Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001560
IA/00393/2021

THE IMMIGRATION ACTS

Heard at Birmingham CJC (hybrid hearing).	**Decision & Reasons Promulgated**
On 8 September 2022	**On 1 November 2022**

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

ZSP
(Anonymity direction made.)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Wood of the Immigration Advice Service.
For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision a First-tier Tribunal Judge Dixon ('the Judge') promulgated following a remote hearing on 19 July 2021.

2. The appellant is a citizen of Iran of Kurdish ethnicity who left his home state in February 2019, arriving in the UK on 5 March 2019, at which

point he claimed asylum. The core of the appellant's claim is that for some six months he had been a supporter of the KDPI. He worked in a photocopying and printing shop and agreed to make copies of ID cards and laminate them for the benefit of the party. He had been introduced to the party and undertaken this work at the request of a friend, H. The appellant claims that some time later his auntie had been told by a neighbour that his father and his friend had been arrested by the Ettela'at and that he believe the authorities had connected him to his friend. The appellant claimed that had he been there when the Ettela'at raided his home he too would have been arrested by the authorities. The appellant claims he has had no contact with any of his family members since he left Iran and also states he will be at risk on return as a result of his participation in demonstrations in support of the KDPI in the UK and on the basis of having posted anti-regime material on his Facebook account.

3. The Judge, in addition to the written evidence, had the benefit of seeing and hearing oral evidence being given. The Judge sets out findings from [37] of the decision under challenge which can be summarised in the following terms:

a) The appellant's account is not truthful even to the lower standard of proof [38].

b) The Judge accepted that the respondent had accepted the appellant's explanation for becoming involved in the KDPI may be credible but, notwithstanding this, was not satisfied the actual elements of the account are truthful [38].

c) The Judge finds a conflict "at the very heart of the appellant's account" in terms of what happened in the early hours of the morning when he went with his friend to his friend's house which was found to be material as it related to the very events the appellant claimed led him to have to flee Iran [38].

d) Notwithstanding the appellant's explanation in his oral evidence for the contradiction., the fact remained there is a contradiction at the core of the account which undermined the credibility of it [38].

e) The appellant decided to flee Iran on the basis of hearsay, a report from a neighbour. The Judge did not accept he would not have taken any steps to seek further particulars of what had happened in order to verify the information given to him which could easily have been undertaken [39].

f) The Judge finds the real reason there was no attempt to verify the alleged events is because they simply did not take place [40].

g) The Judge did not accept the appellant's claim to have contact with his family since he left Iran is credible [41].

h) The Judge found the appellant's attempts to explain the lack of contact by expanding his account undermined the credibility of

the claim. The Judge finds there is no sensible reason why the appellant could not have referred to being frightened as a reason earlier in his evidence, and found the appellant was simply not telling the truth on this aspect. The Judge finds the reason the appellant claimed not to have been in contact with his family is because he did not want to open himself up to questions regarding any interest by the authorities in his family [41].

i) The Judge did not accept the appellant's account of involvement with the KDPI in Iran, did not accept he had come to the adverse attention of the regime in Iran, and found he did not face a real risk of treatment contrary to article 3 on the basis of anything that happened to him in Iran [42].

j) The Judge accepted the appellant had been involved in demonstrations but found he will not have come to the attention of the Iranian authorities and that he was no more than "a face in the crowd" [43].

k) The Judge finds the attendance at demonstrations did not reflect a genuine political impulse and merely arose from a desire to furnish himself with an asylum claim [43].

l) The appellant has provided a number of Facebook postings which he claims he has made public containing material contrary to the regime in Iran. The Judge finds that apart from the appellant's word there is no basis for concluding the material is in the public domain as opposed to only having been viewable by the appellant's Facebook contacts. [43].

m) The Judge accepts that at the 'pinch point' on return the appellant will have to disclose his password for his Facebook account to the authorities and they will find out about his anti-regime activity, including attending demonstrations, but finds that in light of the fact the appellant has no genuine political involvement he can be expected to delete any Facebook material prior to entering Iran [43].

n) The Judge finds the appellant, when asked whether he posted any anti-regime material could answer in the negative as the activity had not been a genuine expression on his part and that he can be expected to delete social media activity relating to the Iranian regime and deny any political involvement as he is not a political animal at all [43].

4. The appellant sought permission to appeal asserting the Judge provided no authority for the finding at [43] that the appellant could be reasonably expected to delete his Facebook material prior to entering Iran. The grounds assert the Facebook account was populated by numerous antiregime posts which will place the appellant at risk on return and that some posts show the appellant's attendance at demonstrations in the UK. Reference is made to the decision of the

Court of Appeal in Danian [1999] EWCA Civ 3000. The grounds also assert the Judge failed to apply country guidance to the appellant's appeal which it is argued undermines the conclusions regarding risk on return.

5. The appellant also asserts a misdirection in law in failing to adopt a holistic assessment of the appellant's account instead of engaging in a "linear compartmentalised appraisal". It is submitted the Judge had not considered the consistency of the appellant's UK-based political activity with his claimed support for the KDPI in Iran; and claims the Judge disbelieved the events in Iran and then moved on to consider the UK-based activity.

6. The grounds assert the Judge had not applied his finding at [38] to his assessment of the genuineness of the appellant's sur place activity which it is argued demonstrates a failure to assess the evidence holistically.

7. The grounds assert the Judge misdirected himself in the approach to assessing the plausibility of aspects of the appellant's account, arguing the Judge failed to take into account the guidance set out in HK v Secretary State the Home Department [2006] EWCA Civ 1037.

8. It is also asserted the Judge made irrational findings when claiming there is no evidence supporting the appellant's statement his Facebook posts are publicly viewable as it is argued that printouts from the Facebook account depicted a globe next to the time and date, which indicates they are publicly viewable and indicating prime facie support for the appellant's claim. The grounds assert the Judge has either ignored or overlooked that evidence.

9. The grounds assert that the errors are material in that had they not been made the Judge may have arrived at a different conclusion. It is argued the appellant should not be expected to delete his anti-Iranian regime posts, including the photographs of his attendance at demonstrations he attended.

10. Mr Wood's oral submissions were in live with the pleaded grounds.

11. Permission to appeal was granted by another judge of the First-tier Tribunal the operative part of the grant being in the following terms:

> 2. There are several arguable errors of law. These include:
>
> a. The judge arguably erring in making a finding as to how a dissident Kurd in Iran would react upon being told his father had been arrested (decision, para. 39;grounds, paras. 18,19). The judge's expectation that it is implausible one would flee upon news of this from one's mother's neighbour without further enquiry is arguably unreasonable given the difficulties any immigration judge would have in making such an assessment without intimate familiarity with the realities of life as a Kurd in Iran.
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> b. The judge's view that the appellant's retelling of precise details would be sharper for previous dramatic events is arguably at odds with traditional experience in this tribunal (decision, para.38; grounds 22 – 24). Indeed, it might be thought notorious that the ability to recount such matters

consistently is often diminished when they relate to traumatic or stressful events.

12. The Secretary of State opposes the appeal in her Rule 24 response dated the 15th of February 2022, the operative part of which is in the following terms:

3. The SSHD resists the appellant's appeal. It is submitted that the reasoning at [39] of the determination is sensible and not arguably perverse. The Judge, having heard the evidence, is entitled to conclude that the appellant would have taken basic steps to ascertain the situation, where doing so would be straightforward and practical. This finding should be considered in the context of the fact that the appellant claims to have taken no steps to attempt to contact his family since leaving Iran, without being able to advance any credible explanation for this failure [41].

4. The Judge was similarly entitled to conclude that the appellant will be able to remember the details of an important event forming part of the core of his claim [38]. Credibility is a matter for the Tribunal to assess, and in this case clear reasons have been given which rationally supports the overall conclusion is reached.

Discussion

13. Mr Wood placed reliance upon the country guidance case of HB (Kurds) Iran CG [2018] UKUT 00430 the headnote of which reads:

(1) SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC) remains valid country guidance in terms of the country guidance offered in the headnote. For the avoidance of doubt, that decision is not authority for any proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone.

(2) Kurds in Iran face discrimination. However, the evidence does not support a contention that such discrimination is, in general, at such a level as to amount to persecution or Article 3 ill-treatment.

(3) 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.

(4) 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.

(5) 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. Those "other factors" will include the matters identified in paragraphs (6)-(9) below.

(6) A period of residence in the KRI by a Kurdish returnee is reasonably likely to result in additional questioning by the authorities on return. However, this is a factor that will be highly fact-specific and the degree of interest that such residence will excite will depend, non-exhaustively, on matters such as the length of residence in the KRI, what the person concerned was doing there and why they left.

(7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.

(8) 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.

(9) 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.

(10) The Iranian authorities demonstrate what could be described as a 'hair-trigger' 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.

14. The first point of note is that the Judge was clearly aware of his authority and makes specific reference to the 'hair trigger' approach of the Iranian authorities.

15. Mr Wood's submissions, taken at their highest, seems to suggest that any individual involved in attending demonstrations or posting anti-regime information on their Facebook account, unless all is private,

faces a real risk on return to Iran entitling them to a grant of international protection.

16. HB (Iran) cannot be considered in isolation as there are a number of other relevant country guidance cases relating to the issues under consideration since 2018.

17. The most recent is XX (PJAK, sur place activities, Facebook) (CG) [2022] UKUT 00023 the head note of which reads:

> 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.

18. In BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) the Upper Tribunal considered risk to those attending demonstrations in the UK, including the use of Facebook. The head note of that decision reads:

> 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.
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> (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?

19. The starting point for the Judge considering risk on return is whether what the appellant claimed had occurred to him in Iran was credible. We find, having read the determination and supporting evidence as a whole that the Judge clearly considered the evidence with the required degree of anxious scrutiny and has given reasons that enable a reader to understand why he concluded as he did.

20. The first ground of challenge claiming the Judge materially erred in relation to the Facebook posts has not been made out, especially in light of XX. As discussed at the Error of Law hearing the appellant did not provide the type of evidence referred to in XX such as the account details and timeline of the Facebook account, to enable the Judge to

be satisfied that the posts had not been in any way amended or altered to create a false narrative. It was not irrational to place little weight upon the claim that the Facebook posts were public, as the only evidence of that was the oral evidence of the appellant who was found to have lied.

21. The finding of the Judge in relation to the settings on the Facebook account, that it was not clear whether they were public or private, is a finding within the range of these reasonably open to the Judge on the evidence. Copies of entries on the appellant's Facebook account clearly state that it is private; although some later entries appear to have had that specific wording removed. It is unclear as to who actually had access to the Facebook account at the relevant time. The reason for the finding in XX concerning production of the timeline for the Facebook account is that it is possible for a person with a private account to change the setting to public, print/download the information from the account they wish to rely on in support of their claim, and then immediately change the settings back to private. It is also the case that when one looks at the posts which appear to show a globe they are clearly posts of others that the appellant has added to his Facebook account. There was no evidence before the Judge or before us to show that any of those individual have come to the attention of the authorities in Iran such as to create any related risk to the appellant.

22. We do not find it made out that the Judge is guilty of artificial separation in the assessment of the evidence. The Judge had to start at some point. The appellant claims his real risk on return originates from events in Iran and it was logical for the Judge to start there. The Judge identified contradictions in the evidence and flagged a number of concerns in the appellant's claim including that having been told something which must have been hearsay he chose to flee Iran and travel all the way to the UK, including accessing the type of considerable funds that would have been required to pay an agent, rather than checking whether the information he received was true; and appearing to have taken no interest since leaving Iran in the welfare of his father or any other family member or his friend H.

23. We do not find that the Judge's comments in relation to this are in any way irrational or outside the range of those reasonably open to the Judge on the evidence. Although the grant of permission to appeal states the Judge arguably erred in making a finding on how dissident Kurds in Iraq would react and in relation to recalling precise details of events, judges of the First-tier Tribunal are experienced in assessing claims by individuals claiming international protection in the United Kingdom, including from Iran. The Judge's finding that it was implausible the appellant did not bother checking whether what he was told is true is nothing to do with the appellant's ethnicity but a simple comment upon the fact it is not unreasonable to expect a person who is told that his father has been arrested will find out whether what they have been told is true or not. It must also be remembered Judge had the benefit of seeing and hearing oral

evidence being given in addition to the documentary material. We find no material legal error made out on this head of claim.

24. The grounds refer to the decision of the Court of Appeal in Danian which is authority for the proposition that it does not matter if an individual undertakes acts that do not represent a generally held political belief per se, as it is how they will be perceived by potential persecutors for undertaking such acts that is the key point.

25. It was found in XX there is no evidence the authorities in Iran have the ability to monitor every person's Facebook account and as the claimed risk arising from the events in Iran has been found to lack credibility, the Judge's conclusion the appellant had not established, even to the lower standard, that he faced a real risk on return as a result of anything that occurred within Iran is a finding within the range of those available to the Judge.

26. The Judge's conclusions, having considered the evidence holistically, that the appellant's sur place activities did not represent a genuinely held political belief that formed a fundamental part of his personal identity is also a finding within the range of those available to the Judge on the evidence. It is therefore not unlawful for the respondent to expect the appellant to delete his Facebook account prior to any application for an Emergency Travel Document. Therefore even if at the 'pinch point' the appellant was asked if he had a Facebook account, which he could deny as there is no fundamental right to have such a source of social media, even providing the password would not enable the authorities to access a deleted account.

27. In relation to the Judge's findings at [38], the Judge noted the respondent accepted the appellant's explanation for being involved with the KDPI was credible, but the core finding is the Judge not accepting that anything the appellant had done created a real risk on return. There is a partial quote from [38] in the ground seeking permission to appeal but that paragraph in full reads:

> 38. I do not find the appellant's account to be a truthful one even to the lower standard of proof. I accept, as urged upon me by Mr Wood, that the respondent has accepted the appellant's explanation for becoming involved the KDPI as credible. To the extent that it is plausible and credible that a Kurd would have sympathy for the aims of the KDPI, then the appellant's account has a plausible grounding. Upon careful consideration of the actual elements of the account I am not, however, persuaded that it is truthful. I find that there is a conflict at the very heart of the appellant's account in terms of what happened in the early hours of the morning when he went with his friend to his friend's home. His witness statement indicated that his friend had parked his car in the garage. In his oral evidence however, when being questioned by Mr Rahman, he clearly said that the friend had parked his car on the road near his home. Of course I bear in mind the need to afford the benefit of the doubt to an appellant in a refugee case where appropriate. Some variations in detail are not material. I find that this conflict is material. It relates to the very events which are said to have triggered the claimant fleeing Iran. He claims that he 8 Appeal reference:

> PA/50106/2021 was in fear and that that is the reason why he did not return the printer to his shop. He said that that would have been too risky. Given the claimed fear operating on his mind which in this case I find would have concentrated his mind and crystallised the events in his mind, I conclude that he would have known very well whether or not his friend had taken the precaution of concealing the car in a garage or not. I appreciate that when I sought clarification from the appellant, he reverted to his witness statement version to the effect that his friend had driven the car into the garage. The fact remains that there is a contradiction at the core of the appellant's account and it undermines the credibility of it.

28. The specific finding of the Judges therefore is that although the claim that an Iranian Kurd may become involved in the KDPI was plausible and it credible that a Kurd would have sympathy for the aims of this group, the appellant's claims of what he did and what he believes in is not true. The generic statement that Kurds, referring to the collective, may have sympathy for the group does not undermine the Judge's finding that he did not believe that what the appellant was claiming with regard to support for this group or his political beliefs and activities was true. No arguable legal error arises.

29. We do not find the Judge has erred in assessing the credibility or plausibility of the account for the reasons set out above. The fact the appellant has been consistent concerning his father's arrest may be so, but that does not mean that what he was saying is true. A person can learn the story and repeat it on each occasion but that does not make an account that is a lie true by repetition. It may be that country evidence shows that family members of political activists may be detained, but the core finding of the Judge is the appellant has not provided credible evidence that he is a political activist or established that the claimed arrest of his father is true.

30. The Judge was entitled to doubt the appellant's claim that he had no contact with family members since he left Iran, especially as the rest of his evidence as to what occurred in Iran was found to be a lie. The Judge's conclusions on this point had not been shown to be irrational.

31. The appellant's assertion that was no evidential basis for concluding how the appellant's memory works, referring to [38], does not establish arguable legal error. Judges are not psychologists, psychiatrists, or psychoanalysts, and can only assess the merits of the case on the evidence they receive, and knowledge of the county concerned. As noted above, the Judge had the benefit of seeing and hearing the appellant gave oral evidence which would enable the Judge to assess the manner in which the evidence was being given. There was no medical evidence to indicate the appellant had any difficulty recollecting facts and having drawn the various threads of the evidence together the Judge makes a finding which is adequately reasoned. Disagreeing with this conclusion or suggesting different weight should have been given the fact that human memory can be fallible, fails to establish arguable legal error when there was no evidence before the Judge to support a claim that the appellant had

difficulties with recollection; such that a different approach to his evidence was warranted.

32. In relation to the appellant's claim of real risk for attending demonstrations in the UK, there are various photographs showing, for example, the appellant holding a flag which appears to be of the KDPI across the road from what appeared to be a group of demonstrators, showing the appellant with his back to the demonstrators holding what appears to be a photocopy of a page with faces on it, and a photograph of the appellant holding a photograph of a person who appears to be described as a martyr. It may be reasonable to conclude that the demonstration may be characterised by the regime as being a pro-Kurdish demonstration against the persecution and ill-treatment of this group by the authorities in Iran.

33. Even so that does not create a real risk without more. There is no evidence to support a claim the appellant will be characterised by the regime as a leader, mobiliser, organiser, or person with any significant role in the demonstration. The evidence supports a finding the appellant is simply a member of the crowd. The degree of activity is limited, and his motive was not found to be genuine by the Judge, which is relevant to manner in which the authorities in Iran may view him according to the country guidance.

34. As stated, a lot of the photographs show the appellant standing away from what appears to be the main group of the demonstrations whilst holding media but it was not made out that even if there was surveillance, as it is accepted there probably is in front of the Iranian embassy, that the appellant would have come to their attention or that his role within the demonstration would have attracted adverse interest either in recorded media or by agents of the Iranian regime who may mingle with the crowd.

35. It was not made out before the Judge that even if a photograph was taken of the demonstration there will be anything that will trigger an enquiry or action on the return against the appellant. The finding the appellant is not a committed opponent and does not have a significant political profile is a finding within the range of those available to the Judge on the evidence. There is no evidence that the appellant will be viewed by the regime in Iran as being a person specifically objectionable.

36. Leaving Iran illegally does not create a real risk on return, and even if the appellant is questioned at the 'pinch point' there is no need for him to reveal his attendance at the demonstrations as they do not reflect a genuinely held political brief belief that he cannot be expected to deny to avoid persecution. If he does say he attended the country guidance caselaw shows his role in the same will not attract adverse attention and, if telling the truth, the appellant will have to say that his motives for attending were found to be a lie made up for the purpose of enhancing a claim for asylum that lacked credibility.

37. Having carefully considered the material available, we conclude the appellant has failed to establish arguable legal error material to the

decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

38. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

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

We make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed…….
Upper Tribunal Judge Hanson

Dated 21 September 2022