Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/13251/2018**

THE IMMIGRATION ACTS

Birmingham Civil Justice Centre **Decision & Reasons Promulgated**
On 26th April 2022 **On the 05th September 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

SH
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Wilson, instructed by J M Wilson Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

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

An anonymity direction was made by the First-tier Tribunal ("the FtT"). As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

1. The appellant is a national of Iran. He claims to have left Iran in September 2015. He arrived in the UK on 15th February 2016 and claimed asylum. The appellant's claim was refused by the respondent for reasons set out in a decision dated 4th November 2018. The respondent accepted the appellant is a national of Iran of Kurdish ethnicity but rejected the appellant's claim that he had carried out any activities on behalf of the KDPI and his claim that he had come to the adverse attention of the authorities in Iran.

2. The appellant's appeal against the respondent's decision was dismissed by First-tier Tribunal Judge Bristow for reasons set out in a decision promulgated on 8th February 2019. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge O'Keefe on 6th March 2019. The appeal was heard by Upper Tribunal Judge Dr H Storey and the decision of First-tier Tribunal Judge Bristow was set aside for reasons set out in his decision promulgated on 5th August 2019. At paragraph [7] of his decision, Upper Tribunal Judge Dr H Storey said:

> "I am satisfied that the judge's assessment of the appellant's sur place activities was vitiated by legal error. Her statement at paragraph 41 that the Iranian authorities are not currently aware of the appellant's online activity was correct, but did not go on to address whether the Iranian authorities would nevertheless come to learn of his Facebook activities on return. The judge wholly failed to make a forward-looking assessment of risk. The respondent recorded that the appellant had no passport. On the basis of the panel's assessment in **HB**, he would be asked on return to produce details of his Facebook activities. Accordingly there needed to be an assessment of whether these would be perceived adversely by the Iranian authorities."

3. He directed that the decision will be remade in the Upper Tribunal. Upper Tribunal Judge Dr H Storey said that the scope of the hearing before the Upper Tribunal when remaking the decision, is confined to the issue of whether the appellant, as a national of Iran of Kurdish ethnicity, would be at risk on return by virtue of his online postings. The adverse findings of

fact made by the First-tier Tribunal regarding the appellant's claimed activities and profile in Iran, are preserved.

4. It is useful to refer briefly to the claim that was made by the appellant and the adverse findings of fact made by the First-tier Tribunal. The background to the appellant's claim for international protection was summarised in paragraph [1] of the decision of Upper Tribunal Judge Dr H Storey:

> "… The basis of the appellant's asylum claim was that he had been recruited by the KDPI to deliver and collect KDPI members and had agreed in September 2015 to take two KDPI members and a new recruit to a mountain hideout when they had been ambushed by the Pasdar. Although he managed to escape, the appellant left behind his jacket with his mobile phone and ID. Since he fled Iran he has learnt from his family that the authorities are searching for him. He had not been involved with pro-Kurdish activities in the UK but he had a Facebook page which posted things about the KDPI- news and activities."

5. The findings and conclusions reached by First-tier Tribunal Judge Bristow are set out in paragraphs [32] to [62] of her decision. The findings were summarised at paragraph [43] of the decision as follows:

> "… I am not satisfied, for the reasons given above, that the appellant has proved his account to the lower standard. I am not satisfied that the appellant is illiterate. I am not satisfied that he was approached by two males called Kaman and Mahdi. I am not satisfied that a male called Emad engaged him to transport a box between him and Kaman and Mahdi. I am not satisfied that he was asked to take three KDPI members to a mountain. I am not satisfied that he was ambushed and shot at by the Passdars. I am not satisfied that he left his coat together with his mobile telephone and ID card at the scene of the ambush. I am not satisfied that the Iranian authorities were searching for the appellant or that he is a person of any interest to them. I am not satisfied that the Iranian regime is aware of the appellant's online activity."

Remaking the decision

6. The appeal was listed for a resumed hearing before me to remake the decision. 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.

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

The evidence

8. The appellant attended the hearing and was assisted throughout by a Kurdish Sorani interpreter arranged by the Tribunal. Both the interpreter and the appellant confirmed they understood each other and were able to communicate without any difficulty.

9. At the outset, Mr Wilson confirmed the appellant relies upon:

   a. The appellant's bundle that was before the First-tier Tribunal. Mr Wilson confirmed that bundle largely comprises of background material that is irrelevant for the purposes of the hearing before me.

   b. A supplementary bundle that was sent to the Upper Tribunal by Freedom Solicitors under cover of a letter dated 17th July 2019. The bundle is accompanied by a Rule 15(2A) application and the bundle comprises of a witness statement dated 17th July 2019 and exhibits, comprising of a total of 119 pages. I refer to that bundle as [AB1]

c. An addendum bundle comprising of 34 pages. I refer to that as Bundle [AB2]

10. Mr Wilson explained that his firm was instructed in February 2020 after the decision of Upper Tribunal Judge Dr H Storey had been promulgated. The late service of the addendum bundle was caused by some difficulty in obtaining the relevant papers from the appellant's previous representatives, and his firm had then sought to ensure the Tribunal had the relevant evidence before it. Mr Bates did not object to the appellant's belated reliance upon the addendum bundle, [AB2], and I granted the appellant permission to rely upon the evidence set out in that bundle. Mr Wilson also provided me with a skeleton argument comprising of 9 paragraphs.

The appellant's evidence

11. The appellant adopted his witness statements dated 17th July 2019 and 26th April 2022. The appellant confirms that since the hearing before the First-tier Tribunal in January 2019, he has continued to post and share information on his Facebook account.

12. The appellant exhibits to his statement dated 17th July 2019, an updated print of his Facebook page with translations of some of the posts to illustrate their content. The appellant also claims that he has now started to attend demonstrations and meetings. He has exhibited a schedule of the events that he has attended and photographs confirming his attendance. He states that photographs of his attendance at those events are also posted on his Facebook account. He explains that although he wanted to, he was not previously able to attend events to show his support for the Kurdish cause, because he did not have the funds to travel to events. He claimed he was receiving help from his friend who has been granted refugee status and is working. The appellant believes that the authorities in Iran monitor Facebook very closely, and so they may already know of his Facebook account and what he has

posted on it. He claims that if questioned on return to Iran, he will truthfully confirm the reasons he has been in the UK and the reasons that he gave for claiming asylum.

13. In his witness statement dated 26th April 2022, the appellant claims his involvement in attending activities since his previous statement has been limited, largely due to the Covid pandemic. He claims he has also lost the financial support of his friend, who has moved away from Wolverhampton. With the limited asylum support he receives, the appellant claims that he has been unable to afford the fares to travel to demonstrations. He claims that during the pandemic he continued his support, voicing his concerns over human rights abuses towards Iranian Kurds using his Facebook account. He exhibits printouts which he claims focus on the content he has shared, via pictures and videos of the Iranian regime brutalising and killing Kurdish people. He draws attention, in particular, to a photograph of him with an individual who I shall refer to in this decision as [QK], who is said to be one of the main organisers of the UK KDPI. The appellant claims there can be no doubt that [QK] is likely to be monitored by the Iranian intelligence services and it is likely that the appellant's association with him, will have brought the appellant to the attention of the authorities. The appellant claims that during protests outside the Iranian Embassy, he has been photographed by fellow demonstrators who upload their photographs to social media platforms to demonstrate their allegiance to the KDPI. He claims that photographs of him will therefore be visible on many publicly available Facebook and social media accounts.

14. In his oral evidence before me, the appellant said that he is now able to read and write a little English and Kurdish. He said that he had previously received help with his posts on his Facebook account, but he has now started 'posting' material himself. The appellant confirmed that at page 28 of [AB2], there is a photograph of the appellant with [QK], who has links with most of the leaders of the Kurdish opposition groups, and senior members of groups here in the UK. The appellant said that he

posted that photograph on his Facebook account, although that is not apparent because his name appears to have been cut off from the top of that page.

15. The appellant said that [QK] is one of the organisers of most of the activities and demonstrations in the UK. Mr Wilson confirmed that the Tribunal has not been provided with a translation of the text that appears under the photograph. The appellant said that the photograph was taken at an event organised by the KDPI in Manchester and took place on the day of the anniversary of the execution of the former Kurdish leader. At the event, there were speeches by those who attended so that the 'new generation' understands and appreciates what their predecessors have done for them. The appellant said that [QK] was one of the organisers of the event. He did not know who the other organisers were. The appellant confirmed that there are further pictures of [QK] at pages 29 to 31 of [AB2]. They are not extracts from the appellant's Facebook account but extracts from the account of [QK]. Page 29 of [AB2] shows [QK] with Dr Qasimlo, an old friend of the former leader of the KDP. The appellant claimed Dr Qasimlo had been assassinated in Austria. Page 31 of [AB2] is a photograph that appears on the Facebook account of [QK], a 'friend', that the appellant has 'liked'. The appellant was asked by Mr Wilson whether he is referred to, in any of the posts that appear on the Facebook account of [QK]. He said; "*No. He is only my friend".* The appellant confirmed that he does not appear in any of the photographs that are at pages 29 to 31 of [AB2].

16. Mr Wilson then referred the appellant to the photograph that appears at page 32 of [AB2]. The appellant explained that that is an extract from the Facebook account of a friend of the appellant who I shall refer to as [RC]. The date of that post is 1st February. The appellant said it was taken at some point between 2016 to 2019. He explained that the photograph shows that people from inside the Iranian Embassy were recording people outside. The appellant said that he had been present outside the Embassy when that photograph was taken. The appellant

said he had not referred to his attendance at demonstrations during the course of his appeal previously, because no-one had asked him about it. The appellant was referred to the schedule exhibited to his statement dated 17th July 2019 setting out the demonstrations he claims to have attended. The schedule is at page 103 of [AB1]. The appellant was asked why there is no reference to him having attended a demonstration on 1st February. The appellant explained the picture that appears at page 32 of [AB2] is a picture that was in the public domain before it was posted by [RC] on 1st February and is a picture that is often posted when demonstrations occur. The appellant said that at every demonstration, there are people taking photographs secretly from inside the Embassy, and sometimes they do so without anyone noticing. The appellant clarified that he does not know whether he was at the demonstration at which the photograph was taken, but the photograph demonstrates what the Iranian regime does. He confirmed there is nothing in the evidence before me to show that photographs were taken from inside the Embassy, during any demonstration attended by the appellant.

17. The appellant was asked about his support for the KDPI. He said that he is supporting those that live in Iran by doing whatever he can for them. He confirmed he supports the KDPI.

18. In cross-examination, the appellant said that he last had contact with family members in Iran, a couple of years ago. He said that after he arrived in the UK, he contacted them twice, and has not had contact since. He could not remember precisely when that was, but it was the middle or end of 2017. He claimed that the last time he spoke to them, they told him they were being observed by the authorities “disrespectfully and very rudely”.

19. Asked about his Facebook account, the appellant claimed he did not set up the account himself. It had been set up for him by a friend before the appellant attended his first interview with the Home Office. He said he started posting on the account, after it was opened. Mr Bates asked the

appellant why he had only provided evidence of posts, which post-date the hearing of his appeal before the First-tier Tribunal. The appellant said it was not his fault, and his previous representatives had not done their job properly. Mr Bates referred the appellant to the change of his name on his Facebook account. The appellant explained that after he approached his current solicitors, they noticed that his name is spelt differently on his Facebook account. He informed them that the account had been set up by a friend, and he then corrected his name. He said he made the correction after the last hearing before the Upper Tribunal. He claimed he had only amended his name. He was asked why the spelling of his name mattered. The appellant said that personally for him, it does not make any difference, but he had changed the name to make it the same as on the papers so that he would not be criticised by the Home Office. He explained that if he had not been told by his solicitors, he may not have changed the name at all.

20. The appellant was asked whether he is a member of the KDPI. He said that he is not at the moment but would like to be in the future. The appellant was asked about [QK]. He said that he has only met him once, but they chat via 'Messenger'. He said that he had asked him to provide a statement and attend the hearing but was told that they have been told not to attend "these things". He said the KDPI has split, and they are now negotiating to reconcile. Asked why that should stop him attending the hearing and giving evidence, the appellant said that they have been told by the two parties' that they should not attend such hearings before they are reunited. He said some of the parties' representatives abuse their position. The appellant confirmed that the text in the posts that are at pages 29 to 31 of [AB2], was originally in Kurdish and the copies provided to the Tribunal, had been provided with an automatic translation.

<u>The parties submissions</u>

21. Mr Bates submits the appellant's sur place activities are not genuinely motivated. He submits the evidence before the Tribunal demonstrates the appellant attends demonstrations and simply takes the opportunity to be photographed by others attending. Mr Bates submits the appellant's name on his Facebook account appears to have been spelt incorrectly previously. The appellant changed the name on his Facebook account because it suits him, for the purposes of this claim, and because he needs to manufacture evidence to support his appeal. The appellant has provided an extract from his Facebook account that shows that he 'posted' a picture of him with an individual in uniform at page 28 of [AB2]. There is no objective evidence to confirm who that individual is. The appellant claims he is a high ranking official of the KDPI but has provided no evidence to support that claim. The photograph was taken in an enclosed room with many empty seats. Mr Bates submits it is unlikely that the Iranian authorities would have any interest in that event, or the individual shown.

22. Mr Bates submits the picture at page 29 of [AB2] is a picture that was taken in Belgium and has 'auto translated' text. There is no explanation as to why that evidence is significant. It is an extract from the Facebook account of someone else and makes no reference to the appellant. The photograph that appears at page 31 of [AB2] is of an individual who is not even showing his face. The photographs at pages 32 to 34 of [AB2] are, Mr Bates submits, generic photographs that are in the public domain that show people looking out of a window, and at their highest might show that demonstrators are sometimes filmed. There is no evidence that the building is the Iranian Embassy, or the location. There is no evidence before the Tribunal from the individual that posted the photograph.

23. Mr Bates submits the appellant has sought to put together a claim in an attempt to persuade the Tribunal that he has a similar profile to the individual in XX (PJAK, sur place activities, Facebook) (CG) [2022] UKUT 00023 (IAC). However, the appellant has failed to establish that he is

connected to someone with a profile that the Iranian authorities may be interested in. The evidence relied upon by the appellant concerning his Facebook account is not supported by the 'metadata' and simply provides the Tribunal with some snapshot photographs. Mr Bates invites me to find the appellant does not share any genuinely held views, and it will be open to the appellant to delete his Facebook account before the 'ETD' process begins. There is no reason for the appellant to disclose the Facebook account because it does not represent a genuinely held view. Mr Bates refers to paragraphs [98] to [102] of the Upper Tribunal's decision in XX (PJAK, sur place activities, Facebook) (CG) in which the Tribunal considered the extent to which a person can be expected not to volunteer the fact of having previously had a Facebook account, on return to his country of origin. The Tribunal said:

> "98. Our answer is in two parts. The first is whether the law prevents a decision maker from asking if a person will volunteer to the Iranian authorities the fact of a previous lie to the UK authorities, such as a protection claim made on fabricated grounds, or a deleted Facebook account. We conclude that the law does not prevent such a question, in this case. Whilst we consider Mr Jaffey's suggestion that Lord Kerr had specifically counselled against asking the question at §72 of RT (Zimbabwe), that was in a very different context, namely where political loyalty, as opposed to neutrality, was required by the Zimbabwean regime. In that case, the relevant facts included the risk of persecution because of the activities of ill-disciplined militia at road blocks. The means used by those manning road blocks to test whether someone was loyal to the ruling Zanu-PF party included requiring them to produce a Zanu-PF card or to sing the latest Zanu-PF campaign song. An inability to do these things would be taken as evidence of disloyalty, where even political neutrality (as opposed to opposition) would result in a real risk of serious harm (§16). In that context, Lord Kerr regarded an analysis of whether a person could avoid persecution by fabricating loyalty as unattractive. He raised practical concerns in evaluating whether lying to a group of ill-disciplined and unpredictable militia would be successful (§72) but made clear that his comments were by way of "incidental preamble," as the critical question was whether the appellant in that case had the right to political neutrality (§(73).
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> 99. The key differences in our case are that the Iranian authorities do not persecute people because of their political neutrality, or perceived neutrality; and a returnee to Iran will not face an unpredictable militia, but a highly organised state. In our case, a decision maker is not falling into the trap of applying a test of what a claimant "ought to do," in cases of imputed political opinion. That was counselled against by Beatson LJ in SSHD v MSM (Somalia) and UNHCR [2016] EWCA Civ 715.
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> 100. Instead, in deciding the issue of risk on return involving a Facebook account, a decision maker may legitimately consider whether a person will

> close a Facebook account and not volunteer the fact of a previously closed Facebook account, prior to the application for an ETD: HJ (Iran) v SSHD [2011] AC 596. Decision makers are allowed to consider first, what a person will do to mitigate a risk of persecution, and second, the reason for their actions. If the person will refrain from engaging in a particular activity, that may nullify their claim that they would be at risk, unless the reason for their restraint is suppression of a characteristic that they have a right not to be required to suppress, because if the suppression was at the instance of another it might amount to persecution. It is difficult to see circumstances in which the deletion of a Facebook account could equate to persecution in this sense, because there is no fundamental right protected by the Refugee Convention to have access to a particular social media platform, as opposed to the right to political neutrality.
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> 101. The second part of our answer relates to Lord Kerr's concern about whether an analysis of what a person will do is too speculative or artificial an exercise. We accept Mr Jaffey's submission that there may be cases where the exercise is too speculative, particularly in the context of a volatile militia. That is not the case here.
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> 102. We consider that it may be perfectly permissible for a decision maker to ask what a returnee to Iran will do, in relation to a contrived Facebook account or fabricated protection claim. Whether such an inquiry is too speculative needs to be considered on a case-by-case basis, but factors which may point to that question not being impermissibly speculative include: where a person has a past history of destroying material, such as identification documents, or deception or dishonesty in relation to dealings with state officials; whether the government has well-established methods of questioning (in the Iranian state's case, these are well-documented and therefore predictable); and whether the risks around discovery of social media material, prior to account deletion, are minimal, because a personal's social graph or social media activities are limited.

24. Mr Bates submits the appellant is simply an Iranian national of Kurdish ethnicity who may have exited Iran illegally. On a proper application of the country guidance, he would not be at risk upon return.

25. In reply, Mr Wilson adopted his skeleton argument and submits there are three points to make on behalf of the appellant. First, in BA (Demonstrators in Britain – risk on return) CG [2011] UKUT 36, at paragraph [36], the Tribunal said it was persuaded that the Iranian authorities attempt to identify persons participating in demonstrations outside the Iranian Embassy in London. There is evidence that they photograph and infiltrate demonstrations. They use that knowledge to identify individuals who are of interest. Mr Wilson submits the involvement of the appellant in activities critical of the Iranian

authorities, has put him in a position that his Facebook account will be accessed by the authorities on return.

26. Second, the decision of the Upper Tribunal in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) is important to note because it refers to the attitude of authorities to the Kurdish population. The enhanced activity of Kurds has enhanced the sensitivity of the regime. The same must apply to people who are involved in demonstrations concerning the Kurdish struggle. There is therefore a likelihood that the appellant's Facebook account will be considered by the authorities.

27. Third, the appellant does not accept that his sur place activity is contrived as the respondent submits. The appellant claims he is a supporter of the Kurdish cause, and the material he has posted on his Facebook account is evidence of that. He is of Kurdish ethnicity, and it is likely that he would be a supporter of the Kurdish cause. Mr Wilson submits that if returned, regardless of whether the appellant deletes his Facebook account, he would be seen as a Kurd who left Iran illegally, and if asked whether he had supported the Kurdish cause, he would have to be honest and tell them that he does. Mr Wilson submits that on the lower standard, there is a likelihood that the appellant has brought himself to the attention of the authorities and will be of interest to the authorities on return. He will therefore be at risk upon return to Iran, and his appeal should be allowed.

28. Mr Wilson accepts there is no evidence before me regarding the profile of [QK], but he submits, there are photographs of him with other high-profile individuals. He appears in uniform and that suggests he is likely to be of interest to the authorities, and an individual whose activities are monitored.

Findings and Conclusions

29. It is uncontroversial that the appellant is an Iranian national, of Kurdish ethnicity. Judge Bristow rejected the appellant's claim regarding the

events that caused the appellant to leave Iran and the adverse findings made, are preserved. There is nothing in the evidence before me that undermines the findings made by Judge Bristow that, even to the lower standard, the appellant has failed to establish that he is at risk as claimed, as a result of events that took place whilst he was in Iran.

30. In his error of law decision, Upper Tribunal Judge Dr H Storey identified that the issue is whether the appellant, as a national of Iran of Kurdish ethnicity, would be at risk on return by virtue of his online postings. For the avoidance of doubt, I have considered the appellant's sur place activities in the UK, that also include his attendance at demonstrations outside the Iranian Embassy.

31. In reaching my decision I have had regard to all the evidence before me, whether or not it is referred to. I have had regard, in particular to the evidence set out in the witness statements of the appellant and the exhibits, relating to his Facebook account, and his attendance at demonstrations. I have had the opportunity of hearing the oral evidence of the appellant and of seeing his evidence tested in cross-examination.

32. 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. I have been careful not to find any part of the account relied upon by the appellant, to be inherently incredible, because of my own views on what is or is not plausible.

<u>The appellant's political opinion</u>

33. It is useful to begin by considering the appellant's claim that his sur place activities represent his genuinely held beliefs.

34. In his evidence before me, the appellant said that he did not set up his Facebook account himself. He said that it had been set up by a friend, before the appellant was first interviewed by the Home Office. Annex F of the respondent's bundle has the extracts from the appellant's Facebook account that he previously provided to the respondent. Those extracts from his Facebook account were considered by the respondent in her decision dated 4th November 2018. The appellant's surname on his Facebook account had a different spelling at that time. The respondent noted the appellant had no knowledge of what was being posted at that time, because he is illiterate. The appellant had relied upon friends to 'post' things for him without knowing what was being 'posted'.

35. At page 4 of [AB1], there is an extract from the appellant's Facebook account that appears have been taken and printed on 7th October 2019. The extract shows the appellant 'joined in January 2017'. That is almost a year after his arrival in the UK. As at 7th October 2019, the appellant's surname on his Facebook account still had a different spelling. The appellant appears to have had '1,471 friends' in October 2019. At page 3 of [AB2] is an extract from the appellant's Facebook account that states he has '2.2K friends.' The appellant had by that time corrected the spelling of his surname on his Facebook account. There is no breakdown of the appellant's Facebook friends, nor of his timeline of his 'activities', 'posts', 'comments' and 'likes'.

36. 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.
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> 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.

37. I have had regard to the extracts from the appellant's Facebook account that are to be found in the respondent's bundle and in bundles [AB1] and [AB2]. I have carefully considered the translations that have been provided of the applicant's posts. I do not find the appellant to be a credible witness in relation to his sur place activities.

38. The evidence before me from the appellant's Facebook account is limited. When the appellant was asked before me about his support for the KDPI, he said that he is supporting those that live in Iran, by doing whatever he can for them. The appellant's evidence regarding his support for the 'Kurdish cause' is very vague and in the most general terms. Although I am prepared to accept that some of the material posted on the appellant's Facebook account since the dismissal of his appeal by the First-tier Tribunal in February 2019 is critical of the Iranian authorities, I find the appellant's sur place activities are an attempt to bolster a weak international protection claim.

39. The post the appellant now places significant reliance upon, is the one that appears at page 28 of [AB2]. It is a 'post' dated 12th April 2019. The photographs are accompanied by text that is untranslated. Although that post now shows the appellant's name correctly spelt, at the time of that post, the appellant's surname on his Facebook account was spelt differently. The appellant's evidence is that he had changed the name on his Facebook account after the anomaly had been pointed out to him by his representatives, so that he would not be criticised by the Home Office. I find the appellant changed the spelling of his surname on his Facebook account to ensure to bolster his claim and to ensure that he would be able to maintain his claim that the Iranian authorities would be aware of his activities on return.

40. The timing of the posts that are critical of the Iranian authorities and the appellant's attendance at demonstrations is curious. The appellant's

initial activity on his Facebook account as disclosed to the respondent before her decision to refuse the claim for international protection was limited to the appellant simply 'sharing' material posted by other Facebook users. Since his appeal was dismissed by the First-tier Tribunal, the appellant has 'posted' information on his Facebook account relating to a range of issues in Iran and relating to his attendance at demonstrations. Some of the posts include text posted by the appellant. The Facebook posts that are critical of the Iranian regime begin in June 2019, after the First-tier Tribunal Judge had rejected *(in February 2019)* the appellant's account of events in Iran and found that the Iranian regime is not aware of the appellant's on-line activity. There is no explanation, let alone reasonable explanation, even to the lower standard, to explain why the appellant had escalated his Facebook activity following the findings previously made by the First-tier Tribunal.

41. The appellant has been unable to provide any proper explanation as to how he operated his Facebook account, beyond saying that it was set up by a friend, and that he initially relied upon friends to explain to him what the articles are about. He does not explain how he decided what he wanted to post, or the articles that he would 'like' or 'share'. Given the appellant's Facebook account was set up by a friend and the only thing he has changed since, is the spelling of his surname, the appellant cannot know whether his account is a 'public' account, which would be visible to others.

42. Furthermore, as Mr Bates submits, the appellant has failed to disclose the relevant 'metadata' including his 'locations of access to Facebook' and 'full timeline of social media activities', which would be readily available. The extracts from the appellant's Facebook account do not in themselves assist me with when the relevant articles were posted or whether the posts, likes, or shares, are permanently visible to the public. It is hard to discern the meaning of some of the 'posts' that have not been translated and the pictures/photographs are not always self-explanatory. There is

no evidence to suggest that the Iranian authorities have seen the appellant's posts.

43. The evidence before the First-tier Tribunal previously was that the appellant had not attended any demonstrations or meetings in the UK. At page 103 of [AB1], the appellant has provided a 'schedule' of the demonstrations that he claims he has attended. The first demonstration that he attended is said to have taken place on 10th March 2019 and the reason for the demonstration is said to be "International Women's day". The appellant's attendance at that demonstration pre-dates the decision of the First-tier Tribunal. The appellant lists attendance at demonstrations on 30th March 2019, 12th May 2019, and 9th June 2019. The appellant's attendance at the latter two demonstrations post-dates the decision of the First-tier Tribunal. The appellant has provided photographs that he claims, show his attendance at those demonstrations.

44. The appellant claims that although he wanted to, he was not previously able to attend events to show his support for the Kurdish cause, because he did not have the funds to travel to events. In his second witness statement dated 26th April 2022, the appellant claims his involvement in attending activities since his previous statement has been limited, largely due to the Covid pandemic. He claims he has also lost the financial support of his friend, who has moved away from Wolverhampton. The appellant has not provided any evidence beyond his own evidence and the photographs that show attendance at the demonstrations often holding a small poster, of his involvement when he was able to attend. I accept that attendance at demonstrations will have been hampered by restrictions imposed during the Covid-19 pandemic, but in my judgment the appellant does has not shown any real commitment to the Kurdish cause. There was a significant gap between the appellant's arrival in the UK and his attendance at any meetings or demonstrations and there is no evidence of any participation since 2019. I find, as Mr Bates submits, that the appellant attends demonstrations and simply takes the opportunity to be photographed by others attending to bolster his claim.

45. 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

46. 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."

47. 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. The deletion of the appellant's Facebook account, would not on the findings I have made, equate to persecution. As the appellant's sur place activities do not represent any genuinely held beliefs, the appellant would not be expected to lie when questioned. The deletion of the Facebook account will not therefore contravene the principles established and set out in HJ (Iran) v SSHD [2011] AC 596. The closure of the Facebook account will have the effect of removing all posts he has created.

48. 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 (PJAK, sur place activities, Facebook) (CG), 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.

49. The appellant's claim that he was previously recruited by the KDPI and that he agreed to take KDPI members to a mountain hideout was flatly rejected by the First-tier Tribunal. 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. In fact, for a considerable period of time, the appellant's surname on his Facebook account was incorrectly spelt. I accept some of the material posted on the appellant's Facebook account since the dismissal of his appeal by the First-tier Tribunal in February 2019 is critical of the Iranian authorities. According to the extract from the appellant's Facebook account printed off on 7th October 201, the appellant appears to have had '1,471 friends'. At pages 3, 14, 19, and 21 of [AB2] there appear to be three almost identical extracts from the appellant's Facebook account that state he has '2.2K friends'. The date upon which those extracts were printed is not apparent. The appellant has provided what appear to be the photographs that he has shared on his Facebook account, but there is no breakdown of the appellant's Facebook friends, nor of his timeline of his 'activities', 'posts', 'comments' and 'likes'.

50. There is no evidence before me to establish whether the appellant's 'friends' have 'public' or 'private' settings. The appellant places significant reliance upon the 'post' of a picture and text that is to be found at page 28 of [AB2]. The appellant claims the individual that he is

photographed with is [QK], who has links with most of the leaders of the Kurdish opposition groups, and senior members of groups here in the UK. The appellant claims [QB] is an individual that is of interest to the Iranian authorities and that his association with [QB] mean that the appellant will already have come to the adverse attention of the Iranian authorities. There is no evidence before me regarding [QB] and his position within the KDPI, if indeed he has an official role, or of his profile. However, even taking the appellant's account that [QB] has a significant profile at its highest, importantly, the 'post' the appellant now places significant reliance upon, at page 28 of [AB2] is a 'post' dated 12th April 2019. The appellant's name at that time was incorrectly spelt on his Facebook account at that time and was not corrected until some significant time later. If the Iranian authorities had any interest in that event, which appears in any event to have been of a small scale, or any interest in the individual the appellant is photographed with, they would at that time, have been unable to link the appellant to that event. Any link would be to an individual of the surname previously used by the appellant.

51. The appellant claims the extracts from a Facebook account that appear at pages 29 to 31 of [AB2] are not extracts from the Facebook account of [QK]. It is unfortunate that there is no translation, even of the name of the individual who 'posted' the photographs and text, to confirm that they are extracts from the Facebook account of [QB]. The appellant has not provided any adequate explanation as to how he has come to be in possession of that material, if indeed it does emanate from the Facebook account of [QB]. [QB] has not provided a witness statement confirming they are extracts from his Facebook account. I am not satisfied, even to the lower standard, that the relevant pages are genuine extracts from the Facebook account of [QB]. However, even if I am wrong about that, and I were to accept that the extracts from [QB]'s Facebook account show [QB] with prominent figures, that does not assist the appellant. Page 31 of [AB2] is a photograph that appears on the Facebook account of [QK], a 'friend', that the appellant has 'liked'. The appellant was asked by Mr Wilson whether he is referred to, in any of the posts that appear on the

Facebook account of [QK]. He said; "*No. He is only my friend".* The appellant confirmed that he does not appear in any of the photographs that are at pages 29 to 31 of [AB2]. Again, importantly, the appellant 'liked' the photographs that appears to have been 'posted' on 17th November 2019. The appellant's name at that time was incorrectly spelt on his Facebook account at that time. Any interest the Iranian regime had in that 'post' or that individual in November 2019, would not have resulted in a connection with the appellant.

52. 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. I accept the submission made by Mr Wilson that 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?

53. On the appellant's own account as set out in the schedule of demonstration attended that he relies upon, and the photographs provided, the appellant had attended four demonstrations in 2019. He claims that his inability to participate since was because of the Covid-19 Pandemic and because he could not afford the fares to travel to demonstrations. I find the appellant has attended no more than four demonstrations and his role in these was no more than as a member of the crowd holding a small sign with no genuine belief in the cause such that, in the absence of any evidence that his presence was noticed or publicised, no risk will have arisen from this attendance.

54. All that the appellant is left with is his exit from Iran. In her decision, the respondent said, at paragraph [50], that she does not accept the appellant had reason to exit the country illegally. I agree. The appellant's account of the events that cause him to leave Iran has been rejected by the First-tier Tribunal, and there is in my judgment no reason why the appellant should have left Iran illegally. Nevertheless, he has now been out of Iran for several years and I am prepared to accept, to the lower standard, that if he is returned to Iran with an ETD, he will be considered the Iranian authorities to be someone that illegally exited.

55. 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."

56. 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.

57. 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.

58. 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.

59. 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.

60. 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 is a supporter of the KDPI at the lowest possible level, but he is not an individual that has engaged in even 'low-level' political activity or activity that is perceived to be political.

61. I find the appellant will not be required to reveal to the Iranian authorities he previously had a Facebook account or if asked, he would not reveal it in any case, as his beliefs are not genuine; the 'truth' is that he has no genuine beliefs, and the Facebook account is not of his own creation. I have found he can reasonably be expected to close his 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 (PJAK, sur place activities, Facebook) (CG), 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.

62. I find the appellant has failed to discharge the burden of proof upon him to the required standard to establish he is anything other than a failed asylum seeker. It follows that I find the appellant would not be at risk upon return and his appeal is dismissed.

Decision

63. The appeal is dismissed.

64. I make an anonymity direction.

Signed **V. Mandalia** Date: 19th August 2022

Upper Tribunal Judge Mandalia