Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02998/2019

THE IMMIGRATION ACTS

Remote Hearing by Skype for Business
On 8th September 2020

Decision & Reasons Promulgated
On 26th October 2020

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

AHA
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Gayle, Elder Rahimi Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

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

An anonymity direction was made by the First-tier Tribunal ("the FtT"). As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. Unless and until a Tribunal or court directs otherwise, the appellant is granted

anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Remote Hearing

1. The hearing before me was a Skype for Business video conference hearing held during the Covid-19 pandemic. Neither party objected to a remote hearing. I sat at the Birmingham Civil Justice Centre and the hearing room and building were open to the public. The hearing was publicly listed, and I was addressed by the representatives in exactly the same way as I would have been, if the parties had attended the hearing together. At the outset Mr Gayle confirmed that the appellant would not be joining the hearing and he does not object to a remote hearing in his absence. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

Introduction

2. The appellant is a national of Iran. He claims to have fled Iran on 10th October 2018. He arrived in the UK on 20th December 2018 and claimed asylum. The claim was refused by the respondent for reasons set out in a decision dated 15th March 2019. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Shepherd for reasons set out in a decision promulgated on 30th October 2019.

3. Judge Shepherd found the appellant's account to have been recruited by his uncle to distribute leaflets for the KDPI, fundamentally unbelievable. She also rejected the appellant's claim that his brother had, under interrogation, informed on the appellant and identified the appellant as the owner of leaflets found following a raid on the family home. Judge Shepherd noted that on his own account, the appellant has used at least three alternative names since leaving Iran, and that when interviewed in March 2019, he failed to refer to any social media activity or the use of what he claimed to be his real name, which I shall refer to as [AZ], as a profile name. At paragraph [36], Judge Shepherd said:

> "(x) … The overall significance of this is of course that he says he believes himself to be monitored by the Iranian authorities in respect of his online activity, but I find that the way in which his account of online social media participation has developed over time, piecemeal and with significant omissions, undermines that account.
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> (xi). This is particularly exemplified by his use of alternative names. He mentioned for the first time early on in oral evidence the name "[AZ]", and declared it to be his real name. I am firmly of the view that this is not his real name. I am reinforced in this because in his oral evidence he was asked about his Facebook profile photo and name, a copy screenshot of which was submitted for the first time in a letter to the tribunal dated 8 August 2019, 3 days before the hearing. He said the photo was not him, but that of Qazi Mohammed, but that the name "[AZ]" which appears next to the photo in the profile is his name. The inference I am to draw is that he could be identified from this by his "real" name. But I conclude that this is untrue for two reasons. In the first place the hearing was the first time "[AZ]" had ever been mentioned. He does not even refer to this name in his appeal statement. Even to the lower standard the explanation for this must be that he had realised that it would be obvious that he could not in fact be identified from the copy Facebook profile which had been submitted late before the hearing. In the second place slightly earlier in cross examination (p8) when asked why he believed he is specifically monitored by the Iranian state he answered;- "… because I have my own photo in my profile and they know me…". Only a few questions later, as I noted above, he said the photo was of another, Qazi Mohammed. In other words this appellant's account, both as to his true identity and any online identity he claims to have, is inconsistent."

4. Judge Shepherd considered three images purportedly posted on the Facebook account of [AZ], and the submission made on behalf of the appellant that the "live-stream" from which those photographs were taken, would identify the appellant. Judge Shepherd concluded that the photographs do not assist the appellant establish that he could be identified from that, or any other Facebook material. At paragraph [36(xiii)], Judge Shepherd went on to say:

> "The appellant suggests that the authorities would be able to identify him from facial recognition using two sources of material: photos posted on Facebook pages of him apparently outside the Iranian Embassy holding up a cartoon (of which I have been shown three stills from the "live") and in addition, from any images captured by the authorities directly of demonstrators outside the Embassy. Evidence that he has so demonstrated in that location are put in the form of undated photographs, said to be of him at a demonstration in that place. The photographer is not identified and does not provide a statement. Only one of the photos is a selfie. The position of the appellant in all of them, including the selfie, is singular. In all of the images the appellant is placed standing with his back to the Embassy, whilst most of the others present and (sic) facing towards the Embassy. It is unlikely in my view that even if he were present at a demonstration outside the Iranian Embassy as claimed, any surveillance cameras would be able to capture evidence of this appellant at such an angle to those cameras to afford identification. As to the "Live", the person recording the "live" is not identified, and once again there is no evidence from him or her."

5. For the numerous reasons set out at paragraph [36] of her decision, Judge Shepherd concluded, at paragraph [37], that the appellant's account to have been known as a KDPI sympathiser at the time of leaving Iran, and/or having come to the attention of the Iranian authorities for political activism since leaving Iran, has been fabricated. She went on to consider whether the appellant would be at risk upon return as someone who had exited illegally and claimed asylum. She referred to the relevant country guidance, noting in particular that since 2016 the Iranian authorities have become increasingly suspicious of, and sensitive to Kurdish Political activity. She noted, at [39], the authorities now operate a 'hair-trigger' approach to those suspected or perceived to be involved in Kurdish activities or support for Kurdish rights. She noted the threshold for suspicion is low, and the reaction of the authorities is reasonably likely to be extreme. At paragraph [39], she said:

> "… Had I accepted this appellant's account therefore clearly he would be entitled to protection."

6. However the appellant had failed to persuade Judge Shepherd, even to the lower standard, that he has come to the adverse attention of the Iranian authorities in either respect. She concluded that the appellant would return as a failed asylum seeker, and that alone.

7. The appellant's grounds of appeal run to some 20 paragraphs and make several criticisms of the assessment of the evidence and findings made by the Judge. What are described as grounds of appeal, fail to delineate the grounds relied upon. Permission to appeal was granted by Upper Tribunal Judge Blundell on 15th January 2020. The grant of permission is limited to the points made at paragraphs [3] – [4] of the grounds. In granting permission, Upper Tribunal Judge Blundell stated:

> "2. The appellant's claim was based on his political activity in Iran and the UK. At [37], the judge reached a clear conclusion that the appellant's account of being known as a KDPI sympathiser at the time of leaving Iran and to have come to the attention of the Iranian authorities for political activism since leaving Iran had been fabricated. There were extensive reasons given for those conclusions, and it is not established that the judge arguably gave inadequate reasons for them, or that they were perverse, or that they were reached in contravention of the guidance in cases such as Y v SSHD]2006] EWCA Civ 1223. I agree with the judge who refused permission to appeal in the FtT that these complaints amount, in truth, to nothing more than a disagreement with findings of fact which were reached lawfully by the Judge. She was plainly aware of the country guidance and the background material and she reached sustainable findings on the credibility of the appellant's account in light of that material.
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> I grant permission to appeal on the sur place argument which is made most succinctly at [3] – [4] of the grounds of appeal, however. Even though the judge gave clear and sustainable reasons for rejecting the appellant's KDPI affiliation in Iran and his claim to have come to the attention of the authorities as a result of his sur place activities in this country, it is arguable that she failed to consider the likely result of the interrogation and 'hair trigger' enquiries which would await the appellant on return. I do not understand the judge to have rejected the appellant's claim to have been involved in sur place activity and it was arguably incumbent upon her to consider whether that would be revealed at the 'pinch point' of return and, if so, how it would be viewed by the authorities. She arguably failed to do so, and arguably focused instead on the separate question of whether the appellant's sur place activities are already known to the authorities."

8. Before me, Mr Gayle adopted the written submissions that had been sent to the Tribunal by email on 19th May 2020, replying to written submissions received from the respondent. The appellant submits that it is accepted that the appellant has attended demonstrations outside the Iranian Embassy and that Judge Shepherd "… considered Facebook evidence provided by the appellant". The appellant submits the suggestion that the Iranian authorities would consider the appellant's activities as anything other than anti-regime, is perverse. The appellant submits that the

respondent has made no mention of the country guidance set out in HB (Kurds) Iran CG [2018] UKUT 00430, and on a proper application of the country guidance the appellant would be at risk upon return to Iran.

9. Mr Gayle submits that on the accepted facts, the appellant's attendance at demonstrations outside the Iranian Embassy establishes that he would be at risk upon return to Iran. He submits that when considering the photographs showing the appellant's attendance at demonstrations, Judge Shepherd makes criticism because in the images, the appellant is placed standing with his back to the Embassy, whilst most of the others present are facing towards the Embassy. Mr Gayle submits Judge Shepherd failed to understand that the appellant took the photographs in that way, so that they show the Embassy in the background and evidence his attendance at the demonstrations, but that is not to say the appellant stood with his back to the Embassy throughout the demonstrations. The purpose of the photographs was to show the appellant's attendance at the demonstrations. Without such evidence the respondent would be unlikely to accept the appellant's word that he had attended demonstrations outside the Embassy. Mr Gayle submits that in any event, the Iranian authorities do not only monitor from within the Embassy. The Security Services have sophisticated means to monitor the sur place activities of individuals and it is inevitable they use spies amongst the demonstrators to identify those demonstrating. Furthermore, one of the photographs was of the appellant in a Hi-Viz vest, and the appellant is likely to be viewed as a steward at the demonstration and that increases his profile. Mr Gayle submits facial recognition technology has developed since the decision in BA (demonstrators in Britain- risk on return) Iran CG [2011] UKUT in which the Upper Tribunal noted there was no evidence of the use of facial recognition technology at Imam Khomeini International Airport. He refers to the decision of the Upper Tribunal in AB and Others (internet activity – state of evidence) Iran [2015] UKUT 0257 (IAC) in which the Upper Tribunal considered whether the use of social and other internet-based media (including the use of Facebook by Iranian nationals located in the United Kingdom to make actual or perceived criticisms of the Iranian state) is reasonably likely to come to the attention of the Iranian authorities because

those authorities have the capability to monitor the use social and other internet-based media by Iranian nationals based outside of Iran.

10. He submits facial recognition technology is now available on smart phones, and it is inevitable that it is being used by the Iranian regime to monitor and identify activists. Furthermore, although Judge Shepherd rejected the appellant's claim that his real name is [AZ], it is clear from the photographs that were before the FtT that photographs of the appellant at demonstrations have been posted on that Facebook account, liked and commented upon.

11. Mr Gayle submits Judge Shepherd failed to consider the risk upon return on the basis of the accepted evidence that the appellant had attended demonstrations outside the Iranian Embassy. He submits that in HB (Kurds) Iran CG [2018] UKUT 00430(IAC), the Upper Tribunal held that 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". He submits that at paragraph [41] of her decision, Judge Shepherd, drawing upon paragraph [97] of HB (Kurds), accepted that a returnee without a passport is likely to be questioned on return. He submits the combination of the appellant's Kurdish ethnicity, his illegal exit from Iran, and his participation in demonstrations outside the Embassy, is sufficient to establish that he will be subjected to the 'hair trigger' approach adopted by the Iranian authorities against those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. He submits it would be naïve to assume that the Iranian authorities would accept the appellant is being honest when he says he is not 'anti-regime', when he returns as a Kurdish failed asylum seeker, who has attended demonstrations outside the Iranian Embassy. Mr Gayle submits that upon a proper application of the country guidance set out in HB (Kurds), the appellant has established that he would be at risk upon return to Iran.

12. In reply, Mrs Aboni adopted the respondent's written submissions settled by Stefan Kotas and dated 16th May 2020. The respondent submits that on a proper application of the relevant country guidance set out in SSH and HR (illegal exit: failed asylum seeker) Iran CG and AB and others (internet activity – state of evidence) to the facts found by Judge Shepherd, it was open to her to find that the appellant will be of no adverse interest to the authorities upon return. There are two strands to the sur-place activities relied upon by the appellant. In so far as he relies upon his attendance at demonstrations outside the Iranian Embassy, if on return he is asked about the demonstrations, and he gives a truthful answer, that will reveal that the appellant did not know what the first demonstration was about and the two other demonstrations related to women's rights and opposition to capital punishment. Mere attendance at those demonstrations is not something that could properly be construed as a matter the Iranians authorities would have any real adverse interest in. Insofar as the appellant relies upon on-line activity, the appellant's claim that his real name is [AZ] was rejected by Judge Shepherd. All the appellant is left with, is the three photographs relied upon from the Facebook account of [AZ]. The appellant accepts that the photograph on the Facebook profile page is not a photograph of the appellant but a photograph of Qazi Mohammed. The respondent submits that the appellant has not engaged in 'blogging' in the sense described in AB and Others, and the appellant has failed to establish that he can be identified as someone who makes any criticism of the regime, from what is posted on the Facebook account. It is said that on a global assessment of the appellant's profile, he would be an individual who was of no previous adverse interest to the authorities, and someone who has attended three demonstrations in the UK. At one of the demonstrations the appellant did not know what he was demonstrating about. At its highest there is a Facebook account that is not in the appellant's name, but on which the appellant can be seen attending demonstrations. Mrs Aboni submits it was open to Judge Shepherd to find that the appellant could not be identified from that material.

13. Mrs Aboni submits in HB (Kurds) Iran CG the Upper Tribunal confirmed that Kurdish ethnicity is a risk factor which, when combined with other factors, may

create a real risk of persecution or Article 3 ill-treatment. It is a factor of particular significance when assessing risk but "other factors" will include the matters identified in paragraphs (6)-(9) of the headnote. She submits Judge Shepherd carefully considered the evidence of the appellant and it was open to her to find that the appellant has not come to the adverse attention of the Iranian authorities as someone who is suspected or perceived to be involved in Kurdish activities or support for Kurdish rights.

Discussion

14. Judge Shepherd rejected the appellant's claim to have been recruited by his uncle to distribute leaflets for the KDPI. The appellant relies upon the risk upon return to Iran because of the things that he has done since leaving Iran. That is, his attendance at three demonstrations outside the Iranian Embassy and what is posted on the Facebook account of [AZ] showing the appellant attending demonstrations in the UK.

15. The issue in the appeal before the FtT was what would await the appellant on return to Iran in light of the findings made by Judge Shepherd regarding the appellant's sur place activities in the UK. At paragraph [37] of her decision, Judge Shepherd referred to the country guidance and properly noted that since 2016 the Iranians authorities have become increasingly suspicious of and sensitive to Kurdish political activity. She noted they now operate a 'hair-trigger' approach to those suspected or perceived to be involved in Kurdish activities or support for Kurdish rights. She noted the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme. Judge Shepherd undoubtedly had the country guidance in mind when reaching her decision.

16. At paragraph [41] of her decision Judge Shepherd referred to the relevant Country Guidance and noted that it is not disputed that a returnee without a passport is likely to be questioned on return.

17. In AB and others (internet activity – state of evidence) v SSHD, the Upper Tribunal concluded:

> 466. It is very difficult to establish any kind of clear picture about the risks consequent on blogging activities in Iran. Very few people seem to be returned unwillingly and this makes it very difficult to predict with any degree of confidence what fate, if any, awaits them. Some monitoring of activities outside Iran is possible and it occurs. It is not possible to determine what circumstances, if any, enhance or dilute the risk although a high degree of activity is not necessary to attract persecution.
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> 467. The mere fact of being in the United Kingdom for a prolonged period does not lead to persecution. However it may lead to scrutiny and there is clear evidence that some people are asked about their internet activity and particularly for their Facebook password. The act of returning someone creates a "pinch point" so that a person is brought into direct contact with the authorities in Iran who have both the time and inclination to interrogate them. We think it likely that they will be asked about their internet activity and likely if they have any internet activity for that to be exposed and if it is less than flattering of the government to lead to at the very least a real risk of persecution.
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> 468. Social and other internet-based media is used widely through Iran by a very high percentage of the population and activities such as blogging may be perceived as criticisms of the state which is very aware of the power of the internet. The Iranian authorities in their various guises both regulate and police the internet, closing down or marking internet sites although this does not appear to be linked directly to persecution.
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> 469. The capability to monitor outside Iran is not very different from the capability to monitor inside Iran. The Iranian authorities clearly have the capacity to restrict access to social internet-based media. Overall it is very difficult to make any sensible findings about anything that converts a technical possibility of something being discovered into a real risk of it being discovered.
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> 470. The main concern is the pinch point of return. A person who was returning to Iran after a reasonably short period of time on an ordinary passport having left Iran illegally would almost certainly not attract any particular attention at all and for the small number of people who would be returning on an ordinary passport having left lawfully we do not think that there would be any risk to them at all.
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> 471. However, as might more frequently be the case, where a person's leave to remain had lapsed and who might be travelling on a special passport, there would be enhanced interest. The more active they had been the more likely the authorities' interest could lead to persecution.
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> 472. The mere fact that a person, if extremely discrete, blogged in the United Kingdom would not mean they would necessarily come to the attention of the authorities in Iran. However, if there was a lapse of discretion they could face hostile interrogation on return which might expose them to risk. The more active a person had been on the internet the greater the risk. It is not relevant if a person had used the internet in an opportunistic way. The authorities are not concerned with a person's motivation. However in cases in which they have taken an

> interest claiming asylum is viewed negatively. This may not of itself be sufficient to lead to persecution but it may enhance the risk.

18. In HB, the Tribunal heard oral evidence from two expert witnesses, Anna Enayat and Professor Emile Joffé. It declined to give guidance to the effect that a risk of persecution arises where an individual is involved in the making, re-posting or otherwise publicising critical, insulting satirical etc comments about Islam, Islamic religious figures, the Qur'an, Iran's policies or regime members, online on social media networks whether in Iran or abroad; *see [81]*. At paragraph [82], the Upper Tribunal said:

> "However, we consider that such proposed guidance is way outside the scope of the case before us and in any event is far too widely drawn. Although there was evidence before us regarding the potential risk for those whose internet activity/social media use may attract the adverse attention of the authorities, that was not a matter which the parties or experts engaged with in relation to the giving of country guidance in terms, for example, of the ability of the Iranian state to monitor such activity. Indeed, in oral evidence Ms Enayat said that she had not been asked to deal with the question of social media in her instructions (although she had given evidence on the issue in AB and Others). We also take the view that such a consideration is likely to require some technical evidence and such was not before us. Social media use is however, relevant to this particular appellant's appeal and we consider it in that context."

19. The contents of the Facebook posts in HB are referred to in paragraphs [111] to [112] of the decision:- *"In general, as revealed in the posts that have been translated, they express support for the Kurdish political cause and express opposition to the Iranian regime. They consist of shared posts from individuals and from, for example, the Democratic Party of Iranian Kurdistan (PDKI) Scotland and one from Denmark*".

20. At paragraphs [113] to [116], the Upper Tribunal said:

> "113. Mr Metcalfe submitted that there is insufficient evidence that the Iranian authorities would necessarily be aware of that material and that the evidence did not establish that the Iranian authorities routinely inspect the internet profiles of failed asylum seekers.
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> 114. However, we noted at [97] above that itis not disputed that a returnee without a passport is likely to be questioned on return, confirmed in the expert evidence before us and recognised in existing current country guidance, for example, SSH and HR. Ms Enayat's evidence was that it is part of the routine process to look at an internet profile, Facebook and emails of a returnee. A

> person would be asked whether they had a Facebook page and that would be checked. When the person returns they will be asked to log onto their Facebook and email accounts. That is also the effect of her evidence given in AB and Others which was accepted by the Tribunal in that case (see [457]).
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> 115. Mr Metcalfe accepted that the material posted by the appellant on Facebook, if it became known to the authorities, would expose him to prosecution with a risk of imprisonment and that this would result in a real risk of ill-treatment. It was also accepted that the appellant's Facebook page is currently visible to the public at large.
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> 116. We are satisfied that the content of the appellant's Facebook page would become known to the authorities on return as part of the process of investigation of his background. That is the effect of the expert and background evidence before us. It is then, no step at all to the conclusion that this would involve a real risk of persecution and Article 3 ill-treatment in his case, by reason of detention and ill-treatment and likely prosecution. His Facebook posts would reveal not only his support for Kurdish rights but also his having insulted the Iranian regime and leading figures in it. This is reasonably likely to be regarded not only as having 'crossed the line' in terms of political views or activity, but also in terms of religious dissent."

21. The ultimate question is whether the behaviour of the appellant, no matter how cynical or manufactured, would result in a risk of persecution on return; if so then he may establish his right to protection. But that is not the end of the issue. Having established the particular behaviour, the next question to be asked is whether that behaviour does place the appellant at risk.

22. Here, Judge Shepherd found that the appellant had failed to persuade her that he has come to the adverse attention of the Iranian authorities either on account of the Facebook account, or because he had attended demonstrations outside the Iranian Embassy.

23. The country guidance establishes that on return, it is part of the routine process to look at an internet profile, Facebook and emails of a returnee. Judge Shepherd recorded, at paragraph [27], the appellant's evidence that when he arrived in the UK, he opened a Facebook account for himself and started to find friends in the UK as well as in Iran. She was plainly aware that there was a Facebook account relied upon by the appellant and that the posts on that account included a 'live stream' of a demonstration outside the Iranian Embassy, on which the appellant can be seen. The Facebook account relied upon by the appellant is an account in the name of

[AZ] and at paragraph [36(xi)], Judge Shepherd rejected the appellant's claim that his real name is [AZ].

24. Judge Shepherd noted that the three images relied upon by the appellant are stills from the "Live Stream" posted on the Facebook account of [AZ]. She rejected the appellant's claim that he could be identified from that, or any other Facebook material. That was in my judgement a finding and conclusion that was perfectly open to Judge Shepherd. She had rejected the appellant's claim that his real name is [AZ], and it follows that she rejected the claim by the appellant that the Facebook account in the name of [AZ] is a Facebook account that belongs to the appellant. The posts on the Facebook account had not been translated. The images that were relied upon by the appellant are 'stills' from a 'live stream', and in my judgment it was plainly open to the Judge to conclude, as she did at paragraph [36(xii)], that the appellant would not be identified from that material. On return, the appellant will no doubt be honest as to his identity when questioned. The Facebook account relied upon by the appellant is not a Facebook account in the name of the appellant and there is no reason, being honest when questioned, why he should claim to be [AZ] and disclose a Facebook account that does not belong to him. If asked on return if he had a Facebook account he could, legitimately, say no.

25. All that remains is the appellant's claim that he has attended three demonstrations outside the Iranian Embassy. At paragraph [21] of her decision, Judge Shepherd referred to the claim made by the appellant when he was interviewed by the respondent in March 2019, that he had attended a demonstration against the Iranian government. At paragraphs [25] and [26], she referred to two further demonstrations attended by appellant since his interview, and the photographs relied upon by the appellant to evidence his attendance. Judge Shepherd did not reject the appellant's claim that he had attended demonstrations outside the Iranian Embassy, but found it is unlikely that any surveillance cameras would be able to capture evidence of the appellant. The photographs relied upon by the appellant show the appellant to be standing towards the back of the group of protesters demonstrating outside the Embassy. Whilst I quite accept the appellant, in one

photograph appears to be wearing a Hi-Viz vest, and that he is unlikely to have stood with his back to the Embassy throughout the demonstrations, it was in my judgement open to Judge Shepherd to conclude that the appellant could not be identified. The relevant Country guidance indicates some surveillance at demonstrations but there is nothing to suggest the appellant's profile would place him at risk.

26. The Facebook posts as described, the photographic evidence before the FtT and the appellant's evidence regarding the demonstrations attended, together with the lack of other political activity were all considered by Judge Shepherd, who, in the context of the appellant's overall lack of political engagement and lack of explanation for his attendance at demonstrations, reached a conclusion that was open to her. Judge Shepherd was not satisfied that the appellant has been involved in any political opposition to the Iranian government such as would put him at risk upon return. At most, from the evidence that was before the First-tier Tribunal, the appellant has attended three demonstrations and he appears in a 'live stream' posted on the Facebook account of someone else. On return, when questioned, the appellant has no reason to inform the Iranian authorities that he has been involved in anti-government activities because his attendance at the demonstrations was not predicated upon any genuine political involvement. For him to assert otherwise, would be inaccurate.

27. On a proper application of the country guidance set out in HB (Kurds) it is clear that those of Kurdish ethnicity are reasonably likely to be subjected to heightened scrutiny on return to Iran. However, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport and even if combined with illegal exit, does not create a risk of persecution. Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk. Even low-level activity perceived to be political, such as, possession of leaflets supporting Kurdish rights involves a risk of persecution but each case depends on its own facts. Judge Shepherd carefully assessed the likelihood of the appellant's activities bringing him to the adverse attention of the authorities. She rejected the appellant's underlying

account of events in Iran and found that the appellant would not be identified as someone of adverse interest because of his sur place activities. It was open to her to reach that decision for the reasons she has given.

28. Judge Shepherd acknowledged that if she had accepted the appellant's account of events, he would clearly be entitled to protection. Judge Shepherd carefully considered the evidence of the sur place activities relied upon by the appellant in the context of the relevant jurisprudence and concluded, in line with country guidance, that the activities of the appellant would not lead to his identification as someone suspected or perceived to be involved in Kurdish activities or support for Kurdish rights. That was a conclusion the judge was entitled to come to, on the evidence before her.

29. Although the decision could have been better expressed, an appellate court should resist the temptation to subvert the principle that they should not substitute their own analysis and discretion for that of the Judge by a narrow textual analysis which enables it to claim that the Judge misdirected themselves. It is not a counsel of perfection. An appeal to the Upper Tribunal is not an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits.

30. A fact-sensitive analysis of the risk upon return was required. In my judgement, Judge Shepherd clearly had in mind the "pinch point" at which the appellant will be brought into direct contact with the authorities in Iran, and is likely to be questioned. She concluded that the appellant would be returned as a failed asylum seeker, and that alone. It is clear that the more active a person has been, the more likely the authorities interest could lead to persecution. The findings made by Judge Shepherd were findings that were properly open to her on the evidence before the F*t*T. Judge Shepherd found the appellant will not come to the attention of the authorities in Iran on account of his sur place activities, or be regarded as someone perceived to be involved in Kurdish political activities or support for Kurdish rights. The findings cannot be said to be perverse, irrational or findings

that were not supported by the evidence. Having carefully considered the decision of the FtT, I am quite satisfied that the appeal was dismissed after the judge had carefully considered all the evidence before her and upon a proper application of the country guidance.

31. It follows that in my judgment, there is no material error of law in the decision of Judge Shepherd and I dismiss the appeal.

Decision

32. The appeal is dismissed. The decision of First-tier Tribunal Judge Shepherd promulgated on 30th October 2019 shall stand.

33. I make an anonymity direction.

Signed *V. Mandalia* Date: 18th October 2020

Upper Tribunal Judge Mandalia