opened fire on the demonstrators. The Appellant and one of his friends managed to escape back to his friends house in Mariwan. Later on they discovered that 4 of their friends, who also attended the demonstration with them, had been arrested and the Appellants home had been raided by Etelaat looking for him.
 4. The Appellant also fears he may be persecuted as he is opposed to the Iranian authorities due to the human rights abuses they commit and is supportive of Kurdish rights which he demonstrates via his Facebook posts.
6. In paragraph [8] of the appellant's skeleton argument, the issues are set out as follows:
 - a) Did the Appellant come to the adverse attention of the authorities due to his political activities?
 - b) Will the Appellants Facebook posts lead to a risk of persecution?

The evidence

7. At the outset of the hearing before me, I established that the evidence before the Tribunal and relied upon by the parties is set out in the following:
 - a. The respondent's bundle comprising of 94 pages

- b. The appellant's bundle before the FtT comprising of 436 pages ("the appellant's bundle")
- c. The appellant's supplementary bundle before the FtT with translations of the appellant's Facebook posts comprising of 21 pages; ("the additional bundle")
- d. The appellant's bundle filed in readiness of the hearing before me, comprising of 34 pages; ("the supplementary bundle")
- e. A chronology of the appellant's Facebook posts prepared by Ms Anthony

8. I have also been provided with a skeleton argument that is relied upon by the appellant, settled by Anthony Brindley of Halliday Reeves Solicitors.

The evidence of the appellant

9. Before me, the appellant adopted his witness statement dated 16 December 2021. He confirmed that the statement had been read back to him in a language he understands and the content is true. By way of update, the appellant confirmed that the extracts that he has provided from his Facebook account represent all the demonstrations that he has attended in the UK. He said he had attended three demonstrations in 2022 and has so far attended four in 2023. He confirmed that his Facebook account was set up by someone else and he does not know the password for the account. He accesses the account on his mobile phone.
10. In cross-examination the appellant confirmed he was not a member of any political party in Iran, but said he supports the KDP. He did not become a member because he has no male siblings and his parents did not want him to be a member of a party. He confirmed he attended demonstrations two or three times in Iran. When pressed, he said he had attended three demonstrations. He attended the demonstrations because Kurds were being arrested and tortured. The last demonstration he attended was against an increase in oil prices and the Kurdish people were looking for an opportunity to tackle the government in power. The appellant could not estimate how many people attended the demonstrations but there were "a lot". He claimed that on their way back home to Qalarash from the demonstration in Mariwan, four of his friends were arrested and through them, he has been identified by the authorities. The appellant claims he was not with them because one of his friends had said to him that they should stay in Mariwan and return home the following day.
11. The appellant confirmed he has attended demonstrations in the United Kingdom that are organised by political parties. He becomes aware of demonstrations through 'posts' on Facebook. The appellant said he is illiterate and looks at the profile of other individuals on Facebook. He lives in a house with other people from Iran who read the 'posts' to him. He relies upon friends to upload 'posts' on his own Facebook account. These friends also attend demonstrations. The appellant confirmed he had a previous Facebook account in his own name when he lived in Iran. During

his journey to the UK, he was told by the agent that the account should be deleted and when he was in Turkey, the account was deleted by the agent. In Iran, he posted on his Facebook account with the assistance of friends, but in Iran you are not allowed to refer to attendance at demonstrations on Facebook.

12. The appellant said that the photographs that he posts on Facebook relating to other people are 'posts' that are copied and pasted onto his account. He claimed he now has over 2000 friends linked to his Facebook account. The appellant confirmed that his date of birth is 01 January 1980. When he was shown the date of birth set out in his witness statement as 21 March 1980 and on his Facebook account as 20 March 1980, the appellant said that appeared to be a mistranslation of the dates from the Persian to Gregorian calendar. He said that his date of birth in the Iranian calendar is 01.01.1359 and that translates to 21.03.1980 in the Gregorian calendar.
13. The appellant was referred to the English text in his Facebook posts that use a standard phrase "*my participation as an oppressed Kurdish individual in the demonstration against the Islamic Republic of Iran is against the oppression that exists...*". The appellant confirmed that he is illiterate and what is posted is something that was read to him, and something he agreed with. What is said was copied and posted onto his Facebook account. He said they were not his words but they were read to him and were the words "*in my heart*", and he agreed to the words being posted on his account. The appellant confirmed he had taken photographs of his attendance at demonstrations to prove that he attended demonstrations as a Kurd. Asked who he had to prove that to, the appellant said that he needed to do that because others that see his photographs might be encouraged to attend and participate at demonstrations. The appellant said that a lot of people attended the demonstrations and he has personally seen people at the Iranian Embassy taking photographs and recording events. He speculated that a person standing next to him could have been spying on him. The appellant said that all the 'posts' on his Facebook account relating to his political activity are open to the public whereas anything he posts about his own private life is locked so that it can only be seen by friends and family. The appellant said that he could not delete the political 'posts' or his Facebook account because he has other issues with the regime in Iran. He said that it is possible that the authorities already have information about his Facebook account that they would use as proof to arrest him.
14. In order to clarify matters I asked the appellant about his attendance at demonstrations in Iran. He confirmed that he had attended three demonstrations. The first was about 10 years ago (*in about 1388*) in Rayza (or Wrmya). The second was in 1393 or 1394 in Sardasht and the last one was on 15 November 2019 (25.08.1398). He said that he had gone to Mariwan to attend a funeral of an individual that was well known to his father. He attended on behalf of his father. He did not know how the individual had died, but as that person had been arrested, it could have been because he was tortured. The individual was known to the appellant's friends. The appellant said that he and five friends had

travelled from Qalarash to Mariwan together. The day after the funeral, they attended the demonstration and it was when four of his friends were returning to Qalarash that they were arrested. A friend of the appellant had told the appellant that he would prefer to return home the following day, and so he and the appellant intended to return to Qalarash the following day.

15. I referred the appellant to the flags and pictures that he is holding at the demonstrations outside the Iranian Embassy. The appellant explained that they were items that did not belong to the appellant and were not taken by him to the demonstrations. The flags and pictures were distributed amongst those attending and would be passed around to others. The appellant confirmed that the building in the background of the photographs is the Iranian Embassy and that although in the pictures he is looking away from the Embassy, during the demonstrations he moved around and often faced the Embassy.
16. In re-examination, the appellant said that he does not have the facilities to print material to take to demonstrations at the accommodation in which he lives. He said that he usually spends a couple of hours at the demonstrations between 1pm or 2pm until 4pm. The appellant confirmed that he is not a 'friend' of any political party on his Facebook account, but he has friends who may be members or sympathisers of the political parties. He becomes aware of the demonstrations because of 'posts' that are shared on Facebook. Asked whether his friends include member of political parties, the appellant said "*maybe, but I am not sure. No-one has told me they are a member of a party*". The appellant said that he did not know how the agent was previously able to delete the Facebook account he held in Iran. He did not know the password to that Facebook account either.

The parties submissions

17. The submissions made by each of the representatives are a matter of record. In summary, Mr Lawson adopted the respondent's decision. The respondent does not accept the appellant had come to the adverse attention of the authorities in Iran before he left. Mr Lawson submits there is no credible reason why the appellant and one of his friends would separate from the other friends they had travelled to Mariwan with. In interview the appellant was inconsistent about the dates of the demonstrations he attended in Iran. He initially claimed he attended three demonstrations on three consecutive days and later claimed he had attended three separate demonstrations. Mr Lawson submits there is no credible evidence as to how the appellant would have been identified so that he was of interest to the Iranian authorities before he left Iran. As far as the appellant's *sur place* activities are concerned, Mr Lawson submits that on his own account the appellant is not a member of any political party. He submits the photographs on his Facebook account of his attendance at demonstrations in the UK is nothing more than an attempt to bolster what is otherwise a weak claim for asylum. He has effectively 'rented' items that he holds whilst photographs are taken. The appellant's Facebook account does not represent the appellant's own views and

profile. The account was set up by someone else and the appellant relies upon others telling him what is posted by others, that he then adopts. Mr Lawson submits the appellant's Facebook account is manufactured to strengthen a weak asylum claim. The respondent accepts the appellant may have left Iran illegally, but Mr Lawson submits that will not put the appellant at risk upon return. Mr Lawson refers to the decision in XX (PJAK, sur place activities, Facebook) (CG) [2022] UKUT 00023 (IAC) in which the Upper Tribunal gave guidance on social media generally. Mr Lawson submits the appellant has failed to establish that he will be at risk upon return to Iran and that there is no reason why the appellant's Facebook account cannot be deleted before he returns. The appellant's Article 3 claims stands and falls with his asylum claim and there is nothing in the evidence before the Tribunal that establishes that the appellant's removal to Iran would be in breach of his Article 8 rights. His family remain in Iran.

18. In reply, Ms Anthony submits there are three strands to the claim made by the appellant. First, his attendance at demonstrations in Iran and whether he has come to the adverse attention of the authorities. Second the appellant's *sur place* activities in the UK through his attendance at demonstrations. Third, even if he is found not have a genuine political opinion, whether he remains at risk upon return. Ms Anthony addressed the criticisms made by the respondent of the appellant's credibility in her decision letter and submits the appellant's evidence is, upon closer examination, internally consistent and consistent with the external background material. The appellant has explained his motivation for attending demonstrations which has remained consistent throughout and is perfectly plausible. He has provided sufficient details about the demonstrations he attended. He has remained consistent and when his account is considered as a whole, it is credible and supported by the background material. As far as the events of 15 November 2019 are concerned, the appellant's account is supported by the 'Iran 2020 Human Rights Report' that is at page 361 of the appellant's bundle. The report refers to the killing of at least 304 persons during suppression of widespread protests in November 2019 (*page 362*) and deep concerns regarding the lack of independent, transparent and prompt investigations into the events of November 2019 (*page 367*). The report refers to estimates of security forces having killed between 300 and 1,500 people across the country in response to demonstrations against a fuel price hike. The report also confirms that the authorities commonly use arbitrary arrest to impede activities, including by conducting mass arrests of people in the vicinity of anti-government demonstrations. The report confirms plainclothes officers arrived unannounced at homes or offices, arrested people, conducted raids and confiscated private documents, passports, computers, electronic media, and personal items without warrants or assurances of due process. That is, Ms Anthony submits, consistent with the appellant's account of the raid conducted by the authorities at the family home following the appellant's attendance at the demonstration on 15 November 2019.
19. The appellant's evidence is that the demonstrations lasted three days. That is consistent with what is said in a 'Voice of America' article published

on 18 November 2019 (*page 24 of appellant's most recent bundle*). The article confirms the authorities had blocked Internet services for a third day as part of a crackdown on nationwide anti-government protests since the unrest began on Friday (*i.e. 15 November 2019*). The report claimed a government spokesman had said the situation in the country was 80% calmer than Sunday (*i.e. 17 November 2019*). Ms Anthony submits that contrary to what is said by the respondent, the appellant's description of the army uniform is consistent with the background material. Ms Anthony submits the appellant has given a consistent and credible account that he was able to avoid arrest because was not with his friends when four of them were arrested. Ms Anthony submits the concerns expressed by the respondent in her decision letter regarding the credibility of the appellant therefore fall away, and the Tribunal should find that the appellant had come to the adverse attention of the authorities.

20. As far as the appellant's *sur place* activities are concerned, Ms Anthony submits the appellant has attended a number of demonstrations in the UK outside the Iranian Embassy. They have been identified by a review of the appellant's Facebook account. Ms Anthony submits the appellant attends demonstrations, participates, and shares the same text in his own Facebook posts that is widely used by others. It does not matter whether the appellant uses his own wording, or cuts and pastes from others. The issue is how it will be viewed by the Iranian state. She submits there is evidence of others interacting with the appellant's posts on his Facebook account that are critical of the regime. The appellant now claims that he has over 2000 followers and it can be seen that his 'posts' are liked and commented upon by others. Ms Anthony submits there is sufficient interaction with the appellant's posts and it cannot be assumed that no-one has looked at the posts. It is not a leap of faith to assume that the appellant has interacted with people that have some connection to political parties who are monitored by the regime. Ms Anthony submits the Tribunal should find there is sufficient evidence that the appellant is of adverse interest to the Iranian authorities and will be at risk upon return.

Decision

21. 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.
22. 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.

23. 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 attendance at a demonstration in Iran on 15 November 2019, the appellant's Facebook activity, and his attendance at demonstrations outside the Iranian Embassy in London. 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.
24. Matters of credibility are never easy to determine, particularly, as here, where the appellant's evidence is received through an interpreter. I acknowledge that there may be a danger of misinterpretation, but I was careful to explain to the appellant, that questions and answers must be broken down into short sentences so as to ensure that she understood the question, and the interpreter had a proper opportunity to translate the answer provided. I have also borne in mind the fact that events that may have occurred some time ago, can impact on an individual's ability to recall exact circumstances. 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.

The appellant's attendance at demonstrations in Iran

25. I reject the appellant's claim that he came to the adverse attention of the authorities in Iran due to his political activities. The appellant does not claim to have been a member of any political party in Iran. In interview, he was asked whether he has any particular political view. He answered "no"; (Q.20).
26. The appellant was asked in interview about the demonstrations that he attended in Iran. He said that he had attended "2 or 3". On one reading of questions 22 to 24 of the appellant's interview, it appears that the appellant claimed he had attended a demonstration on 15 November 2019 and that all three demonstrations he claimed to have attended, had taken place on three consecutive days. I accept there is some confusion. On a proper reading of the interview record as a whole, I accept that what the appellant was in fact saying is that the demonstration that he attended on 15 November 2019 was a demonstration that lasted three days. The appellant had attended on 15 November 2019 and left Iran the following day. Before I turn to the events of 15 November 2019, I consider the appellant's account of the other demonstrations he attended in Iran.
27. The appellant claimed in interview that the first demonstration he attended in Iran was about eight years ago. That was a demonstration

that the appellant thinks was about the election. He claimed in interview (Q. 71) that he was with his friends and they asked him to go. He did not know why people were demonstrating about the election (Q. 72). The demonstration took place in Sardasht, and he had travelled there by car with his friends. His friends had told him there is a demonstration and he simply went with them. A lot of people attended that demonstration. The appellant and his friends were just demonstrating with them. I accept the appellant attended this demonstration and find that he did so, not because he had any particular political opinion or view that he was demonstrating for, but simply to accompany his friends. The appellant on his own account did not come to the adverse attention of the authorities on this occasion and he was able to continue living in Qalarash for many years after with no difficulties.

28. The appellant claimed in interview that the second demonstration he attended in Iran was about two to three years ago. He said in interview, that the demonstration was about “universities”, but he cannot remember the details (Q.97). The demonstration took place in Kamarbandi and the appellant had attended the demonstration with the same group of friends (Q. 100). The appellant claimed nothing significant happened at the demonstration (Q. 101). The appellant now claims in his witness statement, at paragraph [19], that he did not say that the demonstration had anything to do with the Universities. He claims that he does not know the exact reasons for the demonstration other than it was protesting the suicide of a lady that had been raped and had thrown herself out of a building window. That is at odds with the interview record and I do not accept the appellant’s explanation. In order to clarify the confusion concerning whether all three demonstrations the appellant claimed to have attended, had taken place on three consecutive days, the appellant said in interview (Q66) that he had attended demonstrations about the election and demonstrations about Universities. As I have set out above, the first demonstration the appellant attended was about elections. In interview, the appellant clearly claimed (Q.97) that the second demonstration he attended was about ‘Universities’. The appellant’s account is internally inconsistent and even to the lower standard, I reject the appellant’s account that he attended a demonstration about two or three years ago.
29. I turn then to the events of 15 November 2019. I accept the appellant’s account of demonstrations occurring on 15 November 2019 and the days that followed against a fuel price hike is consistent with the background material set out in the ‘Iran 2020 Human Rights Report’ and the Voice of America’ article published on 18 November 2019 that Ms Anthony drew to my attention. I also accept that the Human Rights Report confirms plainclothes officers arrive unannounced at homes, conduct raids and confiscate private documents, passports, computers, electronic media, and personal items without warrants. However, having considered the wide canvas of evidence before me, I do not accept the appellant’s account that he attended a demonstration on 15 November 2019 that has caused him to come to the adverse attention of the authorities.

30. The appellant's account in his interview was that he had gone to Mariwan for a funeral (Q.28) and the demonstration took place the following day. He claimed that the funeral was of "an acquaintance of a friend of mine" (Q.29). He claimed, "The person who we went to his funeral, was hanged by the government.." (Q.33). He went on to say "My friend told me you come with us to the demonstrations. Because the government executed or hanged that person unfairly, that is why my friends wanted to participate in the demonstration" (Q.34). When asked why that individual had been hanged, the appellant claimed "without any wrongdoing, he was innocent.. they arrest him for a while and then they hanged him." (35). He went on to claim he had not enquired about the reason for the execution and that all he knows is that the government hates Kurds (Q.37). In his witness statement dated 16 December 2021, there is no reference to the appellant and his friends wanting to participate in the demonstration because a friend had been executed. In paragraph [7] the appellant claims he and his friends attended a mosque in Mariwan to express their condolences for someone who had passed away. The following day there were demonstrations because the Iranian authorities had put up the price of petrol. The appellant claims people started protesting on the streets and he and his friends joined in. He claims he participated in the demonstration to support Kurdish people against their persecution by the Iranian authorities. In his oral evidence before me, the appellant said that he had gone to Mariwan to attend the funeral of an individual that was well known to his father. He attended on behalf of his father. He said he did not know how the individual had died, but as that person had been arrested, it could have been because he was tortured. The appellant's account of his reasons for travelling to Mariwan and his motive for participating in the demonstrations is internally inconsistent.
31. I accept, to the lower standard, that the appellant travelled to Mariwan with a group of friends to attend a funeral and express his family's condolences for someone who had passed away, on behalf of his father. I accept that there were demonstrations in Mariwan that were part of widespread demonstrations taking place throughout Iran on 15 November 2019 against a fuel price hike. The fact of the demonstrations and the response of the authorities is information in the public domain. The appellant's account of his motive for participating in the demonstrations is internally inconsistent. I do not accept, even to the lower standard that the appellant and his friends attended the demonstration, albeit there may have been a demonstration nearby.
32. The appellant claims that when the authorities started "shooting" he left with his friends. He said they ran to the house of his friend where they had stayed. I reject the appellant's account that he was separated from four of his friends so that he could remain in Mariwan with one of his friends with the intention that they would return home the following day. The appellant had travelled to Mariwan to attend a funeral with five friends from his village. In interview the appellant explained they all went together by car and the journey took between 4 and 4½ hours. There is no reason why four would return home, and the appellant and one other would remain in Mariwan. The appellant offered no explanation in his interview or witness

statement as to why he and a friend remained in Mariwan. All that he was able to say in his oral evidence before me was that his friend had told him that he would prefer to return home the following day and so the appellant and his friend had intended to return to Qalarash the following day. No reason, let alone a plausible reason is given as to why the appellant's friend should wish to remain in Mariwan at a time when there were widespread demonstrations, rather than return back to the village with the others they had travelled to Mariwan with. It is simply contrary to common sense that the appellant remained in Mariwan as he claims and I do not find his account to be credible when considered as a whole. To the contrary, I find the appellant has adopted the widespread unrest in November 2019 to form the backdrop of a claim that he is of adverse interest to the authorities in Iran, when he is of no interest to the authorities. I reject the appellant's account that he was separated from four of his friends and that four of his friends were arrested as he claim.

33. The appellant claims that his uncle contacted him the same night his friends were arrested (*Q.103 - 104*). The appellant claims his uncle called him from another person's phone in the village and told the appellant his four friends had been arrested and his house had been raided by the Ettela'at. I have rejected the appellant's account that four of his friends were arrested and it follows that I reject his account that his house was raided and that he received the telephone call from his uncle in the way he claims. I do not accept the appellant had come to the adverse attention of the authorities in Iran before he left Iran.

The appellant's sur place activities

34. I have considered the appellant's sur place activities in the UK, including his activity on his Facebook account and his attendance at demonstrations outside the Iranian Embassy in London. I have considered the evidence of the appellant as set out in his interview record, witness statement and his oral evidence before me.
35. In his witness statement, the appellant claims he has learnt how to use Facebook but he is not good at it. He confirms that his friends help him post his activities on his Facebook account as his own knowledge is very limited. He claims he takes the photos and videos at the demonstrations, and they help him post them on Facebook. In his oral evidence before me the appellant accepted that many of his Facebook posts use a standard phrase "*my participation as an oppressed Kurdish individual in the demonstration against the Islamic Republic of Iran is against the oppression that exists...*", and that what is posted on his account is something that is copied and pasted onto his Facebook account, by friends that assist him operate the account. Other than the photographs of the appellant attending demonstrations, the photos and text on his account is material that is copied or liked, from posts made by others.

36. I have had regard to all the extracts from the appellant's Facebook account that are relied upon by the appellant, including those that were previously before the First-tier Tribunal. When asked why the Facebook account only contains 'political posts' and no posts about the appellant's private life, the appellant said that all the 'posts' on his Facebook account relating to his political activity are open to the public whereas anything he posts about his own private life is locked so that it can only be seen by friends and family. I have no evidence before me to confirm whether it is possible to separate posts as either being 'private' or 'public' in the way claimed by the appellant. I simply note that there is no evidence before me of the appellant using his Facebook account as a form of 'social media' relating to his own personal and private life. The evidence before me is limited to Facebook activity directed at the authorities in Iran and the appellant's attendance at demonstrations.
37. 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. The appellant only provides the most basic of explanations as to how posts were read to him and he decided what he wanted to post, or the articles that he would 'upload', 'like' or 'share'.
38. I have carefully considered the 'Posts' that appear in English and the translations that have been provided of the applicant's posts. However, on any view the appellant's evidence regarding his support for the 'Kurdish cause' is 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 Mr Lawson submits, that that the appellant's *sur place* activities are an attempt to bolster a weak international protection claim.
39. 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.
40. 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. There is no evidence at all to suggest that the Iranian authorities have seen the appellant's posts.

41. The appellant's evidence is that he becomes aware of demonstrations through 'posts' on Facebook and he attends with friends. He does not take flags, placards or other material with him to demonstrations and the items he is photographed holding, are items that are distributed amongst those that attend, and then returned. I accept the appellant has attended several demonstrations in the United Kingdom as identified by Ms Anthony. Although the appellant has posted photographs of his attendance at demonstrations, there is no reliable evidence before me as to the what the demonstrations were about or why the appellant had chosen to attend those particular demonstrations. In my judgment the simple fact of attendance at demonstrations does not on its own demonstrate a real commitment to the Kurdish cause. When posting about his attendance at demonstrations the appellant generally adopts a standard phrase that he accepts is copied and pasted onto his account for him by others. I find the appellant attends demonstrations with friends and simply takes the opportunity to be photographed by others attending, to bolster his claim.
42. Throughout his interview and his evidence the appellant refers to the killing and mistreatment of Kurds. In his witness statement dated 16 December 2021, the appellant claims that during his interview he was trying to say that he is not an armed fighter for a political party but he supports the KDPI and wanted to participate in demonstrations to support the Kurdish people. In cross-examination the appellant confirmed that he has not joined any political party even in the UK, despite having the opportunity to do so. Although I accept to the lower standard that the appellant feels aggrieved about the treatment of Kurds in Iran, I find that he has never become involved in any particular political party and although he has sympathy with the cause, he did not actively show any support for the KDPI.
43. 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

44. 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."
45. 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 why 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.

46. The appellant’s account is that a previous Facebook account that he operated in Iran was deleted by the agent during the appellant’s journey to the UK, despite the appellant having forgotten his password for that account. There is no evidence before me that the appellant’s previous Facebook account held in Iran contained anything remotely critical of the regime. The deletion of the appellant’s current 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.
47. 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.
48. 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. The appellant claims that he now has over 2000 followers but there is no evidence to corroborate that. In fact at page 68 of the respondent’s bundle there is an

extract from the appellant's Facebook account that indicates that he has '343 friends'. If the number of the appellant's friends has risen to the extent he now claims, it would have been easy enough for the appellant to provide supporting evidence of that claim. The appellant has provided an extremely limited list of the appellant's Facebook friends at page 8 of the supplementary bundle. However he has not provided evidence of his timeline of his 'activities', 'posts', 'comments' and 'likes'.

49. 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.

50. 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? “

51. 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.

52. All that the appellant is left with is his exit from Iran. I do not accept the appellant left Iran because he had come to the adverse attention of the authorities on account of the events that he claims caused him to leave Iran. I do not accept on the findings made that the appellant is 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.
53. 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.”
54. 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.
55. 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.
56. 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.

57. 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.
58. 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.
59. I find the appellant will not be required to reveal to the Iranian authorities he previously had a Facebook account. 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.
60. Standing back and having considered all the evidence before me, I find the appellant has failed to discharge the burden of proof upon him, even to the lower 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.
61. No separate Article 3 or Article 8 claim has been advanced before me. For the avoidance of doubt I find the removal of the appellant to Iran would not breach Article 3 ECHR.
62. The appellant does not claim to have a partner or children in the UK. His family remain in Iran. Although it seems the appellant has lived in the United Kingdom since December 2019, there is nothing in the evidence

before me to establish the appellant has any entitlement to remain in the UK on private and family life grounds in accordance with the immigration rules. There is scant evidence before me of the private life established by the appellant. On any view, I am satisfied the decision to remove the appellant to Iran is proportionate to the legitimate aim of immigration control and any Article 8 claim cannot succeed.

Notice of Decision

63. The appeal is dismissed on asylum, Article 3 and Article 8 grounds.

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 June 2023