Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06682/2019**

THE IMMIGRATION ACTS

Birmingham Civil Justice Centre **Decision & Reasons Promulgated**
On the 19th April 2022 **On the 12th October 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

RH
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Supaveda, Fountain 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 arrived in the UK on 14th December 2016 and claimed asylum the same day. The appellant's claim was refused by the respondent for reasons set out in a decision dated 18th May 2017 and the appellant's appeal against that decision was dismissed for reasons set out in a decision of First-tier Tribunal Judge Carlin promulgated on 10th July 2017. On 7th December 2018, the appellant made further submissions. The respondent accepted the further submissions as a fresh claim but refused the claim for reasons set out in a decision dated 9th July 2019. That decision gave rise to a right of appeal.

2. The appellant's appeal was dismissed by First-tier Tribunal Judge Robertson for reasons set out in a decision promulgated on 19th September 2019. The appellant was granted permission to appeal by Upper Tribunal Judge Jackson on 3rd November 2020. Under cover of a letter dated 15th February 2021, Fountains Solicitors sent an application to the Upper Tribunal to rely on additional evidence under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2018. The bundle provided, comprising of 15 pages was said to be evidence of the appellant's Facebook activities in the UK, including posts against the Iranian regime and pictures of himself attending demonstrations.

3. The appeal to the Upper Tribunal was determined on the papers by Upper Tribunal Judge Stephen Smith under Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The decision of First-tier Tribunal Judge Robertson was set aside for reasons set out in an 'error of law' decision promulgated on 2nd February 2021.

4. The background to the appeal was summarised in paragraphs [7] and [8] of the decision of Upper Tribunal Judge Stephen Smith:

> "7. The basis of the appellant's original asylum claim was that he had been "politically involved" with a secret organisation known as the Revolutionary Union of Kurdistan ("the RUK") in Iran. Judge Carlin had previously rejected the appellant's evidence to have been involved in the delivery of leaflets and CDs in Iran. The appellant maintained that narrative before Judge Robertson.
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> 8. The appellant's further submissions were based on arrest warrants which were said to have been issued against him in Iran. The appellant also claimed to have engaged in a range of *sur place* activities in this country, including attending anti-regime demonstrations, and making social media posts critical of the Iranian regime. At the appeal before Judge Robertson, the appellant relied on the relevant country guidance in relation to Iran, including HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) concerning the risk profile of failed Kurdish asylum seekers."

5. Upper Tribunal Judge Smith considered the grounds of appeal advanced by the appellant and found that Judge Robertson reached findings of fact that were open to her. At paragraphs [30] to [32] he said:

> "30. Even though the judge had found, legitimately in light of my analysis above, that the appellant did not have a "significant" political profile, it was nevertheless incumbent upon her to consider whether the appellant's Facebook posts amounted to *"low level"* political activity of the sort likely to engage the *"hair trigger"* reaction of the Iranian authorities. The judge was clearly alive to the possibility that, at least in the appellant's eyes, that was the effect of the social media activity: see her finding at [17.viii] that, "Overall, I consider it likely that the Facebook profile and photographs have been created in order to bolster the appellant's claim to remain in the UK." Yet the judge did not expressly conduct an assessment of the "low level" impact of the appellant or that activity, despite having identified that the appellant sought to advance his appeal on that basis. She did not mention HB Iran in her operative analysis, giving force to the submission that she erroneously failed to consider it. That was an error of law, given the significance of the "hair trigger" findings at paragraph 10 of its head note.
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> 31. Accordingly, I find that the decision of the First-tier Tribunal involved the making of an error of law in so far as it failed to consider HB (Iran). As I have found there to be no errors of law in the judge's findings of fact, there is no need to set those findings aside. I preserve all findings of fact reached by the judge, save for her application of the country guidance, which will need to be re-addressed. It is appropriate for the matter to be reconsidered in this tribunal.
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> 32. I set aside the decision of Judge Robertson, preserving the findings up to and including [18]. The matter will be reheard in the Upper Tribunal. The appellant may rely on additional evidence, subject to a successful application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, which he must make within 14 days of being sent this decision."

6. The appeal was listed for a resumed hearing before me on 19th April 2022 to remake the decision. The appellant attended the hearing and was

assisted by a Kurdish Sorani interpreter arranged by the Tribunal. Both the interpreter and appellant confirmed they understand each other. At the outset of the hearing before me, both Ms Supaveda and Mr Bates confirmed that no issue arises from the 'error of law' decision having been determined on the papers by Upper Tribunal Judge Smith.

7. Ms Supaveda initially indicated that she wished to call the appellant to give evidence. She accepted that notwithstanding the direction previously made by Upper Tribunal Judge Smith, there has been no further application under Rule 15(2A) to adduce further evidence and no further witness statement has been made by the appellant. I allowed Ms Supaveda an opportunity to speak to her colleagues that have conduct of this matter, so that the Tribunal can be provided with an explanation for the failure to make any further application under Rule 15(2A) and provide the respondent and Tribunal with a witness statement from the appellant setting out the appellant's further evidence. Ms Supaveda returned and informed me that she would not call the appellant to give evidence. She had intended to ask the appellant about his attendance at demonstrations, but, she noted, it is accepted the appellant has attended demonstrations as set out in his Facebook posts. The findings previously made by the First-tier Tribunal in that respect have been preserved.

8. Mr Bates did not object to the appellant relying upon the evidence of his Facebook activities in the UK, including posts against the Iranian regime and pictures of himself attending demonstrations that had previously been provided to the Upper Tribunal under cover of a letter dated 15th February 2021 from Fountains Solicitors. I granted the appellant leave to rely upon that additional evidence filed under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2018.

The preserved findings

9. Because they are relevant to my decision and have been preserved by Upper Tribunal Judge Stephen Smith, it is helpful for me to record in this

decision, the preserved findings of the First-tier Tribunal. The following findings are extracted from paragraphs [17] of the decision of First-tier Tribunal Judge Robertson:

> "iii) In respect of his political opinion the appellant has stated that he was politically active in Iran. He would distribute anti-government leaflets for the secret RUK.... I find [the accounts of the appellant and [Mr B]] to be inconsistent and implausible as to why the Appellant would trust a complete stranger when he was fearful of government spies and a member of a secret organisation.
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> …
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> v) …I find both the appellant's and [Mr B's] evidence to be unreliable.
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> vi) Having looked at the Facebook posts before me I can see that the appellant is sharing photos of himself and other images with occasional comments, presumably written with the assistance of his friends as, on his own evidence he is illiterate. I note that one is written in English. There is no year on the photos in the appellant's bundle, but one is said to relate to a demonstration in 2019. The copies in the respondent's bundle are also mostly without a year though one has a date of 2017.
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> vii) The appellant gave evidence that he had submitted copies of his Facebook activity at the previous appeal and that he had been active since he arrived in the UK in 2016. TJ Carlin has addressed the documentary evidence before him and if there was evidence of a Facebook profile, he would have made a finding on it. However, I find no reference to either copies of such posts being before TJ Carlin or any reference to a Facebook profile in his evidence. Accordingly, I do not accept that the appellant has been posting on Facebook since 2016. The earliest date I can be certain of is 17th December 2017.
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> viii) It is not clear if the appellant's Facebook profile is public, but in any event, I do not accept that he has a significant political profile or that he is likely to come to the attention of the authorities on return. He has shared photos from articles others have written and shared photos of himself and others at various demonstrations. But other than holding a placard none of the photos show that he had any active involvement in the demonstrations. The photos are undated with no reference to where the demonstrations occurred. There is no evidence that the appellant has come to the adverse attention of the authorities as a result of his posts or attendance at demonstrations and I do not find that he has a significant profile. Overall, I consider it likely that the Facebook profile and photographs have been created in order to bolster the appellant's claim to remain in the UK.
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> ix) A letter has been submitted purporting to be from the RUK. I attach little weight to this document. It is littered with errors including the spelling of the party name. It is unsigned and the contact details given for the authors are incorrect.
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> x) In respect of the court summons, I accept that they are two separate documents which purport to summon the appellant to attend court for collaborating with anti-government groups. The respondent has rejected the documents as they are incomplete, the appellant has stated that this is unimportant and that signatures are not required on the documents.

> xi) The onus is on the appellant to show that the documentary evidence can be relied upon. I do not find that he has done so. He states that the documents came from a friend's friend but has not explained how they came to be in this person's possession. The documents are not complete, and the appellant has not satisfactorily explained why I should accept this as unimportant. Accordingly, I do not accept the summonses as evidence of the appellant being sought by the Iranian authorities."

10. At paragraph [18] Judge Robertson concluded:

> "Given that I have not found the appellant to be a credible witness I have not accepted the basis of his claim. I am not persuaded even to the low standard of proof of applicable that he would have a well-founded fear of persecution for a Convention reason were he returned to Iran."

11. I should make it clear that although Upper Tribunal Judge Smith said at paragraph [32] of his decision that the findings of Judge Robertson, up to and including [18], are preserved, I have considered for myself whether the appellant has established, to the lower standard, that he has a well-founded fear of persecution for a Convention reason and would now be at risk upon return to Iran.

The parties submissions

12. On behalf of the respondent Mr Bates submits the appellant has been found not to be credible in any respect. The findings made establish he is of no underlying interest to the Iranian authorities based upon anything that happened prior to his arrival in the UK. On the findings, the appellant has contrived his sur place activities in order to bolster his claim to remain in the UK.

13. Mr Bates refers to the decision of the Upper Tribunal in XX (PJAK, sur place activities, Facebook) (CG) [2022] UKUT 00023 (IAC) and refers to headnotes [7] to [9] of that decision in which the Upper Tribunal gave guidance on social media generally. The evidence relied upon by the appellant concerning his Facebook account is not supported by the 'metadata' and he simply provides the Tribunal with some extracts from his Facebook account. 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.

14. Mr Bates submits the appellant has not provided the information suggested in the headnote and social media is open to abuse. The appellant may be the account holder. He has the ability to make changes for the purposes of a manufactured asylum claim. Mr Bates submits the appellant has failed to establish that he is connected to someone with a profile that the Iranian authorities may be interested in and given the unreliability of the social media evidence, there is no reason to believe that the Iranian authorities have any interest in the appellant. Referring to the relevant authorities, Mr Bates submits that in HB (Kurds) Iran CG [2018] UKUT 00430, HB was found to be a credible witness and was found to be at risk at the pinch point because of his profile. In XX (PJAK, sur place activities, Facebook) (CG), XX was not credible, but there were pictures of XX with a high-profile individual, who was of interest to the Iranian authorities, and there was a likelihood that the appellant would therefore be at risk. Mr Bates submits that here, although the appellant has a Facebook account, there is no evidence that he is in any way associated with anyone that has any profile that might be of interest to the authorities.

15. Mr Bates submits that looking at the Facebook posts relied upon by the appellant, on some of the posts, there appear to be 'comments' but the Tribunal has not been provided with any translation of the comments made. The appellant attended demonstrations, but the photographs provide only a snapshot of a particular point in time. Mr Bates questions why there is no video of the demonstrations attended by the appellant showing how the appellant was participating in the demonstration or what he was demonstrating against. He submits the photographs are simply a snapshot of a particular point, but the appellant is often facing away from the Embassy. On the evidence, the appellant's simple attendance at any demonstrations will not have brought him to the attention of the authorities. He submits there is a significant gap between the theory of what the Iranian authorities are believed to know about those that attend demonstrations, and what the Iranian authorities will actually be aware of.

16. Mr Bates submits the simple fact that the appellant is of Kurdish ethnicity is not sufficient for him to establish that he will be at risk upon return to Iran. There needs to be more. Here, the appellant is simply an Iranian national of Kurdish ethnicity who may have exited Iran illegally.

17. Based on the preserved findings and the lack of any further evidence, Mr Bates submits the appellant has not discharged the burden of proof that he will be at risk upon return. On a proper application of the country guidance, the appellant would not be at risk upon return and Mr Bates invites me to dismiss the appeal.

18. At the outset of her submissions, I invited Ms Supaveda to take me through the additional evidence sent to the Upper Tribunal under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2018, under cover of a letter dated 15th February 2021 to ensure that I properly understand the evidence now relied upon by the appellant. Because of the way in which the bundle has been prepared, it is extremely difficult to match the translations provided, with the extracts from the appellant's Facebook

account. By way of example only, at page [2] of that bundle, there appears to be an extract from the appellant's Facebook account of a 'post' on 13th July 2020. The translation appears at page [3]. However, at the bottom of page [3] there is a translation of something that I can only assume was 'posted' on 25th March 2020. That has nothing to do with the extract from the appellant's Facebook account that is at page [2] but appears to relate to the extract that appears at page [8]. However, the extract at page [8] is incomplete. Below the text are the words "… See more", but what follows has neither been disclosed, nor, it appears, has it been translated.

19. Similarly, the translation that appears at the top half of page [4], appears to be a translation of the extract that appears at page [5], but again the extract is incomplete. Furthermore, the extract shows some text in the English language; "*demonstration in front of embassy Iranian in London*" followed by a date, but that text does not appear in the translation. Although I accept what is written in the English language is clearly apparent, the Tribunal should not have to compare and contrast the extract and translation to establish a clear picture of what the evidence shows. There is a translation of something at the bottom half of page [4], but neither I nor Ms. Supaveda could establish what that is a translation of. Similarly, neither I nor Ms. Supaveda were able to identify the extracts from the appellant's Facebook account that the translations at pages [9] and [13] relate to.

20. I pause to note the additional evidence that is critical to the appellant's claim has not been presented in a way that complies with the Practice Direction of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, as most recently amended by Sir Ernest Ryder, Senior President of Tribunals on 18 December 2018. The Practice Direction provides, at [8.2], that the best practice for the preparation of bundles is that where the document is not in the English language, a typed translation of the document signed by the translator, and certifying that the translation is accurate, must be inserted in the bundle next to

the copy of the original document, together with details of the identity and qualifications of the translator. In the end, Ms Supaveda accepted that the Tribunal does not have copies of the posts dated 23rd June 2020 and 27th June 2020, translations of which are at page [9] of the bundle, or a copy of the post dated 16th October 2020, a translation of which is at page [13] of the bundle. She accepts the translations do not follow the originals, and some of the extracts from the appellant's Facebook account and translations appear to be incomplete.

21. Ms Supaveda submits the appellant has attended a number of demonstrations. There was evidence before the First-tier Tribunal and there is evidence before the Upper Tribunal now, of photographs posted on the appellant's Facebook account, showing him demonstrating outside the Iranian Embassy. She submits the building shown in the background in each of the photographs is the Iranian Embassy.

22. Ms Supaveda refers to headnote 1 of the decision of the Upper Tribunal in XX (PJAK, sur place activities, Facebook) (CG), and paragraphs [57] and [83] of that decision. She submits that if the appellant does not have a high profile so that he himself would be targeted by the authorities, it is necessary to consider, whether on account of his social interaction with others, he will nevertheless be at risk upon return. The appellant has shared posts of his attendance at demonstrations on his Facebook account and his posts relating to the Iranian regime have been liked, shared and commented on by others. The posts have been interacted with, on an arguably large scale, with people that he shares the same political views with. Ms Supaveda submits that strongly supports the conclusion that those the appellant supports and associates with, share the same views as the appellant regarding the Iranian regime and confirms his support for Kurdish rights. If that is correct, according to in XX (PJAK, sur place activities, Facebook) (CG), the appellant would create a sociograph that establishes to the lower standard, that he is at risk. She submits there is a real risk that due to the appellant's connections, the authorities may have come to know of the appellant. She submits it

is not necessary to have a photograph with a prominent figure. The important consideration is the interaction that the appellant's posts have generated, as referred to in paragraph [83] of XX (PJAK, sur place activities, Facebook) (CG). Ms Supaveda submits there is here, a real risk that the authorities will be aware of the appellant's sur place activities, and they will be, or will become aware of his activities on return to Iran and he will face problems at the pinch point. As to what might happen if the appellant were to delete his Facebook account, Ms Supaveda submits the appellant's Facebook account shows a number of likes, shares and comments and so people have already interacted with his posts. His activities would therefore be apparent even if the appellant does not have his own Facebook account. Ms Supaveda submits the appellant will therefore be at risk upon return and submits the appeal should be allowed.

Remaking the decision

23. 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.

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

serious harm and they are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country.

Findings and Conclusions

25. It is uncontroversial that the appellant is an Iranian national, of Kurdish ethnicity. The appellant's claim regarding the events that caused the appellant to leave Iran has already been considered and the adverse findings previously made, are preserved. There is nothing in the evidence before me that undermines the findings made by Judge First-tier Tribunal Judge Carlin in July 2017, or by First-tier Tribunal Judge Robertson in September 2019 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.

26. 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.

27. The issue is whether the appellant, as a national of Iran of Kurdish ethnicity, would be at risk on return by virtue of his sur place activity. For the avoidance of doubt, I have considered the appellant's sur place activities in the UK, that also include his attendance at demonstrations outside the Iranian Embassy.

28. In reaching my decision I have had regard to all the evidence before me, whether or not it is referred to. I have had regard, in particular to the evidence set out in the bundles before me regarding the appellant's Facebook activity, and his attendance at demonstrations. I have not heard any oral evidence from the appellant, and I have not had the benefit of seeing his evidence tested in cross-examination. It is uncontroversial that the appellant has 'posted' comments on his

Facebook account and 'posted' photographs on that account of his attendance at demonstrations.

The appellant's political opinion

29. It is useful to begin by considering the appellant's claim that his sur place activities represent his genuinely held beliefs. The evidence before me is very limited. I remind myself however that there is a preserved finding that the Facebook profile and photographs that were previously before the First-tier Tribunal, had been created in order to bolster the appellant's claim to remain in the UK. I have considered the further evidence relied upon by the appellant for myself.

30. I do not have a witness statement from the appellant explaining his Facebook posts and the reasons for his attendance at demonstrations. Although the appellant has posted photographs of his attendance at demonstrations, there is no reliable evidence before me as to the what the demonstrations were about or why the appellant had chosen to attend those particular demonstrations. The appellant makes very general and very vague references in his Facebook posts to opposition to the Iranian regime, that he sometimes refers to as 'murderers', 'terrorists' or 'killers of Kurds'.

31. 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.

32. I have had regard to all the extracts from the appellant's Facebook account that are relied upon by the appellant, including those that were previously before the First-tier Tribunal. Notwithstanding the criticism that I have made of the way in which the more recent material has been presented to me, I have carefully considered the translations that have been provided of the applicant's posts. However, on any view the appellant's evidence regarding his support for the 'Kurdish cause' is very vague and in the most general terms. Although I am prepared to accept that some of the material posted on the appellant's Facebook account is critical of the Iranian authorities, I find, as Judge Robertson did previously, that the appellant's sur place activities are an attempt to bolster a weak international protection claim.

33. There is scant evidence before me as to how the appellant operates his Facebook account. In his witness statement dated 22nd August 2019, the appellant responded to the suggestion made by the respondent in paragraph [30] of the reasons for refusal letter dated 9th July 2019 that the appellant claimed to be illiterate, yet the articles have comments on them, and one is in English. The appellant claims he only shared pages and did not create them. He had asked friends to read them to him. The appellant does not explain how he decided what he wanted to post, or the articles that he would 'like' or 'share'.

34. 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.

35. Although I accept there are photographs of the appellant having attended demonstrations, in my judgment the simple fact of attendance at demonstrations does not on its own demonstrate a real commitment to the Kurdish cause. I find the appellant attends demonstrations and simply takes the opportunity to be photographed by others attending, to bolster his claim.

36. 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

37. 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
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> 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."

38. On my finding that the appellant's sur place activities, including the material on his Facebook account, do not reflect his genuine political opinion or his political beliefs, there is, in principle, no reason the appellant should not delete his Facebook account and not volunteer the fact of a previously closed Facebook account, prior to any application for an ETD. 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.

39. 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.

40. 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. I accept some of the material posted on the appellant's Facebook account is critical of the Iranian authorities. The appellant has provided extracts of his 'posts' on his Facebook account and what appear to be the photographs that he has shared on his Facebook account. There is however no breakdown of the appellant's Facebook friends, nor of his timeline of his 'activities', 'posts', 'comments' and 'likes'.

41. There is no evidence before me to establish whether the appellant's 'friends' have 'public' or 'private' settings. The appellant does not identify any post or photograph connecting the appellant to any

individual that is of interest to the Iranian authorities or that has some form of official role, or profile. I find therefore that the appellant does not have a profile that would put him at greater risk than any other Kurd returning to Iran as a failed asylum seeker.

42. 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?

43. Although I am prepared to accept the appellant has attended demonstrations outside the Iranian embassy, I find 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.

44. All that the appellant is left with is his exit from Iran. The appellant's account of the events that caused him to leave Iran has been rejected by the First-tier Tribunal, and there is in my judgment no reason why the appellant should have left Iran illegally. Nevertheless, he has now been out of Iran for a number of 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 by the Iranian authorities to be someone that illegally exited.

45. 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."

46. 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.

47. 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.

48. 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.

49. 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.

50. The appellant has no reason to inform the Iranian authorities that he has been involved in anti-government activities because any social media activity and attendance at demonstrations is not predicated upon any genuine political involvement. To assert otherwise would be inaccurate. At its very highest, the appellant has demonstrated an interest, at the lowest possible level in the 'Kurdish cause' but, I find, he is not an individual that has engaged in even 'low-level' political activity or activity that is perceived to be political.

51. 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. I have found he can reasonably be expected to close his Facebook account. I am not satisfied, even to the lower standard that the Iranian authorities have the capacity or ability to access a Facebook account once it has been closed down. As the Tribunal said in headnote [6] of XX (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.

52. 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

53. The appeal is dismissed.

54. I make an anonymity direction.

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

Upper Tribunal Judge Mandalia