Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001412
IA/01745/2021

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 29 September 2022	**On 27 January 2023**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AKR
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Masih instructed by Fountain Solicitors.
For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge M Robertson ('the Judge') promulgated on 1 July 2021 following a hearing at the Birmingham Justice Centre.

2. The appellant is a male citizen of Iran born on 5 January 1993.

3. Having considered the written and oral evidence and submissions, the Judge sets out her findings of fact from [35] of the decision under challenge.

4. The appellant sought permission to appeal on four grounds, Ground 1 asserting a material misdirection as a result of the Judge's failure to make findings, Ground 2 a material misdirection by the Judge in her failure to apply country guidance, Ground 3 a material misdirection by the Judge in relation to the issue of questioning upon return and Ground 4 a material error by the Judge in relation to the assessment pursuant to paragraph 276 ADE/Article 8 ECHR.

5. Permission to appeal was granted by another judge of the First-tier Tribunal limited to Grounds 1 to 3 and was refused in relation to Ground 4 with no evidence that that refusal was challenged to the Upper Tribunal or permission to appeal granted.

6. The operative part of the grant is therefore in the following terms:

> 1. The appellant seeks permission to appeal, in time. I address each ground in the order pleaded;
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> (1) Ground 1: the judge did accept that the appellant left Iran illegally (paragraph 53 of the decision). However, it is arguable that the judge's findings as to the number of demonstrations attended by the appellant and his activities at those demonstrations are insufficiently precise (see, for example, paragraph 45 of the decision) given the relevance of those activities to the overall assessment of risk.
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> (2) Ground 2: it is arguable that, although the judge was plainly aware of the relevant country guidance cases, he erred in its application by (i) failing to make findings as described in ground 1 and (ii) compartmentalising the risk factors rather than stepping back and considering them in combination.
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> (3) Ground 3: it is arguable that the judge erred in not making a clear finding on the likelihood of the appellant being questioned on return and thereafter, when assessing the risk arising from such questioning, considering too narrowly a range of questions the appellant would likely be asked. For example, the judge does appear to have accepted that it was in fact the appellant's Facebook account (paragraph 48 I) as opposed to an account that the appellant was simply purporting to adopt for the purposes of his appeal.

7. Although there is no Rule 42 reply from the Secretary of State, Mr Williams confirmed the application is opposed.

Error of law

8. Ground 1 contains three sub paragraphs in the following terms:

> 1.1 At [39] to [45] of the FTT determination, reference is made to the Appellant's attendance at demonstrations outside the Iranian embassy in London. There does not appear to be an adverse finding regarding the Appellant's attendance at the demonstrations.
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> 1.2 The FTT Judge materially erred by failing to make findings as to what role at the demonstrations the Appellant was accepted to have. This was material in the assessment of persecutory risk that the Appellant faces on return regardless of his motivation for his involvement at the demonstrations (Danian v Secretary of State for the Home Department [1999] EWCA Civ 3000 applied).

1.3 Furthermore, the FTT Judge materially erred in failing to find whether it was accepted that the Appellant had left Iran illegally or not. Such finding was material in considering whether the Appellant will be questioned by the Iranian authorities on return to Iran.

9. As noted in the grant of permission to appeal the Judge did make a finding on the question of whether the appellant had left Iran illegally.

10. At [39 – 45] the Judge wrote:

> 39 He was asked during the hearing whether he had joined an organisation similar to the KDPI in the UK. He stated that that he attended meetings and went to events but that this had been prevented by Covid-19, and that he could not state on what date he attended the last demonstration because he was illiterate. He stated that that date could be identified from his Facebook posts. He was referred by Mr Islam to p SB44, and the Appellant stated that the photographs were taken outside the Iranian embassy, and that you could see the Iranian flag outside the building. He stated that he had started attending demonstrations in 2012 but that there were some he missed due to funding issues. It was put to him, by Mr Islam, that he had attended demonstrations outside the embassy in London, and posted pictures of them on his Facebook page, and he was asked if he knew the consequences of this for him if he returned to Iran. The Appellant stated that everyone knew that he would face 'hanging or death', and that he saw people from the embassy taking pictures of 'us', i.e., those who attended the demonstrations. In cross-examination, he was asked who took photographs of them outside the Iranian Embassy, and he stated that there were people in the windows of the embassy who were taking pictures and he was of the view that these photographs would be sent to the authorities in Iran. When asked on average how many people attended these demonstrations, he said that there were big crowds and that the street needed to be shut because it was so busy.
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> 40 The Appellant was asked whether he had a leadership role at the demonstrations he attended. He stated that he helped to organise people, to distribute photographs to demonstrators, and to make sure that no-one got into trouble. When asked if all he did was to distribute photographs, he stated that he also distributed messages to topple the regime and stop the hangings. He stated that he did not keep up with politics in Iran because he did not like to listen to the Iranian authorities.
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> 41 There is no reliable evidence before me that the Appellant joined the KDPI in the UK in 2012; there is no evidence from anyone from an organisation within the UK. When asked about this during the hearing, the Appellant stated that he did not ask anyone to come because he did not think anyone was needed; that he had shared photographs which clearly showed that he supported the KDPI. However, the Appellant is represented, and has been since the submission of his further representations, by representatives who are experienced in the immigration and asylum field. It lacks credibility to state that he did not think that evidence was needed.
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> 42 The current country guidance case in relation to monitoring of political activity during demonstrations in the UK, is BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36. The head note to this provides the following:
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> "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."

43 The headnote than provides for factors to be considered when assessing risk on return due to sur place activities, which include:

I The theme of the demonstrators, and how it would be characterised by the regime, the role of an applicant for asylum at the demonstration, his motive, and the relevance of this to the regime, the extent of the participation (one or two demonstrations, or regular participation);

II Identification of risk – surveillance of the demonstrators. How the regime does this, e.g. by filming them, and if so, is this by having agents in the crowd, or reviewing images/recordings of demonstrations, and the regime's ability to identify individuals through advanced technology (e.g. facial recognition) and the human resources devoted to this.

III The factors triggering enquiry, e.g. is the applicant for asylum someone who has a significant political profile? is his conduct particularly objectionable to the regime? And the applicant's immigration history – the method of exit, where he has lived abroad, the timing and method of return.

IV Consequences of identification – is there is a differentiation between demonstrators depending on profile?

> V If a person is identified, is that information systematically stored? Are the border posts geared to the task?
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> 44 Headnote 1 to BA confirms that the regime in Iran does not have the ability to monitor all returnees that have been involved in demonstrations. As to whether photographs were taken of the Appellant by people from within the embassy in London, given the distance of the demonstrators from the embassy (as shown in the photographs) and the large number of demonstrators that the Appellant said had attended, there is little reliable evidence before me that the Appellant would have been picked out in the crowd, or that he would be recognised from such photographs.
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> 45 As to his profile, the evidence given by the Appellant, (see para 39 – 41 above) does not suggest that he had a prominent role in the demonstrations or that he has a significant profile.

11. The Judge was clearly aware of and considered relevant country guidance. Indeed in their submissions to the Upper Tribunal both advocates made specific reference to the decision in BA.

12. It is settled law that a decision-maker, including a judge, need not make findings in relation to each and every aspect of the evidence and the criticism of this decision that the Judge does not make a specific finding in relation to the number of times the appellant attended the demonstrations, when such was evidenced by the photographs on his Facebook account, sufficient to amount to an error of law, is undermined by the fact that the Judge clearly considered all the evidence with the required degree of anxious scrutiny including the content of the appellant's Facebook account. What appears in the determination is the Judge's summary of her consideration of the evidence as a whole. The artificial separation which the Judge is accused of is not made out and applies more to the author of the grounds seeking permission to appeal rather than to the determination under challenge. It is easy to pick out individual aspects of a decision and to criticise the same, but even if legal error was found in a particular part that is not the required test which is whether any error identified is material to the overall decision made by a judge. In this appeal the decision was that the appellant had not established that he was entitled to be recognised as a refugee or a person entitled to a grant of any other form of international protection.

13. At [53] the Judge found:

> 53 There is nothing in the facts of the Appellant's case, as found, that would suggest to me that the regime in Iran have information about the Appellant which would make him of adverse interest to them, and no submissions were made under BA or HB to suggest that there were other factors that needed to be considered, other than the details of the claim as set out above. I find that the Appellant has not established that illegal exit would put him at risk on return to Iran because of his ethnicity, and/or his status, on return, as a failed asylum seeker.

14. That is the key finding. Whilst the grounds challenge the steppingstones used by the Judge to arrive at that finding the overall question is whether the Judge's conclusion is a finding within the range of those available to the Judge on the evidence.

15. My finding that the Judge considered the evidence with the required degree of anxious scrutiny applies to the decision as a whole. It has not been shown that otherwise is the case. The Judge has given reasons in support of the findings made and whilst the author of the grounds and Ms Masih before me indicated those grounds should have been fuller, that does not mean that a reader of the determination cannot understand why the Judge came to the conclusion that she did.

16. The Judge makes a finding in relation to the appellant's role in the demonstrations which is that having considered the evidence with the required degree of anxious scrutiny it was not established that it was a role of any significance which will give rise to risk on return by reference to BA.

17. Whilst paragraph 1.2 refers to Danian, the Judge does not find that the appellant had done anything that will give rise to a credible risk but that such risk will not arise because his motivation for his actions is disingenuous. That would infringe the finding in Danian. The Judge's finding is that whatever the appellant has done, whether disingenuous or not, it is not sufficient to give a real rise to a real risk on return by reference to the relevant country guidance case law.

18. Ground 2 is divided into five subparagraphs which read as follows:

2.1 At [48] and [48 I] of the FTT determination, the FTT Judge appears to accept that the Appellant's face/image to appear on some of the Facebook posts.

2.2 At [39] of the FTT determination, there is reference to the Appellant's attendance at the anti-Iranian government demonstration in the United Kingdom.

2.3 Whilst at [34v] of the FTT determination, the FTT Judge notes i) the 'hair-trigger' approach by the Iranian authorities to those suspected or perceived to be involved in Kurdish political rights or to support rights for Kurds; ii) the fact that the threshold for suspicion is low, and the reaction of the authorities reasonably likely to be extreme; the FTT Judge has failed to adequately assess the persecutory risk that the Appellant faces when holistically considering all the Appellant's enhanced risk features.

2.4 The Appellant's enhanced risk features include such as it is accepted that the Appellant is of Kurdish ethnicity (see [24] of FTT determination); the Appellant's image has appeared on the Facebook posts (see [34 I] of the FTT determination); the Appellant has had some involvement with demonstrations in the UK outside the Iranian embassy (see [39] of the FTT determination); Appellant claimed asylum in the United Kingdom and claimed to have left Iraq illegally.

2.5 HB (Kurds) Iran (illegal exit: failed asylum seekers) CG [2018] UKUT 430 (IAC) notes that 'Kurdish ethnicity' is a factor of particular significance when assessing risk. The FTT Judge has failed to give reasoning as to why it is not considered to be so in this particular case.

19. The author of the grounds makes reference to the decision in HB (Kurds) but is selective in relation to the reference at subparagraph 2.5 above. The head note of that decision in full reads:

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

return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone.

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

(3) Since 2016 the Iranian authorities have become increasingly suspicious of, and sensitive to, Kurdish political activity. Those of Kurdish ethnicity are thus regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran.

(4) However, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment.

(5) Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Being a risk factor it means that Kurdish ethnicity is a factor of particular significance when assessing risk. Those "other factors" will include the matters identified in paragraphs (6)-(9) below.

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

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

(8) Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.

(9) Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.

(10) The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.

20. The Judge was clearly aware of this decision and make specific reference to it, setting out the headnote above from [52] of the decision under challenge. The assertion in the grounds that the Judge somehow "failed to give particular reasoning as to why (the

appellant's Kurdish ethnicity) was not considered to be so in this particular case" is without merit as there is no evidence the Judge failed to give particular weight to the appellant's ethnicity. That was one of the factors the Judge clearly took into account when assessing risk but was not found, as a result of the holistic assessment of the evidence, to be a determinative issue. The country guidance case does not say it is even with an individual having left Iran illegally. Whether a person faces a real risk depends upon a factual assessment in each individual case as a whole. There is no merit in the challenge to the weight the Judge gave to the appellant's ethnicity.

21. Paragraph 2.4 refers to Facebook and even if the appellant's image did appear on his Facebook account and photographs taken at the demonstrations are posted on the Facebook account that does not, in isolation, create a real risk. The question is whether content of the appellant's Facebook account will have come to the attention of the Iranian authorities because, if it has not, whatever has been posted on the Facebook account will create no risk for the appellant.

22. The Judge clearly considered the arguments relating to the appellant's Facebook and made specific findings upon the same in the following terms:

> 46 Have his Facebook posts raised his profile and is the regime likely to have access to his Facebook posts?
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> 47 The Appellant stated that his Facebook account was set up for him by a friend, that he has automatic login details on his mobile phone, but that when the login was not automatic, for example if he tried to access it on someone's laptop, he could not get into his Facebook account because he did not know his login in details; he would have to seek the assistance of the friend who set it up for him. This would suggest that if his account was deleted off his phone, he would not be able to access it. Whilst it is not suggested that the Appellant would be required to delete an account if his beliefs were genuinely held, if his beliefs were not genuinely held, there would be no detriment to the Appellant, and significant benefit to him, if he deleted them prior to return to Iran.
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> 48 There are some Facebook posts which clearly show the Appellant's face, but the evidence presented as to the Appellant's Facebook account does not reliably confirm that his posts are accessible by the regime in Iran or that the posts confirm genuinely held beliefs for the following reasons:
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> I Whilst his Facebook posts show his image clearly in some posts, it is unclear whether these posts are public or private posts. The Appellant stated that all those with a globe beside the name were public posts and those with an icon of two people by his name were private posts. However, there was no objective evidence before me to show that a private post could not be changed to a public post, a screenshot taken of it, and then such post be made private again. No timeline has been provided of the Appellant's Facebook account to show when it was set up, or if any of the timelines or posts have been changed, or when the first posts were made. This is evidence that was reasonably available to him because the Facebook account is his, even if he had to ask the friend who

helped him set it up to provide the evidence that is needed from his account.

II In his WS1, the Appellant stated that he 'had no education at all' (p SB296, para 4). The Appellant stated at the outset of the hearing that he was illiterate. He was asked how he was able to type up the posts that were posted in English (for example, see middle right post at p SB63). He stated that he re-posted posts, but not all of them were reposted, and that some of the content was uploaded by him. However, it is not clear from the posts, and was not made clear during the hearing, which of the posts had been uploaded by the Appellant and which were reposted posts.

III The Appellant stated that although he reposted posts, he was aware that they were against the regime. However, without being able to read the posts that were reposted, it is difficult to know how he understood what the content was. Furthermore, it is difficult to see how the Appellant could create content (as opposed to reposting content) when he is illiterate.

IV The Appellant was asked questions by Mr Islam in relation to the image in the bottom left hand corner at p SB92, which had "AA and 135 others" noted at the bottom, and "74 comments". The Appellant stated that it was the celebration of peshmerga day in Birmingham, and that there were high ranking officials from the party at the event. He went on to be asked who they were, but this added little evidentially because no background information was presented to establish that the people identified by the Appellant were who the Appellant stated they were.

49 On the evidence, in the round, to the lower standard of proof, I find that there is insufficient reliable evidence to establish that the authorities in Iran will be aware of, or have access to, the Appellant's Facebook posts. I find that the authorities in Iran will have no information of the Appellant's activities in the UK. I find that the Facebook account has been created to bolster an otherwise weak asylum claim and that the posts do not establish the Appellant's genuinely held political beliefs so that it is perfectly open to him to delete his Facebook account without it interfering with any fundamental human rights. I find that if he were to be questioned on return to Iran, he would not be in fact lying if he said that he had no access to a Facebook account and has no login details for an account.

23. The core finding by the Judge therefore is that she did not find the authorities in Iran will have any information of the appellant's activities in the UK which must include his Facebook account.

24. The issue of Facebook has recently been considered by the Upper Tribunal in XX (PJAK, sur place activities, Facebook) CG [2022] UKUT 00023 the head note of which reads:

> *The cases of BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC); SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC); and HB (Kurds) Iran CG [2018] UKUT 00430 continue accurately to reflect the situation for returnees to Iran. That guidance is hereby supplemented on the issue of risk on return arising from a person's social media use (in particular, Facebook) and surveillance of that person by the authorities in Iran.*

Surveillance

1) *There is a disparity between, on the one hand, the Iranian state's claims as to what it has been, or is, able to do to control or access the electronic data of its citizens who are in Iran or outside it; and on the other, its actual capabilities and extent of its actions. There is a stark gap in the evidence, beyond assertions by the Iranian government that Facebook accounts have been hacked and are being monitored. The evidence fails to show it is reasonably likely that the Iranian authorities are able to monitor, on a large scale, Facebook accounts. More focussed, ad hoc searches will necessarily be more labour-intensive and are therefore confined to individuals who are of significant adverse interest. The risk that an individual is targeted will be a nuanced one. Whose Facebook accounts will be targeted, before they are deleted, will depend on a person's existing profile and where they fit onto a "social graph;" and the extent to which they or their social network may have their Facebook material accessed.*

2) *The likelihood of Facebook material being available to the Iranian authorities is affected by whether the person is or has been at any material time a person of significant interest, because if so, they are, in general, reasonably likely to have been the subject of targeted Facebook surveillance. In the case of such a person, this would mean that any additional risks that have arisen by creating a Facebook account containing material critical of, or otherwise inimical to, the Iranian authorities would not be mitigated by the closure of that account, as there is a real risk that the person would already have been the subject of targeted on-line surveillance, which is likely to have made the material known.*

3) *Where an Iranian national of any age returns to Iran, the fact of them not having a Facebook account, or having deleted an account, will not as such raise suspicions or concerns on the part of Iranian authorities.*

4) *A returnee from the UK to Iran who requires a laissez-passer or an emergency travel document (ETD) needs to complete an application form and submit it to the Iranian embassy in London. They are required to provide their address and telephone number, but not an email address or details of a social media account. While social media details are not asked for, the point of applying for an ETD is likely to be the first potential "pinch point, " referred to in AB and Others (internet activity – state of evidence) Iran [2015] UKUT 00257 (IAC). It is not realistic to assume that internet searches will not be carried out until a person's arrival in Iran. Those applicants for ETDs provide an obvious pool of people, in respect of whom basic searches (such as open internet searches) are likely to be carried out.*

Guidance on Facebook more generally

5) *There are several barriers to monitoring, as opposed to ad hoc searches of someone's Facebook material. There is no evidence before us that the Facebook website itself has been "hacked," whether by the Iranian or any other government. The effectiveness of website "crawler" software, such as Google, is limited, when interacting with Facebook. Someone's name and some details may crop up on a Google search, if they still have a live Facebook account, or one that has only very recently been closed; and provided that their Facebook settings or those of their friends or groups with whom they have interactions, have public settings.*

Without the person's password, those seeking to monitor Facebook accounts cannot "scrape" them in the same unautomated way as other websites allow automated data extraction. A person's email account or computer may be compromised, but it does not necessarily follow that their Facebook password account has been accessed.

6) *The timely closure of an account neutralises the risk consequential on having had a "critical" Facebook account, provided that someone's Facebook account was not specifically monitored prior to closure.*

Guidance on social media evidence generally

7) *Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person's locations of access to Facebook and full timeline of social media activities, readily available on the "Download Your Information" function of Facebook in a matter of moments, has not been disclosed.*

8) *It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value.*

9) *In deciding the issue of risk on return involving a Facebook account, a decision maker may legitimately consider whether a person will close a Facebook account and not volunteer the fact of a previously closed Facebook account, prior to application for an ETD: HJ (Iran) v SSHD [2011] AC 596. Decision makers are allowed to consider first, what a person will do to mitigate a risk of persecution, and second, the reason for their actions. It is difficult to see circumstances in which the deletion of a Facebook account could equate to persecution, as there is no fundamental right protected by the Refugee Convention to have access to a particular social media platform, as opposed to the right to political neutrality. Whether such an inquiry is too speculative needs to be considered on a case-by-case basis.*

25. The copies of the appellants Facebook posts provided to the Judge, which I have been able to study in detail in the bundle provided for the purposes of this hearing, do not undermine the Judge's conclusions in relation to the risk arising from the same.

26. The Judge's conclusions are based upon findings within the range of those available to the Judge on the evidence. The Judge makes the observation that an individual's Facebook account could be altered and there is no evidence the Judge had anything other than the production of the small part of Facebook account without access to those items specifically referred to in XX which are material to assessing what weight can be given to the evidence. The Judge noted the presence of the globe on some of the postings on the appellants Facebook account which may relate to postings the appellant has accessed, but the issue is whether the appellant's own Facebook

account was public as a general setting or only for the purposes of producing the evidence for his hearing.

27. I do not find the appellant has established material legal error in relation to the Judge's findings concerning his Facebook account. That includes the Judge's finding that the appellant can be expected to close his Facebook account and not volunteer the fact that he had a previously closed Facebook account prior to the application for an Emergency Travel Document. The Judge specifically notes that it was not submitted before her that the HJ (Iraq) principles have any application on the facts of this appeal. As noted in XX there is no fundamental right protected by the Refugee Convention to have access to any form of social media and the Judge's finding that it was not unreasonable for the appellant to delete his Facebook account as the content did not demonstrate genuinely held political beliefs fundamental to his personal identity in within the range of findings reasonably opens the Judge on the evidence.

28. I find no material error made out in relation to Ground 2.

29. Ground 3 is subdivided into five paragraphs in the following terms:

> 3.1 The FTT Judge has failed to adequately assess whether the Appellant will be questioned on return to Iran and the persecutory risk that the Appellant faces if questioned.
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> 3.2 BA (demonstrators in Britain - risk on return) CG [2011] UKUT 36 confirms that Iranians returning to Iran are screened on their arrival, in particular those who exited illegally. Consequently, a finding of whether the Appellant left illegally of whether the Appellant would be questioned on return.
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> 3.3 Instead, at [49] of the FTT determination, the FTT Judge contends that if the appellant was questioned on return to Iran, the Appellant would not be lying if he said that 'he had no access to a Facebook account and had no login details for an account'.
>
> 3.4 However, the FTT Judges failed to assess the risk he would face if the Appellant on returned was asked such questions as: whether he had attended demonstrations against the regime in the United Kingdom; and whether he had posted Facebook posts against the regime. The Appellant cannot be expected to lie about such activities (RT (Zimbabwe) v SSHD [2012] UKSC 38 applied).
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> 3.5 It is contended that in light of the 'hair trigger' approach by the Iranian regime and their extreme reaction; the fact that the Appellant's Kurdish; the fact that the Appellant has attended demonstrations in the United Kingdom; the fact that the Appellant contends he left Iran illegally; the fact that the Appellant has made Facebook posts; it is contended that the FTT Judge materially erred when applying the lower standard of proof in Country Guidance as the persecutory risk that the Appellant faces on return.

30. As noted, the above the ground misrepresented the findings of the Judge who did accept that the appellant had left Iran illegally.

31. Ground 3 is in some respects based upon the need for positive findings in the appellant's favour on Grounds 1 and 2 as the findings challenged under those grounds support the Judge's finding that even if the appellant is questioned on return he will face no risk. For the reasons set out above I find that no material legal error has been

made out in respect of the Judge's findings challenged in the earlier grounds.

32. As noted, no HJ (Iran) point arises in this appeal as the appellant can only be expected not to lie about something that forms part of a fundamental aspect of his identity. The Judges make clear findings that the appellant sur place activities, including attendance at demonstrations and Facebook postings, are disingenuous and do not represent a genuinely held political belief. As found in XX, an individual does not have a right to have a Facebook account and it has not been made out that not disclosing the existence of a now closed Facebook account infringes the principles of the Refugee Convention. In relation to the appellants attendance at demonstrations, the Judge analysed the factual matrix and applies that to the guidance provided in BA. The Judge's conclusion that that create no real risk to the appellant on return is relevant to the weight that should be given to that aspect of the case by the Judge when she undertook her holistic assessment of whether the appellant would face a real risk on return if questioned by the authorities in any event. There is no merit in suggesting legal error by the Judge indicating that the appellant may be questioned by reference to the use of "if", as the Judge clearly assessed risk on the basis the appellant would be questioned.

33. The Court of Appeal have reminded those below on many occasions that mere disagreement is not a ground on which to reverse a decision and that the assessment of the weight to be given to the evidence is generally for the court or tribunal of first instance. It is not made out the Judge failed to consider the evidence with the required degree of anxious scrutiny. I have found she has. It is not made out the Judge's findings do not allow a reader of the determination to understand the Judge's decision and reasons why she came to those conclusions. It is not made out the Judges findings are irrational. The findings are rational in that they within the range of conclusions reasonably open and available to the Judge on the facts.

34. Whilst I accept the appellant would prefer the Judge to have arrived at a more favourable outcome to enable him to remain in the United Kingdom, and disagrees with the Judge's conclusions, I do not accept the appellant has established arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

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

Anonymity.

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

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

Signed……
Upper Tribunal Judge Hanson

Dated 30 September 2022