IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000049

First-tier Tribunal No: PA/53016/2020
IA/00097/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 December 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between

HOM
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Malik, Counsel instructed on behalf of the appellant.
For the Respondent: Mr McVeety, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 15 November 2023

DECISION AND REASONS

1. Pursuant to section 12 (2) (b) (ii) of the Tribunals, Courts and Enforcement Act 2007, this is the remaking of the decision of Judge of the First-tier Tribunal Lewis promulgated on the 23 June 2021, following the decision dated 6 October 2022 of the Upper Tribunal panel (UTJ Plimmer and DUTJ Kelly) setting aside the decision of the FtT having found a material error of law in that decision.

2. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

3. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead

members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

The background:

4. The background is set out in the evidence in the decision of the FtTJ and the documentary evidence. The appellant is a citizen of Iran of Kurdish ethnicity. He left Iran in November 2019 and travelled via Turkey to Italy where he was arrested and fingerprinted on 2 December 2019. He did not claim asylum in Italy and continued his journey and arrived in the United Kingdom on 13 December 2019.

5. The appellant claimed asylum in the UK on the basis of his imputed political opinion in Iran and his actual political opinion in the UK. His claim was that he had fled Iran as he feared the state authorities after they found political material supporting the KDPI in a shop in which he worked with his father. He stated that his problems began a few days before he fled the country and that motivated by shortage of money he agreed to help a male who was a member of the KDPI and offered to pay the appellant to collect a package and deliver it elsewhere for him.

6. A few days later the appellant was approached by the man again. The appellant said that he was reluctant to help but motivated by doubling of his pay and operating through fear of his father being informed of his help for the KDPI, the appellant agreed again to help. The man did not arrive to collect the package, so the appellant stored in the stockroom at his father's shop.

7. The appellant claimed that he was later told that the Ettela'at had raided his father's shop and attain the appellant's father. The appellant was told that he was wanted by them as well and his uncle advised him not to return home. The appellant claimed the family home was raided and his mother was asked about the appellant's whereabouts.

8. The appellant's uncle provided him with financial and practical assistance to leave Iran and he left Iran illegally.

9. Upon his arrival in the UK, the appellant stated that he was aggrieved at the Iranian regime in particular their treatment of Kurds and created a Facebook account and attended demonstrations.

10. The respondent refused his claim in a decision dated 10 December 2020. It was considered that the appellant had not provided a detailed consistent account of his problems in Iran and that it was not accepted that he had engaged in smuggling activities of political material or that he come to the adverse attention to the authorities due to his political opinion (paragraph 69). As to his sur place claim, the respondent considered that he had not substantiated his claim to hold a hypothetical profile, nor was it accepted that his activities in the UK would gain the adverse attention of the Iranian authorities,

11. The appellant appealed the decision, and it came before FtTJ Lewis. The FtTJ accepted the appellant was an Iranian National of Kurdish ethnicity. However in respect of the events the appellant claimed to have occurred in Iran, the FtTJ rejected his account.

12. As regards the findings of fact on the sur place claim they were set out between paragraphs 27 – 34. Then FtTJ did not accept his account that he was able to travel to London as he was not able to read or write and no means to navigate to address by himself. He did not accept that the activities represented his views. In the alternative the judge found that even if such posts and activities did represent the appellant's now genuinely held political views the appellant did not demonstrate that he could be identified by the Iranian regime.

13. The FtTJ therefore dismissed his appeal on protection and human rights grounds.

14. The appellant applied for permission to appeal which was refused by the FtT but was granted by UTJ Lindsley on 21 February 2022. The UTJ refused permission to appeal in relation to those grounds which sought to challenge the adverse findings of fact which related to events in Iran but granted permission to appeal in relation to the FtTJ's analysis of risk by reason of the appellant's sur place activities. Thus there was no appeal before the Upper Tribunal to challenge the factual assessment made by FtTJ Lewis as to the events the appellant claimed had occurred in Iran.

15. The appeal came before the Upper Tribunal panel (UTJ Plimmer and Deputy UTJ Kelly "the panel") on the 16 August 2022. In a decision promulgated on 6 October 2022 they set out the following:

16. The relevant part of the decision is replicated below:

> "4. The matter now comes before us to determine whether or not the FtT committed a material error of law in the analysis of his *sur place* activities. We heard brief submissions from Mr Ahmed and Mr Tan, and we now give our decision.
>
> **Country Guidance**
>
> 5. Before doing so, we remind ourselves of the relevant country guidance applicable at the time of the FtT's decision, that is 23 June 2021. In SSH and HR (illegal exit: failed asylum seeker) Iran (CG) [2016] UKUT 308 the Tribunal found that if *particular concerns* arose regarding a failed asylum seeker who had left Iran illegally, upon arrival in Iran there would be a period of further questioning which carried a real risk of detention and ill-treatment - see in particular [23] of that decision.
>
> 6. The reasoning in SSH can be summarised as follows:
>
> (1) At an illegal departing from Iran a failed asylum seeker would be questioned at the point of return.
>
> (2) The initial period of questioning would be for a fairly brief period.

(3) If *particular concerns* arose from previous activities either in or out of Iran, there would be a risk of further questioning accompanied by ill-treatment.

(4) The assessment of whether there are likely to be *particular concerns* turns upon all the individual factors considered cumulatively.

(5) The failed asylum seeker would be expected to tell the truth when questioned.

(6) The evidence suggested no appetite to prosecute for illegal exit alone but if there is another offence, then illegal exit will be added on to it.

7. The further country guidance decision in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) confirmed that SSH remained valid country guidance in terms of the general guidance offered in the headnote which I have just summarised. The headnote of HB provides additional guidance, particularly in the context of Kurds We now refer to the relevant parts of the headnote applicable to this case:

8. "(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) to (9) below.

…

(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."

9. There is also the older country guidance decision of BA (Demonstrators in Britain - risk on return) Iran v Secretary of State for the Home Department CG [2011] UKUT 35 (IAC). That sets out guidance on how to approach those who attended demonstrations in Iran but do not deal with the additional risk factors as a result of being a Kurd as set out in HB (Kurds). It follows that all the country guidance needs to be considered together.

Error of law discussion

9. We now turn to the FtT's findings of fact, which we have already summarised above.

> The FtT was of the view that those *sur place* activities were not genuine and the appellant undertook them in order to bolster a weak asylum claim. It is nonetheless clear from the authorities that the FtT was still bound to consider whether or not those activities together with this appellant's particular circumstances rendered him at risk in the light of the country guidance. The FtT referred to HB (Kurds) at [32] but only did so in the context of the case put on behalf of the appellant.
>
> The FtT then immediately moved at [33] to apply BA. The reasoning that follows at [34 and 35] only address the country guidance in BA. The FtT failed to apply the country guidance in HB and conducted an isolated and incomplete analysis restricted to the country guidance in BA. That constitutes a material error of law because as we have already observed, there are accepted risk factors in this case: the appellant is Kurdish, he left illegally, and he participated in sur place activities in the UK."

17. The UT considered the issue of disposal at paragraph 11 stating : "We have considered whether or not we should go on to remake the decision ourselves, bearing in mind that the issues are very limited. However we note there has recently been further country guidance on relevant issues arising in X X (PJAK-sur place activities – Facebook Iran CG [2022]UKUT 000 23. It is therefore our view that it would be helpful to have updated evidence of the appellant as to his sur place activities and for there to be a further hearing that considers those against the recent country guidance."

18. The UT panel therefore set out its directions for the remaking of the hearing. Thereafter a transfer order was made by UTJ Blum.

The resumed hearing:

Procedural matters:

19. At the resumed hearing which was listed on the 17 August 2023 the appellant was represented by Mr Malik, of Counsel and Mr Diwnycz, Senior Presenting Officer appeared on behalf of the respondent. For reasons which will be set out separately, the hearing was adjourned and at the hearing a date was given for the hearing of the 12 September 2023.

20. Directions were issued to ensure the hearing could proceed on the next hearing date which included a direction that " The appellant's solicitors shall file and serve on the Upper Tribunal and the other party cross references from the bundle of the sur place activities (dates and times etc) as set out at paragraph 12 of the skeleton argument and as directed by the panel in at paragraph 14 of the directions, no later than 7 days of these directions being sent". The CE File sets out that they served on 23 August 2023.

21. Prior to the service of the directions the Presenting Officer served a position statement.

22. On 30 August, a reply was received from the appellant's solicitors with written submissions as to the issue of costs. As regards the direction concerning the evidence of the sur place activities, it was stated "Please note as per Directions of UTJ Reeds the cross-referencing will be done through examination in chief as due to shortage of staff."

23. At the hearing on 12 September 2023, Mr Malik confirmed that in light of the correspondence sent he proposed to take the Tribunal through the Facebook evidence and the evidence as to the demonstrations by asking the appellant to identify the evidence, including the dates. During evidence in chief, it became apparent that the documentation could not be so viewed as it consisted of black and white photographs, some were of videos but showed no content and in others it was not possible to identify the location or what was happening. As this was relevant material to the issues it was therefore agreed between the advocates that steps should be taken for the material to be viewed from the source, that is the face book account and with the assistance of Mr Malik and the court clerk it was possible to link the account to his computer and for this to be put on the CVP screen in the courtroom. The appellant therefore gave oral evidence about his sur place activities by reference to the photographic evidence on the account, which included the evidence of his attendance at demonstrations. Understandably this was a long process, and it was not possible to complete the evidence at that hearing.

24. The appeal therefore was part heard to be completed on a date to be fixed in accordance with both advocates availability and for the Tribunal. The date for the resumed hearing was on the 15 November 2023.

The evidence:

25. At the outset of the hearing steps were taken to ensure that the evidence was available to both advocates and the Tribunal.

26. There had been a large bundle of documents provided by the appellant which contained updated evidence in the form of a witness statement and copies of Facebook posts and a skeleton argument. Mr McVeety confirmed that he had been served with a copy of the bundle. There was also a copy of the respondent's bundle before the Upper Tribunal which included a copy of the decision letter dated December 2020, copy of the decision of FtTJ Lewis, the panel error of law hearing and a copy of the written position statement.

27. The appellant gave his evidence with the assistance of an interpreter in the Kurdish Sorani language. There were no problems

identified with the interpretation and both the interpreter and the appellant confirmed that they were able to understand each other.

28. In his oral evidence he confirmed his witness statements. The documentary evidence within the appellant's bundle dealing with both the demonstrations and the Facebook posts was not legible. Some of the pictures were stills but in fact were videos (see page 179CEFile) and p.182CEF). When the appellant was asked his evidence originally about the demonstrations, he stated the evidence was not of demonstrations but photographs (see page171 CEF). Similarly in response to other questions the appellant stated it was not a demonstration but a post (see p16 CEF and p5 of 32 AB). As a result it became necessary for the advocates to obtain the material in its original form by viewing the material via the CVP screen. Mr McVeety had no objection to this course.

29. In his evidence by reference to p3 of 32, he stated that this was a list of friends and, page 7 of 32 referred to his attendance at a demonstration in August 2022. Further pictures showed a demonstration of 20 March 2022 (p8 of 32). The appellant stated it was in front of the Iranian embassy and that he was wearing a hi viz jacket and holding a speaker (he can be seen holding a picture also). There were 33 images from the same demonstration. At p178CEF he identified that it was a post about the problems against the Iranian regime for persecuting and stopping the freedom of people and it posted on 2 March 2022.

30. At page 10 there was a video of the appellant burning the Iranian flag (July 2020). Further demonstrations were shown on 4 April 2021(page 11 of 32). The appellant referred to a video which was a "live post" taken during the demonstration in 2022. At p179CEF) the appellant identified himself in a green/white shirt with a flag which was being burnt. He identified demonstration on 13 July 2020 with a video of the burning of the Iranian flag. He identified himself as being the person "on the left." Page 16 was a sharing of a post that he had made showing an Imam making a speech and showing prisoners being made to confess. At p17, the appellant stated that the pictures were about sharing information about people who were taking photographs and details of others and passing it to the authorities. He said that it was possible to see someone holding the camera.

31. He identified a demonstration of 4 April 2021 where he was holding pictures. He stated that all the photographs and images were taken in front of the Iranian embassy (there were 20+ pictures). By reference page 13 of 32 (p 182 CEF), there was a video at a demonstration. There were other photographs images of the same demonstration and he stated there were about 200 people at the demonstration. He said he was chanting slogans "down with Iran." Page 15 of 32 showed the same video of the appellant burning the Iranian flag.

32. The appellant was asked about the images at page 16 of 32. He stated that this was a Mullah who made a fatwa allowing the authorities

to take protesters and to make them admit things by torturing them. This was not just physical torture but other types of torture to take information. This was dated 2 January 2021. Other pictures posted he said were of inhuman treatment in prison.

33. He was asked about page 17 of 32, he said that it showed an individual taking photographs and images of the people at the demonstration. The appellant also identified the middle picture showing that a camera been placed in front of the Iranian embassy to take pictures of the people attending the demonstration. He also identified a picture on the right showing a person who was filming the images from inside the Iranian embassy. He said you can see the Iranian embassy. When asked what the circle was and the picture he said it was another camera and at the top left was a photograph which he said showed an Iranian leader in the photos and images of take that the demonstration would be sent to him.

34. The appellant referred to demonstration on 8 September 2020 and identified himself from the photographs. He said it was a demonstration in front of the embassy to celebrate the political party known as KDPI. The middle picture showed him holding the KDPI flag which he said was to commemorate the bombardment of the KDPI bases by the Iranian government. P32 was a large image of the same date in front of the Iranian embassy where there are approximately 300 people. The demonstration on 8 September 2020 he said showed 50 likes and 59 comments.

35. He was asked about page 24 and that this was his profile and that he changes profile picture, and his new picture was from a previous demonstration that he had attended. The date of the demonstration was 13 July 2020. He was asked about other pictures pages 29 to 32 that this is a demonstration to protest the day the Kurdish leader was assassinated by the Iranian government. He identified the posts and the pictures provided as the leaders of Iran. He stated that he was taking the video, and the flag shown in the video was the flag for the Democratic party. Further material shows the suppression and mistreatment of Kurds. There was a video posted (page 27 of 32) he said that they were talking about the assassination of Kurds and how they could have another leader like him. He identified the KDPI flag in the background. He was filming the video on 13 July 2020. Other demonstrations were identified with a large number of demonstrators at p28, where he said there were 300 people. During his evidence and by reference to the pictures and posts the identified other demonstrations he had attended in front of the Iranian embassy, and that he was holding pictures of the Iranian leaders and explained he was there to protest against the Iranian leaders and that the crosses were written on their faces because he was seeking freedom to challenge them.

36. Further documentary evidence was provided in the interim between the hearing in September and November which related to better

pictures of the original materials been provided. There was no objection to those documents forming part of the evidence. The summary of that evidence showed the demonstrations by way of date, their location outside the Iranian embassy, the proximity of the appellant, and in some photographs wearing a hi viz jacket and in others not wearing a hi vis jacket. There was also a photograph showing the appellant being videoed wearing a hi vis jacket with pictures of Iranian cleric with crosses over the picture. The pictures and post show the appellant with the Kurdish flag wearing a high visibility jacket very close to the embassy. There was also picture showing the appellant next to a man wearing a hi viz jacket with the emblem of the KDPI who was holding a picture of the Iranian leader with the word “murderer” on it, and he is holding a megaphone. There is a picture of the appellant stamping on the picture. There is also another picture of the appellant standing next to a person who looks like a leader/organiser wearing a hi vis jacket with a KDPI logo speaking into a megaphone which the appellant is holding and being filmed.

37. In cross-examination, the appellant was asked if he could remember the first demonstration he attended which he said was 13 July 2020 and that the demonstration was for the KDPI. He confirmed that he was not a member of the party. When asked how he found out about the demonstrations he stated that he was told by his friend who lived with him, and he had found out because he was Kurdish, and that the information was gathered from Facebook and from other social media. He accepted in cross-examination that he could not read or write but that his friend was able to. When asked if he had any organisation role in the demonstrations he said that he did not. When asked to look at the photographs of wearing a hi viz jacket he stated that there was a party organiser who had given him the jacket and asked him to organise, help and to watch the people to prevent the demonstrators going into the main road. When asked if that was “marshalling” the event he agreed and that he was asked to watch the demonstrators to stay in the same location. When asked why the organiser would ask him to do so when he was not a member, the appellant stated that they had asked him, and he assisted as a helper and provided help.

38. He confirmed that all the demonstrations were organised by the KDPI in the UK. When asked if Iranian officials infiltrated demonstrations why would he be asked to help if he was not a member? The appellant stated that it was up to the organisers as to who they trusted and that they had asked several Kurdish people and that he had agreed to help. He said he did not want the demonstrations to be violent and that he liked peaceful demonstrations. He accepted that he had not received any threatening messages on his Facebook account.

39. As to the uploading of material, he stated that previously he was reliant upon his friend and the person who he lived with to upload material but now he had taught himself in it learn to recognise and to do the activities himself. He said that in Iran they were never allowed freely and were not taught in the Kurdistan language. He said that he is not

comfortable with reading Kurdish and English but could read some but not everything. He said that he cannot read English, but he was learning to read.

40. It was further asked why he had opened a Facebook account when he had not had one before in Iran. He stated that when he arrived in the UK he learnt that he would have freedom and he started activities with a friend who had helped him do so. He said that he started posting himself in 2023. He confirmed that his Facebook account was set to public and also his personal social media.

The submissions:

41. The conclusion of the evidence each party had the opportunity to provide their closing summary.

42. The submissions made on behalf of the respondent are summarised as follows.

43. Mr McVeety relied upon the position statement drafted by his colleague with one exception, he did not seek not seek to rely upon the paragraphs where paragraphs 7-8 of the headnote in 7-8 of XX(PJAK) was set out. He accepted that the appellant had provided his full face book account which had been viewed at the previous hearing.

44. It is submitted that the appellant has attended a small number of demonstrations, but for disingenuous reasons as previously found. His presence and role in the demonstrations is not sufficient or significant to have likely come to the attention of the authorities.

45. Mr McVeety conceded that if the appellant were genuine in his political beliefs he would be a committed Kurdish anti-Iranian activist in the wider sense he would be at risk. Conversely if found to be disingenuous but if his profile is potentially one that has come to the attention of the Iranian authorities or was reasonably likely to come to the Iranian authorities attention for the wrong reasons he would also be at risk of harm.

46. Looking at the genuineness of his activities, Mr McVeety accepted that the appellant provided substantial evidence of him attending demonstrations and there was substantial Facebook evidence. However that did not mean his intentions were genuine.

47. As to the demonstrations, the starting point of the preserved findings of the FTT decision. The position statement sets out the FtTJ's previous findings as to the events that the appellant claimed to have occurred in Iran (see paragraphs 20, 22, 23, 24). The appellant had not given a credible account of events in Iran and therefore we had no previous political profile. That was the starting point for assessing credibility.

48. The written submissions set out that no criticism was made of the FtTJ's findings at paragraph 28 – 31 and paragraph 34 and that the finding that the appellant did not have a genuinely held belief and that his presence at the demonstrations was not easily identifiable and there was no evidence that he been identified were also ones were preserved.

49. It was submitted that when dealing with credibility following matters were of relevance:

(1) the appellant is not a member of any political party.

(2) He has no involvement with any activity on behalf of the KDPI,

(3) The issue of wearing the high vis jacket; why was the wearing the jacket; why was he given a role? In the witness statement (paragraph 8) he said that it was well known that the Iranian authorities infiltrated the crowds that is the case it is not possible to accept that the KDPI would give the appellant the role of looking for suspicious activity/marshalling the crowd when they have no idea who he was and when he was not a party member would not trust him with that role. Therefore the wearing of the jacket in some photographs and not others is an attempt to raise his profile as there is no valid reason as to why he is wearing a hi viz jacket.

50. When looking at the country guidance case of BA (as cited) the following is relevant:

(1) Mr McVeety accepted that it attended a significant amount of demonstrations, but looking at the role in the demonstrations he is not an organiser.

(2) The extent of participation is minimal, and he is with the majority of others holding a placard or photographs.

(3) There is no evidence to show that the demonstrations of attracted widespread media coverage either in UK or Iran.

(4) On the previous findings is not known in Iran for any political views and has no critical profile.

(5) He is therefore not someone with a particular profile to be likely of interest to the Iranian authorities.

51. When looking at the Facebook account, his social media presence is minor. The appellant is unable to read and write in the initial account before the previous FtTJ was that he was unable to read and write and a friend posted it for him. He now states that he can do it for himself but be cautious about this as it is not likely that he would be able to download and put on post in a foreign language. He relies on others and therefore it is not a genuine reflection of his own beliefs.

52. In relation to the decision of XX (PJAK), reliance is placed on headnote 1 as to the issue of surveillance. Headnote 2 refers to the likelihood of Facebook material being available to the Iranian authorities and is affected by whether a person is of significant interest. The previous findings is that he has not been a person of significant interest previously. The appellant's evidence was that he had not been threatened or harassed as a result of posts on Facebook. There are very few likes on some of his photographs and it is not an account that has thousands or hundreds views or comments therefore not likely to be an account which has already come to the attention of the authorities.

53. Mr McVeety accepted that he did not rely on headnote 7 and 8 because the Facebook account had been seen in full and there had been full disclosure.

54. At the headnote 9 where someone is not genuine there is no fundamental right to operate Facebook account. Before the appellant got to the point where he would be issued within ETD, and he can delete his Facebook account as it is not a belief is genuinely held.

55. Looking at paragraph 4 of XX (PJAK) and the pinch point of return:

(1) whilst attending demonstrations the politically held beliefs are disingenuous.

(2) They have not come to the attention of the authorities.

(3) He has not previously come to the attention of the authorities,

(4) he is of Kurdish ethnicity which is insufficient to establish a risk and return nor is the fact that he has illegally exited.

(5) Thus he would not be someone who would have any interest at the "pinch point of return" and would not be at risk.

56. Mr Malik relied upon the skeleton argument prepared by his instructing solicitors (at [160CEF] and made the following oral submissions.

57. He submitted that it was important to understand the reasons why had left Iran; that he been smuggling parcels of political material across the border and on his account his father's shop was raided by the Iranian government and he came to their attention that point which made him leave Iran. He therefore come to the attention of the authorities and is known before he left. Mr Malik clarified that submission stating that he wished to elaborate on paragraph 10 of the UT Panel's decision, and it was accepted that the appellant had left illegally and was of Kurdish ethnicity.

58. In terms of risk profile Mr Malik referred to his sur place activity. He submitted that the appellant had a Facebook profile which was set to a

public setting and had attended at least 10 demonstrations from the dates of July 2020- September 2023.

59. By reference to the position statement filed by the respondent, Mr Malik submitted that the evidence was that the attendance was not measured in "tens" as set out by the respondent but there were 200+ demonstrators for example as set out on 24 April 2021. In response to the submission that he was not a leader of the crowd and would not be easily identified, that submission failed to take into account that the appellant was easily identifiable as he was wearing a hi viz jacket.

60. Mr Malik also referred to the concession made by Mr Mc Veety that it was accepted that the appellant had provided full disclosure in accordance with the decision of XX (PJAK).

61. Dealing with the starting point, he submitted that there were Court of Appeal decisions to the effect that the starting point did not mean that the decision-maker was not able to consider any other or new evidence and therefore the decision of Judge Lewis did not have to be the starting point. The authorities he referred to were AA (Somalia) and AH (Iran) v SSHD [2007] EWCA Civ 1040, and R (YH) v SSHD [2012] EWCA Civ 563. He submitted that in terms of previous adverse credibly findings they did not provide a presumption that other given evidence would be rejected as incredible. He further reminded the court that an asylum claim could succeed even if part of the account had been doubted.

62. Mr Malik then turned to the standard of proof applicable in protection claims relying on the decision in MAH (Egypt) v SSHD [2003] EWCA Civ 216 at paragraphs 51 and 52. He submitted that the appellant did not have to prove anything that the assessment of risk starts as less than a 50% chance and even a 10% risk of persecution may satisfy the relevant test. He submitted the risks identified on facts of this case was sufficient to meet the standard of proof.

63. Returning to the issue of risk he submitted that the evidence from the appellant showed that he had attended at least 10 demonstrations in the UK as set out in the evidence in terms of the photographs, the posts and the videos. He was shown wearing a hi viz jacket and undertaking inflammatory behaviour such as burning the flag of Iran.

64. As regards the Facebook account itself, on 22 November 2020 he had 1.668 friends, and that had increased to 2345 in September showing that his exposure on Facebook has been increasing. He currently had over 2000 followers. He submitted that he posted multiple pictures and videos and comments of attracted comments and " likes" from users. For example, there were 60 comments and 2 shares at (p 176CEF), 102 comments on 50 likes at p 177CEF) and 57 comments at p 178 CEF), there were 149 comments and 78 likes for the post at 4 April 2021 (p 180CEF). As of the video which showed him burning the Iranian flag there were 91 comments. Thus he submitted that every post that was

uploaded had comments and likes. He further submitted that it was not only the people who were friends who were listed at in excess of 2000 but multiple comments on each post in respect of demonstrations which he submitted would expose the appellant further risk and given the opportunity for the Iranian government to identify and monitor him.

65. Mr Malik submitted that there was objective evidence that the Iranian government monitored social media and Facebook:

(1) The article "Iranian guards increase monitoring" [page 177AB; 292 CEF). This shows that the authorities block access to Facebook, but he submitted it did not make Iranians immune from state surveillance and that this was the kind of control the Iranian authorities had. It also referred to the spider project.

(2) The Amnesty International report 2021 [p294 CEF) demonstrated those peacefully exercising the human rights. Reference is made to the authorities stifling freedom of expression.

66. As to the monitoring of social media by the authorities in Iran he relied upon the decision of SF and others v Sweden (App NO: 52077/10) ECtHR 15 May 2012 which confirmed that the Iranian authorities effectively monitored Internet communications within and outside Iran.

67. In this context he also relied upon AB and others (Internet activity – state of evidence) Iran [2015] UKUT 0257 :

472. .. The more active the person been on the Internet the greater the risk. It is not relevant if the person had used the Internet in an opportunistic way. The authorities are not concerned with a person's motivation..

68. 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. In particular he outlined the country materials dealing with the circumstances of Iranian prisons (Evin prison), and that 24 prisoners died in suspicious circumstances. He referred to the Human Rights Watch report that the authorities crack down on peaceful assemblies and the US State Department report referring to executions that were politically motivated. As to the general position as to those of Kurdish ethnicity he referred to the document showing that 96 Kurds had been arrested. He submitted that these were the risks that the appellant would face upon return. He further submitted that the appellant is genuinely critical of the regime and therefore will be at risk of this type of treatment.

69. Professor Joffe and Ms Enyat, the experts in AB confirmed that;

(1) airport checks are routine (7, 11- 12, 56).

(2) Airport checks include checks on Facebook and email; 42, 45 and 67.

(3) Deleted Facebook posts are also risky ; 43

(4) there is always a risk during checks.; 15, 36

(5) anyone with an emergency/temporary travel document is scrutinised; 39, 50.

70. The content of the appellant's Facebook and the fact of displaying them creates the risk:

(a) merely sharing/liking posts on social media is risky (43, 51, 56, 66, 67 and 109 – 110

(b) the authorities have a particular interest in Facebook (107)

(c) people have been punished even for material it was not their own

71. By reference to the appellant's account he submitted that the appellant had regularly posted comments on videos on his Facebook account in relation to inhuman treatment and was plainly anti-regime. He submitted that that risk applied even if his actions were opportunistic would be relevant to adverse interest (see AB (as cited) at paragraph 9, 19, 82, 110-112). Also see BA (demonstrators in Britain – risk and return) Iran CG [2011] UKUT 36 at paragraph 65, "while it may well be that in appellant's participation in demonstrations is opportunistic, the evidence suggests that this is not likely to be a major influence on the perception of the regime is correct". In this respect he also relied upon the decision in Danian, that even if it was the position that it was to bolster his case or self-serving it can still demonstrate a real risk of persecution or serious harm.

72. He submitted that Kurds who express political opinion were at risk even Kurds who had expressed peaceful dissent. He referred to the concession made by Mr McVeety that if he was genuine the risks were demonstrated.

73. As to risk on return and applying AB (as cited), the appellant has no documents, and this puts him at risk, the contents of Facebook and the demonstrations also set out the risk and they are shared posts and commented on and over 140 people have commented on his posts.

74. He submitted that the decision in SSH that related to illegal exit remained a valid CG decision and that since 2016 the Iranian authorities had become suspicious as to Kurdish activity and thus returnees are regarded with greater suspicion and therefore the appellant is likely to be subject to scrutiny and return. His Kurdish ethnicity is a risk factor.

75. In addition he has attended multiple demonstrations, and he gave evidence in chief that all the demonstrations were live streamed on

various channels present and social media and therefore is not just the people who commented on his post and having live streaming of the demonstrations provide an additional risk factor alongside his Kurdish ethnicity.

76. Reliance was placed on HB (Kurds) Iran CG [2018] UKUT 430 and the factors set out at paragraph 37 of the skeleton argument as follows:

(1) The Iranian authorities are aware of and sensitive to Kurdish political activity

(2) Kurdish political activities have been given a wider meaning

(3) being Kurdish

(4) more so if they have lived in Iraq

(5) ISIS/Daesh have Kurds as members and sympathisers hence the greater risk

(6) airport checks on Facebook and email

(7) deleted Facebook posts are risk.

77. He submitted that the appellant had been involved in political activities and attending demonstrations would put him at a real risk of harm or persecution. The issues identified in the country guidance case was in support of that and that the Iranian authorities are sensitive to Kurdish actions. Considering the risks put together, his political activity, the fact that he is of Kurdish ethnicity and left illegally are sufficient risk factors to put him at a real risk of harm.

78. Mr Malik said he further relied on BA (as cited above) which highlighted the risks to those involved with social media.

79. By reference to the decision in XX (PJAK- sur place activities – Facebook) Iran CG [2022] UKUT 23, he relied upon paragraph 40 – 47 of the skeleton argument.

80. Even if the appellant's Facebook were deleted, that would not prevent copies, prints, screenshots for having been distributed by the reigning authorities, examples of the Home Office, tribunal or their legal representatives copy of his Facebook posts. In XX Facebook Ireland confirmed that it takes 90 days to delete Facebook again further risk of an extra 90 days of the appellant's profile being in the public domain. Dr Clayton in XX stated that a cached copy of the evidence would age out and that it would be too expensive for Facebook to deleted. Deletion is no good if the appellant has been the target of focused monitoring. Scrapping large amounts of data from other commercial companies and organisations can capture and sell on.

81. The question then arises what about the people and friends that have tagged, shared and commented on the appellant's posts, each one of their posts as it also then puts the appellant at risk.

82. Hacked accounts which the appellant may not know of a username and passwords may still be relevant in determining risk.

83. Mr Malik submitted that the post had been shared and commented upon and therefore the risk still remained. He submitted that he relied upon the CPIN paragraph 10.1.2, that if the appellant were caught with leaflets he would be arrested and tortured and 10.1.8 that the authorities see them as a threat to national security and considered as separatists.

84. In conclusion he submitted that there were risk factors relevant to this appellant namely that he was of Kurdish ethnicity, he had illegally left Iran, his genuine political activities in the form of attending demonstrations and having operated Facebook account with multiple shares and likes and comments provided the additional risk that the appellant would face upon return about those activities.

85. At the conclusion of the hearing I reserved my decision.

Discussion:

86. 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.

87. 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.

88. As to the standard of proof, Mr Malik relied upon the recent decision of MAH (Egypt) v SSHD [2023] EWCA Civ 216 which set out the following:

"Standard of proof in asylum cases

> 49. The so called "lower standard of proof" is well known but still deserves to be set out here. One of the striking features of the present case is that nowhere in its judgment did the UT set out what the "lower standard of proof" is, although it used that phrase many times, for example at para. 29. Setting it out expressly can be a helpful discipline because it operates as a constant reminder of precisely what question the tribunal of fact has to determine. The requirement that an applicant's fear of persecution should be well-founded means that there has to be demonstrated "a reasonable degree of likelihood" that he will be

> persecuted for a Convention reason if returned to his own country: see *R v Secretary of State for the Home Department, ex parte Sivakumaran* [1988] AC 958, at 994 (Lord Keith of Kinkel).
>
> 50.Various formulations of this standard can be found in the decisions of courts both in this jurisdiction and elsewhere such as the USA, e.g. "reasonable possibility": *Immigration and Naturalisation Service v Cardozo-Fonseca* 480 US 421 (1987), at 440 (Stevens J, giving the Opinion of the US Supreme Court), cited by Lord Keith in *Sivakumaran*, at 994; "real chance": *ibid.*; or "real risk": *Ravichandran v Secretary of State for the Home Department* [1996] Imm AR 97, at 109 (Simon Brown LJ). Another formulation which has been used is that there must be "a real as opposed to a fanciful risk" that future events will happen: *MH (Iraq) v Secretary of State for the Home Department* [2007] EWCA Civ 852, at para. 22 (Laws LJ).
>
> 51.Strictly speaking it could be said that it is not entirely accurate to refer to this as a standard of "proof", because the applicant does not in fact have to prove anything. It could more accurately be described as being an "assessment of risk".
>
> 52.It is also well established that the standard required is less than a 50% chance of persecution occurring. Even a 10% chance that an applicant will face persecution for a Convention reason may satisfy the relevant test: see *Cardozo-Fonseca*, at 440, cited by Lord Keith in *Sivakumaran*, at 994; and *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379, a decision of the High Court of Australia given by Mason CJ, cited with approval by Brooke LJ in *Karanakaran v Secretary of State for the Home Department* [2000] 2 All ER 449, at 464.

89. 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 alongside the preserved findings of FtTJ Lewis and the basis upon with the decision was set aside by the UT panel and their decision of the 6 October 2022.

90. The starting point of the assessment are the findings of fact made by FtTJ Lewis. The FtTJ accepted the appellant was an Iranian National of Kurdish ethnicity. However in respect of the events the appellant claimed to have occurred in Iran, the FtTJ rejected his account. His factual findings are as follows:

(1) “I find the appellant’s account – that he was not a sympathizer of the KDPI, but was approached be a member of the KDPI who thereby revealed himself as a member, to carry out tasks ordinarily reserved for members, in the presence of and with the assistance of party members ‘I was accompanied by some Kolbars to get to the village’ AIR Q.65 [178]to be inconsistent with external information about the methods and activities of the KDPI (see para 19-20).

(2) The Respondent says that the appellant's account is inconsistent in a number of ways. It is said that the appellant had a wealthy uncle and father who owned his own business: as such the appellant would not need to assist the KDPI, in a dangerous enterprise, for financial reasons. I accept the appellant's explanation that his uncle's financial support was not unlimited, and that his uncle has his own family from whom he cared and provided.

(3) The appellant's accounts of his activities for the KDPI were inconsistent. In his AIR, (Q.66) the appellant said that he moved only with Iranian territory but that in his screening interview he crossed the border to Iraq. Before attending the AIR, the appellant's solicitors wrote to the respondent on 9th November 2020. That letter set out corrections to the appellant's AIR. There was no correction made as to the appellant's journey. I find the difference between the appellant's two accounts to be significant. Travelling across borders for clandestine purposes carries an additional element of risk which the appellant would clearly understand and recall. More so, because the appellant's case is that on the second occasion he took the same route (AIR – Q.88)(at para 22).

(4) The appellant's case is that within very short compass of his assistance to the KDPI his father's shop was arrested. The appellant and his family are not politically active and were not know to the Iranian Regime. The appellant has inferred that his details have been provided to the regime after the arrest, torture and detention of AH. (Para 23)

(5) The appellant's account as to the raid of his father's shop has changed. When asked in the AIR (Q99) the appellant could not remember. In his SCR interview he claimed in took place on 22nd September 2019. This was corrected to 12th November 2020 in the appellant's witness statement. A single change in account is not fatal to an appellant's case. However, I find in this case that the appellant's account has changed in a number or respects. These include that the appellant stated claimed not to know whether AH was involved with the KDPI (AIR 58-59) but in said that he was a member of the party in his witness statement, paragraph 10 at [3].

(6) I do not find that the appellant's account of his involvement with the KDPI to be reliable because it is changed and was inconsistent with external information about the recruiting methods of the KDPI."

91. While the history and background of the appeal demonstrates that the appellant sought permission to appeal both the factual findings made by the FtTJ in relation to the events in Iran and also the assessment of risk based on his sur place activities, as recorded by the Upper Tribunal panel, UTJ Lindsley on 21 February 2022 refused permission to appeal in relation to those grounds to challenge the adverse findings of fact which related to events in Iran but granted permission to appeal only in relation to the FtTJ's analysis of risk by reason of the appellant's sur place activities. Thus there was no appeal before the Upper Tribunal to challenge the factual assessment made by FtTJ Lewis as to the events the appellant claimed had occurred in Iran.

92. Those factual findings remain as the previous factual findings made by Judge Lewis and applying the decision in Devaseelan.

93. Whilst Mr Malik submitted that it was important to understand the reasons why had left Iran on the basis that he had been smuggling parcels of political material and that his father's shop was raided and thus he was known by the authorities before he left Iran, those were not the factual findings made by the FtTJ. Since the decision of the FtTJ and that of the Upper Tribunal panel, there has been no new evidence to undermine those findings made by FtTJ Lewis that even to the lower standard of proof that the appellant has failed to establish that he is at risk as a result of the events in Iran. Thus the starting point is that the appellant is not known to the Iranian authorities based on any activities in Iran. However I accept the submission made by Mr Malik who relied upon the UT panel's decision where they identified 2 relevant risk factors which were firstly, the appellant left Iran illegally and that he is of Kurdish ethnicity (see paragraph 10 of the UT panel's decision).

94. Relevant country guidance decisions are set out in summary below.

95. In SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (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."

96. 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.

97. 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.

98. At [1]-[5] of the headnote to HB (Iran), the Upper Tribunal stated that those of Kurdish ethnicity are not at risk on return to Iran on account of their ethnicity alone, but that Kurds faced discrimination and those of Kurdish ethnicity were viewed with even greater suspicion than hitherto. Kurdish ethnicity was therefore confirmed to be a risk factor, albeit not a determinative one, which was to be considered alongside the factors listed at [6]-[9] of the headnote. Paragraph [6] (which concerns residence in the KRI) is not relevant to the present case. Paragraphs [7]-[10] are relevant. They state as follows:

> 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.

99. The issue identified by the Upper Tribunal panel in their decision as relevant to the remaking of the appeal was whether the appellant, on return to Iran with the risk factors of his Kurdish ethnicity, as a failed asylum seeker who exited illegally would be at risk on return by virtue of his sur place activity.

100. In his submissions, Mr Malik outlined the country materials in the appellant’s bundle relevant to the circumstances in Iran for those who seek to protest against the regime, whether peacefully or otherwise and the likely consequences of such protests which would be viewed as either anti-regime or un Islamic. The material is exhibited in the appellant’s bundle and includes reports from Amnesty International, the Human Rights Watch report and that of the US State Department.

101. There is no dispute about the country materials, and the stance taken by the Iranian authorities against those who are anti-regime or is

perceived to be by their actions which is well documented both in the country materials and within the country guidance decisions applicable to Iran. As set out in the decision of HB (Kurds) 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.

102. Mr McVeety on behalf of the respondent does not dispute that country material. Whilst I would accept the evidence demonstrates the nature and gravity of the risk on return as did Mr McVeety in his oral submissions, the issue is whether the appellant has demonstrated a reasonable likelihood of being at risk on return to Iran based on the identifiable risk factors and on his sur place activities of political opinion.

103. Mr McVeety began his submissions stating that if the appellant were genuine in the holding of his political beliefs as shown in his posts and his attendance at demonstrations such evidence would demonstrate that he would be considered as "anti- regime" by the Iranian authorities, and alongside the other identifiable risk factors such as his illegal exit and his Kurdish ethnicity and would be at a reasonable likelihood of harm on return. He further accepted that even if the appellant were not genuine or that the tribunal found that he was disingenuous that it would still be necessary to determine whether his profile was one that has come or would be likely to come to the Iranian authorities attention for the wrong reasons, this would also lead to the appellant being at a reasonable likelihood of harm on return.

104. The Upper Tribunal panel set aside the decision of the FtTJ and its assessment of risk for the reasons set out in its decision and as recited earlier in this decision.

105. The FtTJ did not find the appellant's political activities in the UK to be genuine and his findings on this issue were set out at paragraphs 29-31 of his decision.

> "29. It is the appellant's case that he travelled to London on his own but knew where to go because of the assistance of his house mate. The Respondent says, and I find, that such account is not credible or plausible. The appellant cannot read or write. He has no means to navigate to an address by himself and has not given specific evidence as to how he did so.
>
> 30. The appellant's literacy is further relevant. When cross-examined the appellant said that he has set up a Facebook account in opposition to the Iranian regime and that he set up the account: 'when I arrived in the UK.' Mr. Brown, on behalf of the appellant urges me not to take such a statement literally, rather to find that the appellant set the account up some time after he arrived in the UK, and that he created the account with the assistance of the person with whom the appellant shared a house.

> 31. In this regard I do not find the appellant's account to be credible. I find that the appellant's posts on Facebook and travel to London represent an attempt by him to bolster a weak claim rather than to represent his actually held political views.

106. In the alternative, the FtTJ found that even if such posts and activities "did represent the appellant's now genuinely held political views," based on his assessment that he attended a small number of demonstrations and that the attendees were measured in "tens" and that the appellant was not easily identifiable, that the appellant would not be identified by the Iranian authorities.

107. Mr Malik submitted that the starting point of the findings of the FtTJ did not bind the Upper Tribunal and that a claim could succeed even if in part a person's account had been doubted or not believed.

108. At paragraph 9 of its error of law discussion, the Upper Tribunal panel set out the FtTJ's assessment that the sur place activities were not genuine and he undertook them in order to bolster a week asylum claim but that it was "nonetheless clear from the authorities that the FtTJ was still bound to consider whether or not those activities together with this appellant's particular circumstances rendered him at risk in light of the country guidance." They concluded that the FtTJ erred in law by failing to apply the relevant country guidance in the light of the accepted risk factors of the appellant being of Kurdish ethnicity and having left illegally and participated in sur place activities in the UK (see paragraph 10). In terms of remaking the UT panel observed that there had been more recent country guidance in XX (PJAK) -sur place activities – Facebook) Iran CG [2022] UKUT 0023 and that it was their view that "it would be helpful to have updated evidence from the appellant as to his sur place activities and for there to be a further hearing that considers those against the recent country guidance." It was therefore envisaged by the Upper Tribunal panel that further evidence would be given.

109. The first part of the relevant evidence involves the appellant's attendance at demonstrations in the United Kingdom in support of his claimed political opinion held. When assessing the issue, the relevant country guidance is set out in BA (Demonstrators in Britain - risk on return) CG [2011] UKUT 36.

110. At paragraph 65 of its decision the Tribunal identified the relevance of the risk of identification. They stated "we are persuaded that the Iranian authorities attempt to identify persons participating in demonstrations outside the Iranian embassy in London. The practice of filming demonstrations supports that. The evidence suggests that there may well have been persons in the crowd to assist in the process. There is insufficient evidence to establish that the regime has facial recognition technology in use in the United Kingdom, but it seems clear that the Iranian security apparatus attempt to match names to faces of demonstrations from photographs. We believe the information gathered

here is available in Iran. Demonstrations is opportunistic the evidence suggests that this is not likely to be a major influence on the perception of the regime. Although expressing dissent itself will be sufficient to result in a person having in the eyes of the regime a significant political profile, we consider that the nature of the level of the sur place activity will clearly heighten the determination of the Iranian authorities to identify the demonstrator while in Britain and to identify him on return. That, combined with the factors which might trigger enquiry would lead to an increased likelihood of questioning and ill-treatment on return."

111. The UT panel did not accept that the Iranian authorities had the ability to identify all returnees who attended demonstrations particularly in the light of the number of those who did, and this was limited by the lack of facial recognition technology and the haphazard nature of the checks at the airport (see paragraph 65). Therefore for an infrequent demonstrator who played no particular role in demonstrations and whose participation is not highlighted in the media he is not a real risk of being identified and therefore not at risk on return.

112. The Tribunal's conclusions were as follows:

"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? "

113. The additional evidence provided by the appellant is different to that which was before the previous tribunal. Dealing first with the demonstrations, at the time of the previous hearing in June 2021 the appellant's attendance was limited to 3 demonstrations (see paragraph 20). Whilst the written submissions submitted on behalf of the respondent set out that the appellant's assertion of attending demonstrations was unsubstantiated, Mr McVeety did not seek to dispute that the appellant had in fact substantiated his attendance at least 10 if not more demonstrations in the United Kingdom which took place outside the Iranian embassy. He accepted that he had provided substantial evidence of attending demonstrations and posting material on Facebook. The level of attendance has been made clearer by being able to view the appellant's Facebook account and the pictures posted on that account shows the appellant present at the demonstrations and his behaviour/conduct at them. The extent of his behaviour or attendance the demonstrations may not have been obvious previously as the photographs both in the old and the new bundle were very unclear in their images and what they purported to show. It was only by viewing the material and the later colour photographs to show the appellant's attendance and behaviour which made events clearer. It was also possible to view the videos posted rather than a single screenshot which did not show anything.

114. From the evidence the demonstrations attended by the appellant appear to be as follows; 13th of July 2020, 16 July 2020, 8 September 2020, 1 January 2021, 4 April 2021, 12 July 2021, 20 March 2022, 23 August 2022, 14 February 2023, 20 March 2023, 11 June 2023, 6 August 2023, 3 September 2023.

115. It is now not disputed that the appellant has attended demonstrations as set out above. The nature and theme of those demonstrations was to demonstrate on behalf of the Kurdish people in Iran and in particular in support of the party known as the Kurdish Democratic party – Iran(" KDPI"). The appellant's evidence was that whilst he was not a member of that party he agreed with their aims. There is similarly no dispute as to the KDPI who are an Iranian Kurdish opposition party who split from the PDKI in 2006. The party's headquarters and substantial part of its organisation and members are based in exile in northern Iraq. They have resumed limited military activity inside Iran since 2015 and the main focus of the party are civil activities such as to support civil society in Iranian Kurdistan and culture by way of protests and strikes. Membership or affiliation to the party might lead to the death penalty or long prison sentences in Iran. The country materials demonstrate that Kurdish political prisoners represent almost half of all political prisoners in the country, and most were

charged with crimes against national security. Kurds constituted a disproportionate number of those sentenced to death and executed.

116. Thus applying the headnote in BA, the support for the KDPI would reasonably be likely to be characterised by the Iranian authorities as being anti- regime.

117. As to the role of the appellant, on the evidence before the FtTJ he found the demonstrations appeared to be small ones with attendance in "tens" rather than hundreds and he appeared to be distant from the embassy and not clearly identifiable.

118. As such out earlier the evidence before this tribunal is now greater and more easily viewed than it was before the FtTJ. Mr McVeety on behalf of the respondent submitted that whilst he had attended a significant number of demonstrations that he had no real role in the demonstrations. In particular he submitted that the appellant's evidence as to the wearing of a hi viz jacket was not credible.

119. In assessing the evidence, the demonstrations are plainly held outside the Iranian embassy and the appellant can be seen in some of the material as being in close proximity to the embassy. For example, as to the picture the demonstration attended on 20 March 2023 the proximity of the embassy could be seen by the flag of Iran. There are a large number of demonstrators at the demonstrations. This can be seen from the videos of the demonstration posted on the Facebook account. This accords with the appellant's oral evidence that there were 200 protesters at the demonstration in April 2021.

120. When looking at his behaviour or conduct of the demonstrations, the appellant can be seen holding pictures of the leaders of Iran with crosses through their faces and with a noose around their neck (see 20/3/23). He is viewed burning a picture of the regime leader with blood on his hands in close proximity to the Iranian embassy and near to the police. The appellant could be seen holding a picture of Kurdish activist and seen next to another demonstrator holding up a sign (stop the killing in Iran" and on 11 June 2021 "stop killing Kurds". Other examples in the demonstration show the appellant holding the Kurdish flag close to the embassy and holding pictures of Iran leaders with inflammatory words written on them. There are other pictures and videos of the appellant chanting or shouting and is an active participant.

121. As to whether the appellant has any role in the demonstrations, the appellant can clearly be seen wearing a high visibility jacket. The appellant's evidence (set out his witness statement paragraph 7) that he was given the jacket. In his oral evidence he stated that he was given the jacket to make sure that the demonstrators stayed in the correct place. In other words and as Mr McVeety highlighted, he was "marshalling" the crowd rather than having any direct organisational role.

122. Mr McVeety submitted that his evidence was not credible on the basis that it was not reasonably likely that someone from the KDPI would have given him such a role when he was not a member. Having considered the evidence I accept the appellant's evidence as to why he was wearing the high visibility jacket. Firstly, he did not seek to embellish his account that his role was that of an organiser as part of the KDPI but that he performed a limited practical "organisational" role. Secondly, if the appellant were seeking to be visible he would have worn the high visibility jacket at all demonstrations and also for all of the time of the demonstrations attended. Thirdly, there is a photograph of the appellant in the high visibility jacket standing next to a man who was wearing a high visibility jacket with the logo and emblem of the KDPI. It is a reasonable inference to draw the man is an organiser or has a role within the demonstration and that the appellant was photographed next to him. This supports the appellant's account that he was asked to undertake some role in the demonstrations.

123. As to the publicity of the demonstrations it is not known what coverage there would be in the UK or Iran. However, as Mr Malik pointed out in his submissions, the appellant was shown on the video/photographs as being filmed and demonstrations were live streamed on various channels. Thus whilst it is not easy to ascertain where it was been shown the fact that live streaming was taking place demonstrates that it is reasonably likely that it could be viewed by both those who supported the Kurdish cause and those equally who did not.

124. As to the risk of identification, the appellant has been in close proximity to the embassy and is wearing a high visibility jacket. He has been photographed next to an organiser with a KDPI emblem.

125. The issue of surveillance of demonstrations is set out at paragraphs 65 – 66 of the country guidance in BA. The panel were persuaded that the Iranian authorities attempt to identify persons participating in demonstrations outside the Iranian embassy in London. The practice of filming demonstrations supports that. The evidence suggests that there may well have been persons in the crowd to assist in the process. The panel also found that there was insufficient evidence to establish that the regime has facial recognition technology in use in the UK, but it seems clear that the Iranian security apparatus attempts to match names to faces of demonstrators from photographs. The panel stated "we believe that the information gathered here is available in Iran. While it may well be that an appellant's participation in demonstrations is opportunistic, the evidence suggests that this is not likely to be a major influence on the perception of the regime. Although, expressing dissent itself will be sufficient to result in a person having in the eyes of the regime a significant political profile, we consider that the nature of the level of the sur plus activity will clearly heighten the determination of the Iranian authorities to identify the demonstrator while in Britain and to identify and return. That, combined with the factors which might trigger enquiry

would lead to an increased likelihood of questioning and of ill-treatment on return."

126. It is therefore reasonably likely that the Iranian authorities aim to identify those who regularly demonstrate outside its embassy through filming them as the tribunal found or by having agents in the crowd. The regime does not have facial recognition technology to identify every demonstrator. That is made clear by the country guidance and the material analysed therein. However it is reasonably likely to be able to identify those whose can be viewed or otherwise "stand out" and that the nature of the level of the activity will clearly heighten the determination of the authorities to identify the demonstrator while in Britain and to identify on return. It is that, combined with other factors, for example Kurdish ethnicity and having exited illegally, which might trigger enquiry which would lead to an increased likelihood of questioning and of ill-treatment on return as a consequence of the " hair trigger" approach.

127. I now turn to the Facebook evidence. The appellant has operated a Facebook account since 2020. It is accepted on behalf of the respondent that the appellant has complied with the disclosure of the Facebook account as required and as referred to in the country guidance decision of XX (PJAK) at headnote 7.

128. It is also accepted that the Facebook account is accessible to the public. The evidence shows that the Facebook account has his name and photograph on the profile page (see p 170CEF) and also gives his hometown address in Iran.

129. The content of the Facebook posts which are numerous, mirror to some extent the photographs and pictures taken of the appellant's attendance at the demonstrations. The relevant part identified by Mr Malik are as follows. The appellant started the account on 22 November 2020 and when he did, so he had 1.668 "friends" and that this has now increased to 2345 in September showing that his exposure has been increasing over the time it has been activated. It can also be seen that the images and videos attracted comments and "likes" from users (see p 176, 177, 178 CEF). For the post dated 4 April 2021 (p 180CEF), there were 149 comments and 78 likes. The burning of the Iranian flag on 11 July 2020 had 91 comments. Another example is the demonstration at 20 March 2022. The appellant is wearing a hi viz jacket and holding and speaking through a megaphone. The post refers to the Iranian government killing Kurds and identifying them as "terrorists."

130. The appellant in his evidence identified the post (P186CEF) as showing the sharing of information and about people taking photographs of the demonstrators and passing them on stating "you can see someone holding a camera." Thus showing evidence consistent with paragraph 65 of BA.

131. When assessing the evidence of risk, I take into account the submissions made by Mr Malik as to the surveillance of social media. He relied upon an article set out at page 177AB entitled “Iranian guards increasing monitoring” to demonstrate the issue of surveillance. However on reading the article refers to the ability of the Iranian authorities to monitor social media inside Iran rather than outside Iran. The thrust of the article is about state censorship and monitoring social media inside Iran rather than outside Iran. The decision of SF v Sweden (May 2012) did confirm that the Iranian authorities effectively monitored Internet communications both within and outside Iran, however the evidence did not demonstrate that all social media and the Internet is monitored. Furthermore, whilst reliance is placed on the reported decision of AB and others (Internet activity - state of evidence) Iran [2015] UKUT 257, this concerned evidence on the issue of blogging. The appellant is not a blogger. That would be inconsistent with his stated ability or limitation in his written ability in Kurdish and English-language.

132. The more relevant and up-to-date country guidance on Facebook is that set out in XX (PJAK, sur place activities, Facebook) (CG) which is summarised in the headnote as follows:

"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 308 (IAC); and HB (Kurds) Iran CG [2018] UKUT 430 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 257 (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.

133. 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."

134. When assessing the country materials and objects material relied upon by the appellant as to surveillance of social media, it is not as recent as that set out in the country guidance decision and the expert evidence analysed therein. Thus it does not lead to any departure from the conclusions reached in XX (PJAK). Thus the evidence fails to show that there is a reasonable likelihood that the Iranian authorities are able to monitor on a large scale Facebook accounts. Thus it will require a more focused and ad hoc search. The country guidance sets out that it is reasonably likely to be confined to those individuals who are of significant adverse interest. That identifies that this will depend on a person's existing profile and where they fit into and the "social graph" and the extent to which they have a social network and may have their Facebook material accessed.

135. When assessing whether the appellant holds genuine political views, how they have been expressed has been set out in the preceding paragraphs. The starting point are the findings made by the FtTJ as set out above who rejected the account of events given in respect of Iran and that his sur place activities were an attempt to bolster a weak claim. The appellant's general credibility is affected by those previous adverse findings. I would however accept the submission made by Mr Malik that it does not necessarily mean that all of his account and his evidence should be treated as not being credible. In that regard and since the hearing the tribunal has had further evidence and of a better quality as to the appellant's political activities as envisaged by the UT panel. Mr McVeety accepts that the appellant has provided substantial evidence of

attendance at demonstrations and substantive Facebook evidence. However that does not mean that his intentions are for genuine reasons.

136. Whilst Mr McVeety submits that it counts against the appellant that he is not a member of any political party and that he has no involvement in activities on behalf of the KDPI, it is not necessary to be a member of a party to hold political views. Further, the demonstrations attended appear to be those organised by the KDPI as evidenced from the photographs. The other point raised by Mr McVeety weighing against credibility is the wearing of the high viz jacket. I have resolved that issue in favour of the appellant and that it is reasonably likely that he was wearing the jacket on the basis he stated. The last point arises from the previous finding is that of the appellant's literacy. When the appellant arrived in the UK he was not able to read or write and the claim to have set up his Facebook page and travel to London was not accepted as being credible. The appellant's evidence was that he had set up the account with the assistance of his Kurdish friends with him shared a house. When asked about this in cross-examination he stated that he had now been able to learn some English and Kurdish and was able to post some material himself. The fact that someone has poor or limited literacy skills does not necessarily mean that they cannot hold or express political views which are genuine. However I am cautious in accepting the evidence that he now posts some material himself. I take into account that he has been in the UK since December 2019 which is now 4 years. Given the length of residence it is not inherently incredible that the appellant has been able to learn to write and speak some English and to write in Kurdish. It would be surprising if he could not do so. Also part of his oral evidence was that he was aggrieved as to the treatment of Kurds in Iran like himself who were not able to be taught the Kurdish language. His position and attendance at the demonstrations show an interested protester and there is some albeit limited evidence given about his views as expressed.

137. It is not a straightforward task to assess the genuineness of someone's political views and the previous adverse findings are plainly relevant in assessing that evidence. The fact that he has continued activities for 4 years does not again make them necessarily genuine. Overall and taking into account the lower standard of proof I accept that he has demonstrated political and critical views of the Iranian authorities which he believes in and are therefore genuine. Whether he would continue to express those beliefs on return was not explored in evidence, either in evidence in chief or a cross-examination. At its highest it was an assertion that (see paragraph 7 witness statement) is that he will continue to protest if returned to Iran and paragraph 9 that he would not be able to conceal his political beliefs because he was not prepared to support a government he could not support. But if he would not do so as a result because he feared the authorities that would bring him within the principles of HJ(Iran) and would amount to persecution. This would be relevant to the enquiries made at the "pinch point" of return where he would be expected to tell the truth about his activities. The appellant

would therefore be at real risk of harm on return to Iran on account of his political beliefs.

138. Even the appellant would not continue to express any political opinion on return, or if I were not to find those views to be genuine, as identified by the advocates the question is whether the conduct and behaviour of the appellant, no matter how manufactured or opportunistic, would result in a risk of persecution and return. If so, as identified by Mr McVeety the appellant may still establish his claim.

139. In this regard it is necessary to take into account the particular behaviour and conduct in respect of his attendance at demonstrations and his Facebook posts and whether that evidence demonstrates the appellant is at a reasonable likelihood of risk of harm. The assessment that evidence is set out in the preceding paragraphs.

140. When assessing risk overall, Mr McVeety submitted that the appellant was not of significant interest previously in Iran. On the findings of the FtTJ that is correct, and the appellant has not shown that he was previously known to the authorities as a result of events in Iran. However that is not the end of the assessment. The risk of identification and surveillance depends on where the appellant is on the "social graph" as a result of the activities undertaken.

141. The factual findings made as to the appellant's attendance at demonstrations demonstrates that he has been involved in a significant number of demonstrations where he has been highly visible on the evidence at events supporting the KDPI with close proximity to the embassy which is reasonably likely to have been filmed by the authorities and having been live streamed. The attendance of demonstrations in support of a party that supports Kurdish rights is likely to be viewed negatively or adversely by the Iranian authorities. It is reasonably likely that based on his attendance and on the particular facts that the appellant would be identified from those demonstrations in the light of the particular evidence that has been given. Those have been replicated online via Facebook.

142. Whilst the Iranian authorities cannot access all Facebook accounts, there is a real risk that the appellant is reasonably likely to have been or be the subject of targeted surveillance based on his attendance at the demonstrations. The country guidance decision identifies the relevance of a public profile and "friends." The tribunal accepted the evidence of Dr Clayton (set out between paragraphs 39 – 41) that Facebook data could be obtained in 1 of 3 ways which includes having a Facebook account set to fully public as here. Not all data can be "scraped" (see evidence at paragraph 80) and it is identified that the ability to extract further information depends on the routes identified by Dr Clayton and that it requires going through posts identifying friends with whom the target material is shared (see paragraph 83 of XX (PJAK). Based on the evidence the appellant has a large number of friends and even if it could

be said that the appellant could delete his Facebook account so that he would not be at risk at the “pinch point” of return the fact that posts and photographs have been shared with third parties would mean that they would continue to have access to them.

143. In summary, the following risk factors are relevant and the particular facts of this appeal. The appellant is of Kurdish ethnicity although this factor on its own would not give rise to a real risk of persecution or ill-treatment on return (see HB (Kurds). The appellant left Iran illegally. Again that factor on its own or even in conjunction with Kurdish ethnicity would be insufficient to create a real risk of persecution or serious harm and return (see SSH and HR). The additional relevant risk factors are that the appellant has demonstrated that there is a reasonable likelihood that his level of sur place activities and also taken with the Facebook profile is such that he is likely to be of adverse interest to the authorities on return.

144. It is accepted from the country guidance decisions that the ultimate question is whether the conduct or behaviour of the appellant, no matter if opportunistic would result in a risk of persecution or serious harm at what has been described as the “pinch point” at the airport where his activities would be discovered alongside the other relevant factors. Thus applying those factors the appellant has demonstrated that there is a reasonable likelihood that on return he would be of interest to the Iranian authorities and would therefore be at real risk of persecution or serious harm on account of political opinion either actual or imputed to him.

145. The appeal is therefore allowed on protection grounds.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision was set aside by the UT panel.

The appeal is remade as follows: the appeal is allowed.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

21/12/23