



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

Appeal Number: PA/11042/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 26 April 2022**

**Decision & Reasons Promulgated  
On 20 May 2022**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MF**

(Anonymity direction made)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Ahmed instructed by Hanson Law, Solicitors.

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

**DECISION AND REASONS**

- 1.** Following a hearing on 24<sup>th</sup> August 2020 at the Birmingham Civil Justice Centre a judge of the First-tier Tribunal dismissed the appellant's appeal against the refusal of his application for international protection and/or leave to remain in the United Kingdom on human rights grounds. At [11] of that decision the Judge set out the agreed issues in the following terms:
  - a. the appellant's nationality, date of birth and age is agreed. The appellant is a citizen of Iran born on 30 December 1990.

- b. The appellant is of Kurdish ethnicity.
  - c. The appellant is not a vulnerable witness.
  - d. The appellant's immigration history set out in the reasons for refusal letter except that paragraph 15, is not agreed.
  - e. If it was found the appellant's account to be proved the lower standard than the appeal should be allowed under the Refugee Convention.
  - f. The appellant does not rely on the Humanitarian Protection ground.
  - g. The appellant does rely on Articles 2 and 3 ECHR but accepts these will stand or fall with the Refugee Convention ground.
  - h. The appellant relies on paragraph 276 ADE (1) (vi) and asserts that there would be very significant obstacles to his integration into Iran even if the Refugee Convention ground is not proved, and
  - i. relies on Article 8 outside the Immigration Rules.
- 2.** The appellant claims to have been born in Qulqula village in Iran on 30 December 1990. His mother and a paternal uncle remain living in Iran in the village. The appellant claimed his uncle was involved with the Kurdish Democratic Party ("KDP"). The appellant claimed he too is a member although it was his uncle who "signed him up" as he did not do this himself. The appellant claimed he made money in Iran transporting goods, including alcohol, across the border; additional money which we would give to his uncle. The appellant also claimed he transported KDPI leaflets. The appellant claimed he was unaware of the content of the leaflets and that his uncle would tell him what they were. The appellant claims that during winter 2014 he was transporting goods and KDPI leaflets when the Revolution Guard came across him and his associates abandoned the goods and leaflets and fled. The appellant claimed that the goods were seized by the authorities and he went into hiding in the basement of his house.
- 3.** The appellant claimed a warrant for his arrest was sent to his mother in Iran dated 6 September 2015 requiring the appellant to surrender on 8 September 2015 but that he left Iran travelling overland to Turkey on 27 September 2015 which took about 48 hours. The appellant claims he then travelled by lorry to the UK entering the UK on 5 October 2015, claiming asylum the following day.
- 4.** The First-tier Tribunal record the appellant had not engaged in KDPI activities in the UK, claiming he could not afford to travel there, and that in 2016 his uncle had sent a copy of the arrest warrant and a copy of the appellant's KDPI documents confirming membership of the KDPI - Iran dated 2015.
- 5.** The First-tier Judge considered the alleged events in Iraq but found a number of aspects of the appellant's case which troubled him leading to the appeal being dismissed on all grounds.

6. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal. In a decision promulgated on 21 July 2020 the Upper Tribunal noted the respondent acknowledged that the First-tier Tribunal judge had failed to address or make credibility findings in respect of the supporting evidence which was accepted as amounting to an error of law. That decision was therefore set aside and directions given for the further management of the appeal.
7. The case came before me on 23 September 2020, remotely, although that hearing was adjourned as there had been a very recent change of the appellant's representative. Directions were therefore given for the further consideration of this appeal including that the evidence provided will stand as the evidence in chief of the maker.

## **Discussion**

8. The chronology set out by the appellant shows that he remained in Iran until 27 September 2015. Referred to in the summary of the agreed issues before the First-tier Tribunal, the respondent writes "However, there was a Eurodac Match-CAT 2 Hit in Hungary on 07/09/15 which you failed to disclose". This is a significant omission. I accept that the evidence provided by the Secretary of State confirms that match which shows that fingerprints provided by the appellant in the UK are identical to those taken by the authorities in Hungary. I am satisfied that the appellant has misled, and continues to mislead, in alleging that he was not in Hungary on that occasion.
9. Despite it being confirmed that the issues identified by the First-tier Tribunal noted above were still live the appellant in his latest witness statement dated 22 April 2022 now states:
  11. The Home Office state that I have provided two different dates for leaving Iran and that I was fingerprinted in Hungary, I mentioned this in Iranian, if this is interpreted incorrectly, I cannot be held responsible. I wish to confirm that I cannot remember the dates, in Iran memorising or knowing that one states is not important like it is in the UK or other European and Western countries. I wish to confirm that I left the country illegally with the help of an agent who my uncle found. I wish to confirm that I did not claim asylum in Hungary. I was under the control and instruction of the agents not to claim. When I was in Hungary, I refused to give fingerprints, but the Hungarian authorities hit and kicked me, as a result this is when I was forced to give my fingerprints, they also took a picture of me, I was not provided with an interpreter, and I did not know what they were saying.
10. At question 92 of the Statement of Evidence (SEF) form the following is recorded:
  92. In your screening interview you claim to have left Iran on 27/09/2015, however HO records show you were fingerprinted in Hungary on 07/09/2015, can you explain this discrepancy?  
  
Answer - all I remember was I was stopped in country I think they were a group of Mafia they force me to have my fingerprints taken and then got on the lorry again.

- 11.** There is no suggestion there were any difficulties with the interpreter who assisted with the SEF in relation to the appellant's answers to the screening interview in which he did claim that he left Iran on 27/09/15. In reply to question 93 of the SEF, when the appellant was asked whether he could remember when he left Iran, he claimed he could not remember but that he thought that when it came to the UK he mentioned it, that he did not know the date, but it is clear that the date of 27 September 2015 is one he gave, as recorded.
- 12.** The difficulty for the appellant is he could not have been in Iran when he claimed he was if he was fingerprinted in Hungary and would no doubt travel from there to the UK. The reality is that the UK has always been the appellant's intended objective.
- 13.** The appellant was criticised by the First-tier Tribunal Judge for being vague in the answers he gave in his evidence. The written transcript of the appellant's evidence is within the tribunal file and although the Upper Tribunal found error of law the actual evidence given by the appellant as recorded by the First-tier Judge is not challenged. There is merit to the submission made by the Secretary of State at [3] of the positional statement of 27 January 2022 which is in the following terms:
  3. The issue of credibility and whether the account given by the appellant is reasonably likely to be true is central to the appeal. The issues as identified within the set-aside decision of First-tier Tribunal Judge Bristow at [10] - [12] remain broadly applicable. It is submitted that whilst the decision itself has been set aside, the SSHD considers that the record of the evidence given at the hearing remains relevant for consideration in light of there not having been a challenge to the recording of that evidence.
- 14.** The credibility of the appellant's claim was rejected in the refusal letter as it was found the appellant's claim he was a member of the KDP was said to be lacking in detail. In relation to the claimed membership it is written at [34 - 39] the following:
  34. You stated that your uncle was a member of the KDP, and you transported KDPI papers/leaflets for them (Air 49) before you became a member. When you were asked if you had a membership card you stated 'if I had my uncle would have sent it to me, it appears I don't have one'. This is not considered a reasonable response and is externally inconsistent with country information, which states as all members party members are holders of a membership card.
  35. Moreover, it is not consistent that you are a member of the KDP yet are unaware of whether you have a membership card or not. This is considered as damaging to your credibility.
  36. You stated your uncle obtained a document from the KDP - I showing that you are a member of the KDP. You stated, 'some people from the party gave it to him' (Air 70). However, country guidance states letters to verify whether a person is a member of the KDP-I party is investigated through Khoysanjak headquarters in the KRI. Recommendations are not delivered to asylum seekers and they will only be issued directly to the asylum authorities or the asylum seekers lawyers in Europe. When you were questioned as to why your letter did not come via this route, you stated 'I don't know, this is because my uncle made me a member and my uncle arrange this for me' (Air 71). This is not considered a reasonable explanation. This document has been considered in line with the case law of Tanveer Ahmed IAT 2002 UKIAT 00439 STARRED. We

are unable to add any weight to this document as there is no date, writing is not legible, and its authenticity cannot be verified. Therefore, this document cannot be relied on as evidence in support of this aspect of your claim.

37. During your Asylum interview you asked about the KDP. You are asked why you became a member you stated, 'the Iranian government treated our people very badly place I didn't have any work that's why I had to work as a kolbar to earn some money' (Air 72). You were asked to explain what the KDP believed in and their rights, you said 'KDP works for human rights and works for humanity as a whole and they treat people in a good way' (Air 73). You were asked when they KDP were founded you stated, 'about this my uncle did not tell me anything, my job was to transport papers from another place to another place and all I know my uncle linked my name with the party' (Air 76). It is considered reasonable to expect you to know more information about the KDP especially as you state you were a member of the party. You have been unable to provide us a reasonable explanation for your lack of knowledge as such, your credibility is damaged.
  38. You stated that the leaflets you were transporting were for the 'Kurdistan Democratic party' (Air 47). The Kurdish Democratic Party (KDP) is the oldest Kurdish political party in Iraq Kurdistan. Throughout the asylum interview you referred to the KDP. You have provided a document which claims you were a member of the KDP-I. However, the KDP-I are a different Democratic party, who are based in Iran therefore this is internally inconsistent with your statement above and throughout the Asylum interview. External sources show that the KDP and KDP-I are different parties.
  39. Given the above, it is considered that you have failed to provide a detailed account with regards to this aspect of your claim. It is not accepted that you were a member of the KDP. This part of your claim has not been accepted.
- 15.** The appellant responds to the above findings in his witness statement dated 22 April 2022 in the following terms:
5. I wish to confirm that I am a member of the KDPI and that I transported paper/leaflets for them across the border. At [34 - 35] RFRL, I confirm that I do not have a membership card from the KDPI. In order to obtain the card, you have to undertake 3 month Peshmerga training. I did no such training and I think without which they will not give you the card even if you are a member. I said in the asylum interview that I did not have a membership card. I do not know why the Home Office still said in the refusal letter that I did not know if I had one or not.
- 16.** The source of the comment in the refusal letter relating to the appellant's comments concerning the membership card is that it is reasonable to expect that if the appellant was a member of the KDP-I that he would be a holder of a membership card is at paragraph 7.3.1 of the CIPU Iran: Kurds in Kurdish political groups, where it is written:
- 7.3 Membership cards
- 7.3.1 The 2013 Danish Refugee Council and Danish Immigration Service factfinding mission were also informed:
- '...Mustafa Moloudi (KDP-Iran) informed the delegation that all party members in KRI are holders of a membership card. The membership card is of the size of a credit card and it has text on both sides. The membership cards issued to the full time professional members is of a pale blue color while the membership card issued to the ordinary members is of a pale yellow color. The party members living outside the party camp have the same pale yellow ID card as the ordinary members. The party's peshmargas are also issued the pale yellow ID card for up to one year and after that they will hold the same

cards as the high level professional members. Secret members living in Iran do not hold a membership card for security reasons. Within the party camp, there is a social committee that issues marriage certificates and birth certificates since the local government in KRI does not issue these documents to Iranian Kurds.'

**17.** The appellant's comment that in order to obtain a card it is necessary to undertake three months Peshmerga training is also not supported by the country information. The above report shows that membership alone entitles an individual to a membership card and that different coloured cards are made available to different types of members, including Peshmerga. It is not made out that an individual has to undertake Peshmerga training to obtain a membership card as an ordinary member which is what the appellant claimed he is.

**18.** At [6] of the witness statement the appellant writes:

6. At [36] RFRL, the Home Office say that the KDPI letter are sent to asylum authorities directly and not to individuals. I would like to clarify that at the time, I was in Iran and not in the UK, the KDPI letter could not have gone to the asylum authorities, because at that stage I did not claim asylum or leave the country. Furthermore, my uncle was a member of the KDPI, the fact that he was able to obtain the letter shows that the authorities trusted him and knew him. By way of example, the law in Iran says that you should not do such and such, and it is the authorities who break their own law.

**19.** The source of the comment in the refusal letter regarding the issue of authentication, is at 7.4 of the CIPU where it is written:

7.4 Verification of membership

7.4.1 The same source from 2013 reported:

'...Mustafa Moloudi, (KDP-Iran) informed the delegation that the headquarters of the party in Khoysanjac, KRI issues letters of recommendation to members going abroad to seek asylum. Since all members have their names listed in the headquarters, it is possible to identify each one of them. The party issues letters of recommendation, but the source emphasized that letters of recommendation are not delivered to asylum seekers and they will only be issued directly to the asylum authorities or the asylum seekers' lawyers in Europe. Every member has a written file within the headquarters which forms the basis of the description of the situation of the asylum seeker in the letter of recommendation. If a party member for instance goes to Denmark to seek asylum, he or she must address the local party committee that will then ask the headquarters to issue a letter of recommendation. The party's sympathizers can also get a letter of recommendation if the KDP-Iran is certain that the person asking for the letter had to flee due to political activism. In such case it will be stated in the letter that he or she is a party sympathizer and not a member.'

**20.** The appellant has provided a copy document together with a translation. In English the document reads:

KURDISTAN DEMOCRATIC PARTY [Emblem]

KDP-IRAN

Commission of Connection

Subject/Support

We are as a KURDISH DEMOCRATIC PARTY OF IRAN supporting Mr (MF) that he is an active member and his name is registered in our Party Book

Forward with appreciation

Stamped and signed  
Connections of Sulaimaneyya  
Siamak Wakily  
2015

- 21.** The appellant claims the letter confirming he was a member was obtained by his uncle when the appellant was in Iran. It is not clear why the appellant would have sought a letter confirming he is an active member, a claim he does not actually make himself, if he was still in Iran when he would have had his membership card and the ability of his uncle to vouch for him. It is also not clear why there is no date on the document other than the statement that it is positioned in 2015. This is of some importance in relation to the Eurodac match showing the appellant was in Hungary on 7 September 2015, a fact he did not originally disclose, which means he must have left Iran prior to this and is not therefore clear that he was even in Iran at any time within 2015.
- 22.** I find that little weight can be placed upon this document as evidence of the appellant's membership of the KDPI in Iran. Concerns regarding the same were clearly communicated to the appellant in the refusal letter of 30 October 2019 yet, despite there being published reference to the ability to obtain confirmation of membership from an official source that could have been sent to the authorities in the UK, no such evidence has been provided.
- 23.** At [7] of his witness statement the appellant writes:
7. At [37] RFRL, the Home Office takes issue with me not knowing much about KDPI. I would like to clarify that first and foremost, I was illiterate and could not read and write, secondly, as the oldest son in the family, I had to work to look after my family. Also, I was undertaking Kolbar work and most of my time was spent taking goods/leaflets/paper to the border that there was not enough time to find out. My uncle made me a member, and this is what I have said in the interview.
- 24.** It is accepted that if the appellant is genuinely illiterate he cannot be expected to understand the written text on documents. What the appellant's explanation does not deal with, however, is that in a number of communities where the standard of literacy may not be as high as it is in the UK great importance is placed upon the spoken word. The appellant claims to be a member of the party, through his uncle, committed to the KDPI through membership and his claim that his uncle was a trusted member of this organisation. It is reasonable to expect that if the appellant had indicated to his uncle that if he was interested in the Kurdish cause that this would have been explained to him, yet the appellant's answers to the questions put to him in the asylum interview in relation to this issue demonstrate a lack of knowledge of the party or its aims.
- 25.** At [8] of the appellant's witness statement he writes:
8. At [83] RFRL, the reason why I refer to the party as 'KDP' is that I expected the Home Office to know that as I am from Iran, I was referring to the KDPI and the letter 'I' I did not say, but it should have been obvious. I have never meant to say KDPI it has always been KDPI. Also, if I mentioned or meant KDP,

why would I submit a letter from KDPI then, it would make no sense. I wish to add that the KDPI letter, which is dated 2015, also mentions on the top left hand side 'Kurdish Democratic Party' underneath it, says KDP-Iran, this is all different ways of writing it, but it all means the same thing i.e. KDPI.

- 26.** The statement by the appellant raises further concerns about the credibility of his claim. The KDP and KDPI are not the same party. There is merit in the point taken by the Secretary of State that there is a difference between the KDP and the KDPI. In 2006 the KDPI split into two parts the KDPI which has undertaken operations against the Iranian regime and the KDP which is established in other Kurdish regions such as Iraq, Syria and Turkey. It is reasonable to expect that if a person is a member of one of the branches they will be consistent in stating which branch they are actually a member of. It cannot be assumed that a Kurd who refers to the KDP was therefore implying the KDPI was what they actually meant. It also lacks credibility that an official from the KDPI would not, in documentation genuinely produced by them, have referred to a completely different party. It is accepted that since the split in 2006 there have been discussions to see whether the two parties can amalgamate into one Kurdish party but there is no evidence to date that such discussions have been successful. The appellant's explanation in his witness statement does not adequately deal with this matter and further strengthens the Secretary of State's argument that the appellant's claim in this respect lacks credibility.
- 27.** Pausing at this stage to consider this aspect of the appeal, having assessed the evidence by reference to the lower burden of proof applicable to appeals of this nature, I find the appellant has failed to produce sufficient evidence to discharge the burden of proof upon him to show that his claim to have been a member of the KDPI in Iran is credible. There is also no credible evidence of family connection to members of that banned organisation.
- 28.** Turning to the court document, in the refusal letter the Secretary of State writes:

Incident/Arrest warrant

40. You have claimed that your friends were arrested by the revolution regards as you are working as Kulbars. You claim that you managed to escape. This aspect of your claim is considered to be lacking specific details.
41. You state that while you were working as a Kulbar, you transported democratic papers for the KDP and Alcohol (Air 25,32). This is linked with the previous rejected material fact, consideration will be given to this aspect of your claim.
42. You claim there was an ambush, and that your friends were arrested by the authorities. (Air 25). Additionally, when you are asked what made you believe it was the authorities who were arresting your friends and how far were you from this incident, were you not all travelling together? You stated, 'they were revolutionary guards; they fired I was 100 percent sure it was them I managed to flee plus my family an arrest warrant from them' (Air 62). You have provided us a copy and translation of that court warrant. It states that they suspected you are transporting alcohol and not KDP material. This has been considered in line with the case law of Tanveer Ahmed IAT 2002 UKIAT 00439 STARRED. We are unable to add any weight to this document as the writing is not legible and it is a photocopy, so it's authenticity cannot be verified. Therefore, this



document cannot be relied on as evidence in support of this aspect of your claim.

43. Additionally, you are asked how you managed to flee and see that your friends were being arrested at the same time. You stated 'I threw my goods which was on your back and went to my uncle's' (Air 63). This is not considered a reasonable response. You were asked the same question again, you stated 'it was night and they were arrested but I managed to throw my goods away and get away' (Air 64). Your account is lacking in specific details. When you are asked how far you were from your friends you stated, 'I don't know how to say, I don't know how to describe it' (Air 65). Additionally, you were asked as it was night when it happened how you are able to see it was the authorities you stated, 'the friend shouted and said we were being arrested'. You have been unable to give detailed credible account of how you managed to escape.
44. Moreover, the objective information states that authorities will shoot to kill, this is inconsistent with your claim that you are able to escape and that your friends were arrested. As such, your credibility is damaged.
45. Based on the claim the ease with which you are able to escape, and the lack of detail you have provided, it is not accepted that you were of adverse attention to the authorities due to your work as a Kulbar.

**29.** In his recent witness statement at [9 - 10] the appellant writes:

9. The Home Office at [42] RFRL, takes issue with the fact that the court summons only mentions alcohol and not KDPI material. I do not know why KDPI is not written and only alcohol is, this document is from the Court, and so I cannot comment on this. However, I think that the reason is that, they may also be playing a tactful game, in which they only mention alcohol and if I come forward, they will also punish me or kill me for the KDPI leaflets as well.
10. I have provided in my side interview record, an explanation of how I fled, however The Home Office at [43 - 45]RFRL questions it. I confirm that it was night time, me and my friends were carrying goods, I was carrying leaflets/paper. We heard a noise, and my friends were all of a sudden arrested, they shouted, and I dropped my goods and ran away, in the process, the authorities were shooting. But because it was night time and not experts at shooting, they missed me, and I was able to escape. I do not understand why the Home Office is saying that I was unable to give a more detailed account. What more information do they want, I have told them everything I know. Also, just because they have shoot to kill orders, that does not mean they are 'marksmans' (expert shooters), they missed me and as a result I was able to escape.

**30.** It is not disputed that kolbars exist in Iran. The respondent CIPU Iran: Smugglers, Version 4.0, February 2022. , A section 2.4 writes:

- 2.4.1 Exacerbated by limited employment opportunities and international sanctions, up to 170,000 Kurds make their living as kolbars by smuggling everyday goods, which include cigarettes, mobile phones, clothes, housewares, foodstuffs and livestock, using informal crossing routes across the mostly mountainous Iran-Iraq border in Kurdistan. Smuggling across this border has been prevalent for decades by locals living in the border areas and is widely viewed locally as a form of trade in essential items. Some smuggling operations are run by organised criminal networks. Tighter US sanctions introduced in 2018 has brought people from big cities to the borders to work as kolbars. The majority of kolbars are men but also include women and children (see Kolbars, Operation and prevalence, Commodities and contraband and Border control).
- 2.4.2 Although there is no explicit state law criminalising kolbars and, at times, permits have been issued, the practice is considered smuggling and subject to

prosecution (see Legal context). However, border officials, including the Revolutionary Guards (IRGC), have been known to ignore smuggling operations and are reported to be complicit and/or reliant on smuggled goods, not always illegal items themselves, but which international sanctions are making increasingly difficult for people to obtain or afford (see Border control and Anti-smuggling operations). Illegal commodities such as alcohol, weapons and illicit drugs, are also smuggled across the border making their movement a more dangerous, criminal activity. Evidence on the smuggling of political material is limited (see Commodities and contraband).

2.4.3 Actual numbers of arrests of kolbars is limited, but reports indicate that the number of detentions are numerous, with one report suggesting ‘thousands each year’ (see Arrest and detention). There are frequent reports of border officials beating, or shooting kolbars with impunity and without warning, causing deaths and injuries. Between 2020 and 2021, an estimated 370 kolbars were kill or injured by border officials. These reports should be seen in the context of up to 170,000 kolbars regularly working the Iraq-Iran border. Injuries and deaths are often caused by the hazardous terrain on the steep sides of mountains along with poor weather conditions (see Kolbars, Excessive use of force).

2.4.4 Though not specifically addressing the situation for kolbars or smuggling (and the evidence on the smuggling of political material is limited), in the country guidance case of HB (Kurds) Iran CG [2018] UKUT 430 (IAC) (heard 20 to 22 February and 25 May 2018 and promulgated 12 December 2018), the Upper Tribunal found:

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

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

‘Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Being a risk factor it means that Kurdish ethnicity is a factor of particular significance when assessing risk’ (paragraph 98 (3) to (5)).

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

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

‘The Iranian authorities demonstrate what could be described as a “hairtrigger” approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By “hair-trigger” it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme’ (paragraphs 98 (8) to (10)) .

2.4.6 Evidence continues to support the findings in HB in that a person will not be at real risk of persecution or serious harm based on their Kurdish ethnicity alone,

though when combined with other factors, such as involvement in smuggling, may create a real risk of persecution or Article 3 ill-treatment. Each case must be considered on its facts and decision makers must take into account additional factors, such as actual or perceived political activity, when assessing risk.

2.4.7 Persons who have been involved solely in smuggling are likely to face prosecution. It is lawful for the authorities to prosecute those engaged in smuggling illegal items, or goods which would be subject to import tariffs. However, those prosecuted for such crimes may face a trial which does not meet international standards of fairness. Smuggling can incur a range of penalties, from fines to flogging, or the death penalty (see Penalties and prosecution).

**31.** The section of the report referred to above relating to commodities, contraband, and border control reads:

3.3 Commodities and contraband

3.3.1 The GIATOC report of April 2019 stated, 'Smugglers say that anything and everything that Iran can no longer import legally is now smuggled across this border, mainly carried on foot or by horseback. Most of the goods now being transported this way are not illegal commodities in Iran - they are just no longer available to ordinary citizens, or at least not at prices they can afford.'

3.3.2 Smuggled items included clothes, footwear, cigarettes, foodstuffs, tyres and car parts, white goods and other electrical products<sup>34 35</sup>. According to Iran wire, 'As a rule, kulbars do not transport alcoholic beverages even though they bring in a high price because they are illegal in the Islamic Republic, transporting them is difficult and can lead to heavy fines and even prison.'

3.3.3 In regard to carrying political material produced by Kurdish political parties, a 2013 report by the Danish Immigration Service (DIS) and Danish Refugee Council (DRC) cited a representative of Komala SKHKI, who said the thriving border trade '... makes the difficult task of transporting political materials into Iran easier,' though added that such material was also sent electronically<sup>37</sup>. The same report cited representatives from the Kurdistan Democratic Party - Iran (KDP-I) and Komala KZK, who said that flyers were produced in the Kurdistan Region of Iraq (KRI), then sent electronically to Iran and distributed by members or sympathisers of the party<sup>38</sup>.

3.3.4 For further information on Kurdish political parties, see the Country Policy and Information Note on Iran: Kurds and Kurdish political groups.

3.3.5 The GIATOC report stated that: 'Although the organized smuggling network behind the flow of foodstuffs and other legal goods is technically a criminal operation, it is widely viewed locally as a form of trade in essential items. However, alongside this "trade" there is a parallel smuggling operation across this border, involving explicitly criminal commodities, notably alcohol, weapons and illicit drugs. These goods are illegal in Iran and not authorized by government, making their smuggling a more criminal, and more dangerous, operation.'

**32.** The reference in the CIPU to the shoot to kill policy is taken from a report by Amnesty International.

**33.** Whilst the country information speaks of penalties being dependent upon the value of the goods transported, there is specific reference to items treated by the authorities as being prohibited goods namely alcohol or information provided for prohibited political parties. There is a logic in this day and age for the transmission of material to be sent electronically to Iran, such as by the KDPI, which is then either distributed locally in the same format or printed locally and handed

out to members or sympathisers, but this does not rule out the possibility that such documents are also sent by the more traditional means. There is also evidence that alcohol may be smuggled.

- 34.** The country material shows that although the authorities cannot stop the flow of smuggling, due to the porous nature of the border and sheer frequency of the same, they can be extremely hard in their reaction including killing those involved in the smuggling by shooting even before there has been any conviction confirming that individual's guilt. The appellant tries to guess why, despite his party being ambushed (which suggests an organised activity by the Iranian authorities) he was able to escape. The appellant was given the opportunity to provide further details as to how he was able to escape when it is the Secretary of State's view that if his account is true he was more likely to have been shot and killed or captured. The country information shows that it is the Border Guard who have primary responsibility for policing the borders of Iran but that both the Revolutionary Guard and Iranian Special Forces can also be involved in such activities. It is reasonable to expect that if a planned night operation occurs to seek out the smugglers that the authorities would have appropriate nightvision equipment to enable them to see the smugglers in the dark and identify the target. The appellant's speculation that those involved may not have the necessary skills to hit their target is also undermined by the fact that those he claims were involved are the more effective members of the Iranian security services.
- 35.** In relation to the smuggling of alcohol the CIPU writes:

4.2.6 Specific penalties were prescribed in the Penal Code for offences relating to alcohol:

'Article 702- Anyone who produces or buys or sells or proposes to sell or carries or keeps alcoholic beverages or provides to a third person, shall be sentenced to six months to one year of imprisonment and up to 74 lashes and a fine five times as much as the usual (commercial) value of the aforementioned object.

'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.

'Note 1- In respect to articles 702 and 703, when the discovered alcoholic beverages are more than twenty liters, the vehicle used for its transport, if its owner is aware of the matter, shall be confiscated in favor of the government; otherwise the offender shall be sentenced (to a fine) equal to the value of the vehicle. Tools and equipments used for producing or facilitating the crimes mentioned in the said articles, as well as the money gained through the transactions, shall be confiscated in favor of the government.

'Note 2- When civil servants or employees of governmental companies or companies or institutes dependant to government, councils, municipalities or Islamic revolutionary bodies, and basically all the three powers and also members of armed forces and public service officials, commit, or participate, or aid and abet in the crimes mentioned in articles 702 and 703, in addition to the punishments provided, they shall be sentenced to one to five years' temporary suspension from civil service.

'Note 3- The court, under no circumstances, shall suspend the execution of the punishment provided in articles 702 and 703.'

- 36.** The document provided by the appellant, purportedly from the judicial authorities in Iran reads:

JUDICIARY

No: 697  
Date: 06/09/2015  
Appendix:...

[EMBLEM]

THE ISLAMIC REVOLUTIONARY COURT OF MARIWAN

Summons

Name and Family Name	MF
Father's Name	F
Occupation	Self-Employed
Address	Mariwan/Village: Qul Qula
Place of attendance	The Islamic Revolutionary Court of Mariwan
Date of attendance	08/09/2015
Cooperation with the DEMOCRATIC PARTY we are aware of that, and you crossed the border between the ISLAMIC REPUBLIC of IRAN and IRAQ through BASHMAKH and sale alcohol. Stamped and signed	
If summoned early and without reasonable excuse, does not appear warrant will be sent in due time.	

- 37.** The first thing to notice is that this document is not a warrant but a summons. The second point to note is the reference in the refusal letter to the document only mentioning alcohol is not strictly true as there is also reference to cooperation with the Democratic party. The description of the appellant as being responsible for a sale of alcohol is not technically correct as his complaint is that he is at risk for smuggling alcohol for which there is a specific provision in Iranian law as noted above, albeit there is no mention of this provision in the alleged court document.
- 38.** The appellant claimed that he was transporting the goods in question, when his group was ambushed. In his evidence to the First-Tribunal he claimed this was in the winter of 2014/15 before he left on 27 September 2015. We know that alleged claimed date of departure is a lie as the appellant was in Hungary on 7 July 2015.
- 39.** It is also a concern if one looks at the record of the evidence the appellant gave to the First-tier Tribunal, which still stands as a record of what he claimed, recorded at [23] of that decision in the following terms:
23. In the SEF the Appellant stated that the 2014 incident occurred in the winter (question 27). In cross-examination he was asked what month the incident in 2014 happened. He replied: "Think in July". Iran is in the Northern hemisphere. July is a summer month. I find that the Appellant has been significantly

inconsistent about the time of year when the 2014 incident happened. This causes damage to the credibility of the account.

- 40.** There is also a genuine concern about the fact the appellant claimed this event occurred in the winter of 2014 when the documents allegedly emanating from the Islamic Revolutionary Court is dated 6 September 2015. The summons refers to not only the sale of alcohol but also cooperation with the Democratic Party which are serious offences within Iran. It is accepted that a person suspected of supporting the Democratic Party can face serious consequences including ill-treatment and death at the hands of the Iranian authorities. The manner in which those showing dissent to the Iranian authorities are treated in Iran is recorded in information in the public domain. Yet despite being suspected of cooperating with a political party whose views are adverse to those of the authorities in Iran, and smuggling a banned substance into the country for sale, the appellant claims no action was taken against him for a period of nine months. This is implausible as is the fact that a summons would have been issued in circumstances where it is more likely that a warrant would have been issued and the appellant arrested. The appellant's claim that the authorities in Iran were "playing games" by summoning him to court intending to then charge him with the more serious offence when he appeared lacks credibility, and demonstrates an unrealistic approach in light of what is known about the actions of the Iranian authorities to those they perceive to be against them.
- 41.** Reviewing the merits of the appellant's claim at this stage, his claim to be a member/supporter of the KDPI has not been found to be credible for the reasons set out above. His claim of events that led to the warrant and the issue of warrant itself has been shown to lack credibility for the reasons set out above. I do not find the appellant is of interest to the authorities in Iran as a result of his having smuggled alcohol and pro-Kurdish Democratic party leaflets. I find there is merit in the concerns referred to in the Reasons for Refusal letter such that no weight may be placed upon this aspect of the appellant's claim. I do not find the appellant has established that he is the subject of judicial proceedings within Iran or that he is of adverse interest to the Iranian authorities.
- 42.** The appellant also claims he will be at risk on return as a result of his illegal exit from Iran.
- 43.** In SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) it was held that (i) An Iranian male whom it is sought to return to Iran, who does not possess a passport, will be returnable on a laissez passer, which he can obtain from the Iranian Embassy on proof of identity and nationality; (ii) An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have

been established. In particular, there is not a real risk of prosecution leading to imprisonment.

44. The above case remains valid country guidance following the handing down of XX (PAJAK, sur place activities, Facebook) (CG) [2022] UKUT 00023.
45. The appellant fails to establish that his claim to have left Iran illegally is credible in light of the extent of the misinformation in relation to other aspects of his claim or that, even if it was so, he will face a real risk on return for this reason alone.
46. In relation to the appellant's activities in the UK, attending demonstrations and posting articles on Facebook, the appellant claims a real risk of persecution and identification.
47. I accept the point made in the appellant's pleadings that it does not matter if his activities represent a genuinely held political view as it is how the appellant will be perceived by the Iranian authorities and whether that will give rise to a real risk of harm that is the relevant consideration.
48. In his recent witness statement the appellant confirmed he has a Facebook account that he claims to be public that can be accessed by anyone anywhere in the world in which he criticises the Iranian government and what they have done to all people, including the Kurds. The appellant also claims to be an activist attending demonstrations outside the Iranian Embassy in London. The appellant provides photographic evidence and this in his bundle, and which he claims to have posted on his Facebook page, to raise awareness to others so that they may join. The appellant claims that as part of an organising team he was given a jacket to wear to ensure the safety of others by crowd control to ensure the process was peaceful. The appellant is shown to be wearing a 'Hi-Viz' jacket in some of the photographs.
49. The appellant claims he attended demonstrations on 7 August 2021, 13<sup>th</sup> July, 5 February, 16<sup>th</sup> June, 1 March, 14<sup>th</sup> January, 5 January, 12 December 2020 and 7 December, 1 December and 28 November 2019 and on other occasions.
50. Not all these accounts are evidenced in the documents and it is important to consider their relationship to the lockdown restrictions that reinforce in the UK which are as follows (data taken from the UK Parliament, House of Commons Library) :

*First national lockdown (March to June 2020)*

England was in national lockdown between late March and June 2020. Initially, all "non-essential" high street businesses were closed and people were ordered to stay at home, permitted to leave for essential purposes only, such as buying food or for medical reasons. Starting in May 2020, the laws were slowly relaxed. People were permitted to leave home for outdoor recreation (beyond exercise) from 13 May. On 1 June, the restriction on leaving home was replaced with a requirement to be home overnight, and people were permitted to meet outside in groups of up to six people.

*Minimal lockdown restrictions (July to September 2020)*

Most lockdown restrictions were lifted on 4 July 2020. Most hospitality businesses were permitted to reopen. New health and safety guidance on operating businesses "Covid securely" was published. Gatherings up to thirty people were legally

permitted, although the Government was still recommending people avoid gatherings larger than six.

*Reimposing restrictions (September to October 2020)*

On 14 September, restrictions for gathering in England were tightened and people were once again legally prohibited from meeting more than six people socially. The new “rule of six” applied both indoors and outdoors. Eleven days later, pubs, bars and restaurants were told they had to shut between 10pm and 6am.

During this period, a range of local restrictions were imposed across England. On the 14 October, the Government rationalised local restrictions by introducing a “three tier system”. At first, most of the country was placed in the least restrictive tier one, which had similar restrictions to the previous national rules. As time went on, more of the country was placed in the higher two tiers.

*Second national lockdown (November 2020)*

On 5 November, national restrictions were reintroduced in England. During the second national lockdown, non-essential high street businesses were closed, and people were prohibited from meeting those not in their “support bubble” inside. People could leave home to meet one person from outside their support bubble outdoors.

*Reintroducing a tiered system (December 2020)*

On 2 December, the tiered system was reintroduced with modifications.

Restrictions on hospitality businesses were stricter and most locations were initially placed in tiers two and three. On 19 December, the Prime Minister announced that a fourth tier would be introduced, following concerns about a rising number of coronavirus cases due to a new variant (what was to become known as the Alpha variant, first identified in Kent).

The tier four rules were like those imposed during the second national lockdown. On 30 December, after the first review of tiers under the new system, around 75% of the country was placed under tier four restrictions.

*Third national lockdown (January to March 2021)*

Following concerns that the four-tier system was not containing the spread of the Alpha variant, national restrictions were reintroduced for a third time on 6 January.

The rules during the third lockdown were more like those in the first lockdown. People were once again told to stay at home. However, people could still form support bubbles (if eligible) and some gatherings were exempted from the gatherings ban (for example, religious services and some small weddings were permitted).

*Leaving lockdown (March to July 2021)*

On 8 March 2021, England began a phased exit from lockdown. A four-step plan, known as the [roadmap out of lockdown](#), intended to “cautiously but irreversibly” ease lockdown restrictions. Instead of a return to the tiered system, the Government said it planned to lift restrictions in all areas at the same time, as the level of infection was broadly similar across England.

England moved through the roadmap as planned but step four was delayed by four weeks to allow more people to receive their first dose of a coronavirus vaccine.

- 51.** It is unlikely the authorities would have permitted a mass gathering, especially in London, during the period of any of the national lockdowns. If any of the appellant’s alleged meetings fall within this period doubt is cast upon their reliability. In relation to the photographic evidence on Facebook, reference is made in the respondent’s position statement, written pursuant to an earlier



direction of the Upper Tribunal. The respondent's position is set out as follows:

5. It is noted that the appellant has produced excerpts from his Facebook account as detailed within the appeal bundle. It is submitted that any potential risk on return as a result of Facebook activity will be dependent on the Tribunal's findings as to the reliability of his historic account, and whether the appellant has such a profile on the 'social graph' such as to have attracted the attention of the Iranian authorities. The recent CG decision of XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC) affirms the cases of BA, SSH and HB is accurately reflecting the situation for returnees to Iran.
6. Whilst the appellant has provided limited evidence of being present at a demonstration (via Facebook), it is briefly submitted that the mere presence of the demonstration without more is not sufficient to elevate his profile to one where he would be of interest to the Iranian authorities.
7. As to the Facebook evidence relied upon, the SSH the relies on the guidance within the headnote of XX (emphasis added):

#### 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.

52. In addition to the above guidance, the SSHD draws attention to the following parts of the decision.
53. At [50], the Tribunal defined "social graph" is how networks of people may be related, and their relative importance.
54. At [65], Mr Marchant accepted that there was no clear evidence that Iran had implemented facial recognition technology, to monitor citizens.
55. A person of significant interest to the Iranian authorities was, in general, reasonably likely to have been the subject of targeted Facebook surveillance. Relevant factors to prompt such surveillance 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 attracted; the likelihood of surveillance of particulate demonstrations; and whether the person was a committed opponent [92, 95]. Further that social media evidence cannot be considered in isolation.

- 56.** It is considered that the above sets out that the evidence provided by the appellant is very limited evidential value (pages 114 - 127 of appellant's bundle). Some of the evidence contains repeated screenshots, are of poor quality, remain un-translated and as per XX, the evidence itself could be easily manipulated by simply changing the page source data. It is unclear from the evidence who was the original person to have posted the material (since much of the material appears to be reposted), or if there is any connection at all to the appellant, or that the appellant is connected to anyone of importance that would result in him being consequently of interest to the Iranian regime - these all been relevant to the 'social graph' assessment.
- 57.** The evidence fails to demonstrate that the appellant had a particular role in any demonstration, or that it attracted a degree of publicity such that the appellant would fall in to the category of a person of significant interest. The credibility issues arising out of his claim to events in Iran negatively impacts on any assessment as to whether this material was posted in the manner claimed, and his claim to be committed to a political cause easy due to his historic or sur-place activities. It is submitted that there is no basis for concluding that the appellant has come to the attention of the Iranian authorities, and that in the absence of credibility the appellant could be reasonably expected to delete his Facebook account prior to any ETD application.
- 58.** The claim in the appellant's skeleton argument that simply by posting items against the Iranian regime on Facebook will create a real risk for the appellant and identification is too simplistic a statement when the analysis of XX is more supportive of an alternative finding. Such postings by themselves are not sufficient.
- 59.** The information relating to the appellant's Facebook postings is also very limited. The type of information required to establish the reliability of such postings, such as the individuals Facebook timeline or to the actual account has not been provided. A further point arising from the appellant's Facebook entries is that although he claims the setting of access has been sent set as 'public', there is insufficient evidence to show this is the setting that is always prevailed in relation to this account or a change made for the purposes of adducing evidence in support of the appellant's claim which could, according to the guidance, be changed immediately thereafter. It is the absence of the timeline that prevents it being established that the evidence is or has not been available to others.
- 60.** The main issue regard to the evidence provided is that the appellant's claim relating to events in Iran has been found to lack credibility and there is insufficient credible evidence to establish that the appellant

has, prior to his leaving Iran, any profile of any adverse interest to the authorities there.

- 61.** In relation to the appellants attendance at demonstrations in the UK, whilst photographs appear on his Facebook account it is not made out the authorities in Iran have accessed the same. The appellant claims to be an organiser but, in reality, he was only directing attendees to ensure an orderly demonstration rather than appearing on the face of the photographs to be a person responsible for organising the same per se.
- 62.** The Danish Refugee Council report relied upon by the appellant is dated 2013 and has to be considered in light of the other material.
- 63.** In BA (Demonstrators in Britain –risk on return) Iran CG [2011] UKUT 36 (IAC) the Tribunal held that:
- (i) Given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain;
  - (ii) (a) Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Students, particularly those who have known political profiles are likely to be questioned as well as those who have exited illegally.
    - (b) There is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain. The conclusions of the Tribunal in the country guidance case of SB(risk on return-illegal exit) Iran CG [2009] UKAIT 00053 are followed and endorsed.
    - (c) There is no evidence of the use of facial recognition technology at the Imam Khomeini International airport, but there are a number of officials who may be able to recognize up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might well be picked up for questioning and/or transferred to a special court near the airport in Tehran after they have returned home.
  - (iii) It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after

considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed.

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

(a) Nature of sur place activity. Theme of demonstrations -what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime? Role in demonstrations and political profile -can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive (e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime. Extent of participation -has the person attended one or two demonstrations or is he a regular participant? Publicity attracted -has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?

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

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

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

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

**64.** The photographs of the appellant, in addition to showing him wearing the high visibility jacket show him holding posters and posing with other members of the crowd for the purposes of having a photograph

taken. The others are clearly behind the barricade at some distance from one assumes might be the Iranian Embassy on the other side of the road. It is not made out from any of the evidence that the appellant is a leader or a mobiliser who addresses the crowd, an organiser of the event or chanting antiregime activities or criticism of the Iranian authorities, and appears no more than a member of the crowd with organisational responsibilities relating solely to the orderly behaviour of those attending. There are photographs of the appellant holding up a document in a couple of photographs but it is not made out that he has demonstrated genuinely held antiregime pro-Kurdish political views. The appellant claims to have attended a number of demonstrations but the evidence concerning that is very limited and it has not been made out that anything on the appellant's Facebook will have been seen by the Iranian authorities. There is no evidence that the appellant's attendance has attracted media coverage in the UK sufficient to create a real risk for him.

- 65.** The issue of surveillance is referred to in XX as relied upon by the Secretary of State in her position statement and the appellant has not demonstrated that his activities will be of such interest that he is likely to be monitored by the Iranian authorities.
- 66.** The appellant's immigration history is discussed above in relation to which his claims have been found to lack credibility.
- 67.** Although there is evidence of the appellant attending demonstrations and posting entries on his Facebook account I do not find, when considering the claim in the round, even taking into account the content of the Danish Immigration Service Report, that the appellant has established he will be viewed as an activist or that his "social graph" this is such that he will have come to the adverse attention of the authorities in Iran.
- 68.** It is not made out that in light of the lack of a genuine adverse political profile the appellant cannot be expected to delete his Facebook entries and close that account. The appellant has not made out that having done so the content of the Facebook account will be accessible to the Iranian authorities, as found in XX. There is no right to have a Facebook account and nothing demonstrating the appellant will be expected to reveal the same to the authorities if questioned on arrival.
- 69.** I find that the appellant is no more than a failed asylum seeker and that even if questioned at the pinpoint on arrival, has failed to establish that he will face a real risk of ill-treatment or persecution sufficient to entitle him to a grant of international protection. The Iranian authorities know many come to the UK to claim asylum and even if the appellant reveals this fact if he tells the truth he will confirm that he has made a bogus claim of no merit whatsoever.
- 70.** I dismiss all aspects of the appellant's protection claim under the Refugee Convention, Qualification Directive, and articles 2 and 3 ECHR.
- 71.** The appellant also relies on paragraph 276 ADE of the immigration rules but I find he has failed to establish any insurmountable obstacles

to his reintegration into Iran. There is no basis for concluding the appellant has come to the adverse attention of the Iranian authorities or to show that he will not be able to return to his home area and carry on as he is done previously, where his family live.

- 72.** In relation to article 8 outside the Immigration Rules, the appellant fails to establish the existence of family life recognised by article 8. I accepted he has formed a private life since entering the UK on 5 October 2015 but little evidence has been provided to explain the same in detail. Even if the respondent's decision interferes with a private life, which it is likely to do if it is UK based and the appellant is removed to Iran, it is then necessary to consider section 117B Nationality, Immigration and Asylum Act 2002. The appellant did not have lawful leave to enter the UK and his status has either been unlawful or precarious. The appellant has no legitimate expectation he will be permitted to remain in the UK and the weight to be given to the private life he has formed is therefore very limited. It is not made out he is financially independent or speaks English. He made use of the Kurdish Sorani interpreter at the hearing. Having weighed up his arguments against those relied upon by the Secretary of State I find the respondent has discharged the burden of proof upon her to establish that any interference with any protected right relied upon by the appellant is proportionate to the legitimate interest relied upon by the Secretary of State as outlined in the reasons for refusal letter.
- 73.** I find the appellant has failed to establish any entitlement to any form of leave to remain in the United Kingdom and accordingly I dismiss the appeal.

### **Decision**

- 74. I dismiss the appeal.**

Anonymity.

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

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

Signed.....  
Upper Tribunal Judge Hanson

Dated 9 May 2022