



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03758/2016

THE IMMIGRATION ACTS

**Heard at Stoke
On 15 November 2017**

**Decision & Reasons Promulgated
On 2 May 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**LKIK
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bedford instructed by Sultan Lloyd Solicitors

For the Respondent: Mr Bates Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 8 May 2017 the Upper Tribunal found the First-tier Tribunal had erred in law in allowing the appellant's appeal on asylum and human rights grounds and listed the matter for a Resumed hearing, part of which is to enable the Upper Tribunal to hear evidence in relation to Facebook to ascertain whether guidance can be provided in cases where an individual asserts a real risk on return on the basis of information posted upon a Facebook or other social media account.

The evidence

2. There are a number of social media sites accessible on the Internet. Names such as 'Facebook' with 1,500,000,000 estimated monthly visitors, YouTube, approximately a similar number of monthly visitors, Twitter, with approximately 400,000,000 estimated monthly visitors, Instagram, approximately 275,000,000 monthly visitors, LinkedIn with approximately 250,000,000 monthly visitors, and Reddit, approximately 125,000,000 estimated monthly visitors, are probably the most frequently used social networking sites of which there are in excess of 200 such sites. The term 'social media' more generally refers to websites and applications that enable users to create and share content or to participate in social networking.
3. Data in the form of pictures or written text stored on computers, tablets, telephones or other electronic devices when used in court proceedings is digital or electronic evidence. Such evidence can be transmitted either in digital form or printed into hardcopy and adduced along with other more traditional forms of documentary evidence.
4. Earlier concerns relating to the admissibility of such evidence have been resolved. For example, in the Civil Courts, CPR 32.3 provides that the court may allow a witness to give evidence through a video link or by other means. The rules of the First-tier and Upper Tribunal's allow the admissibility of evidence within its proceedings even if such evidence would not be admissible in civil proceedings.
5. The issue with evidence adduced either in electronic or paper form printed from electronic media ordinarily relates to the weight that a court or tribunal will be required to give to that evidence as part of its assessment of the case as a whole.
6. The burden in civil proceedings lies upon the person seeking to rely upon such evidence as proof of the point in issue. Where concerns arise in relation to the reliability of such evidence the burden must also rest upon the person asserting such evidence is reliable.

The expert report

7. The appellant instructed an expert to prepare a document described as a 'Social Media Expert Report'. That report, dated 5 August 2017, was written by a Mr Ross Patel described as a Senior Analyst with Afenis Forensics. That company is based at New Bond House, 124 New Bond Street, London and are accredited expert witnesses. No issue was taken in relation to either the suitability of the company or Mr Patel in being able to produce the expert report.
8. The instructions to the expert, in a letter dated 24 July 2017 from the appellant's solicitors, raised a series of questions upon which the expert's opinion was specifically sought. They are set out in the report and are as follows:

- i. Can a Facebook account still be viewed after it has been deleted? If so, in what circumstances and for how long?
 - ii. Can a Facebook post be viewed after it has been deleted? If so, in what circumstances and for how long?
 - iii. If the information on a Facebook account has been stored at a point/s in the past as part of a filtering/data collection process, what happens to that information if the Facebook account/post is subsequently deleted?
 - iv. If a person A comments on/likes/shares person B's post can person A be identified from person B's post, even if person A deletes their own Facebook account?
 - v. If person A's post is shared by person B, what happens to the shared post if person A deletes it.
 - vi. Can person A's Facebook post be copied/screen-printed by person B - does that mean person A can never delete the screen-printed copy?
 - vii. Can the Facebook friends of a person A see everything person A posts/comments on/likes? How are person A's friends notified that person A has posted something?
 - viii. Can the Facebook friends of person A see everything person A posts/comments on/likes? How are the Facebook friends of person A's Facebook friends notified that person A has posted something?
 - ix. Who can see public posts? How can public posts be searched for?
9. As noted above, Facebook is a term that refers to one specific social networking website. A person is able to visit the site and register as a user and thereafter create a profile of themselves, upload pictures and videos, post content and messages, and connect to others who have also registered and created their own profile on Facebook as a means of staying in touch with family, friends and/ or work colleagues or those they may wish to interact with through such a media.
10. Creation of a Facebook account requires a prospective user to visit the Facebook registration and account setup page and to provide their details, free of charge, in the "sign up" section. Details provided includes full name, email address or telephone number, password, birthday and gender. Once these details have been provided the prospective user follows the simple instructions which creates an account in that name with a verification email being sent to the registered email address. The user must click on a link sent in the email to activate the account.
11. The expert notes "It is worth noting that there are currently no meaningful ways of checking the identity of a Facebook account and as such there are accounts that are fake and run by impostors; some opening several accounts and using various aliases". The expert provides an example of a hypothetical individual by the name of Alice opening an account in the name of Jane Smith. It would appear that Jane Smith was the account owner responsible for the content

associated with that profile even though the person actually responsible would be the imposter Alice.

12. In dealing with the specific social media questions asked by the appellants representative the report provides a detailed response supported by screenshots and references from the Facebook website itself. In summary, the author concludes in relation to each question the following:
13. Question 1: - Can a Facebook account still be viewed after it has been deleted? If so, in what circumstances and for how long?

The expert notes that if a user decides they wish to remove their account in its entirety, including all posts/comments made, articles saved, media uploaded etc, then they can visit a dedicated page on the Facebook website and initiate the account deletion process. The expert confirms that information, media and all settings/data relating to a deleted Facebook account, (including user IDs and names) are not accessible after it has been deleted; in other words, any such entries by that particular user account will no longer be visible online and within a matter of days will be permanently removed from the service.

The expert refers to the fact that some information will be retained by Facebook for analytical and research purposes but that those records are physically stored on a separate technical infrastructure that is not accessible to either the public or any third-party organisations and that the data is retained in an encrypted/scrambled state and with all personally identifiable information and user generated content permanently removed. In the expert's opinion it is stated "From the perspective of public access (via the Facebook website, search engines etcetera) or access via law enforcement agencies, the Facebook account is essentially unavailable from the time of account deletion".

It is also noted that Facebook provides a secondary option known as 'deactivation' that is akin to 'suspension' which allows a user to temporarily disable their account and remove the majority of the content that they have posted to the service. Once an account is suspended/deactivated the account profile is no longer accessible and most posts/comments and uploaded material removed from the Facebook website, although actual records and data associated with a suspended/deactivated account remains on the Facebook system so they may be accessed by law enforcement although none of the material is publicly accessible any more. A user can restore their account and all associated content within moments by going through the deactivation process again and opting to re-establish their account to the previous state.

14. Question 2: Can a Facebook post be viewed after it has been deleted? If so, in what circumstances and for how long?

The term 'post' is defined by the expert as being a reference to user generated content typically a picture, website link, and/or text. The original Facebook post and any copy shared by other users cannot be viewed after being deleted. The expert describes Facebook as a dynamic system that refreshes user content on its servers within a matter of seconds meaning that content that is added, edited, updated, or removed is visible in that specified state almost immediately.

The expert accepts, as with any technical platform where records are generated, stored and manipulated on an international scale, there is always scope for anomalies or failings and provides a reference to limited references on the Internet suggesting that in rare circumstances even records and accounts on Facebook may still appear accessible after being deleted.

15. Question 3: If the information on a Facebook account has been stored at a point/s in the past as part of a filtering/data collection process, what happens to that information if the Facebook account/post is subsequently deleted?

Facebook does not retain accessible or publicly visible information for deleted/erased accounts. This is because such information is rendered undecipherable and stored in servers that combine vast datasets making the information effectively a block of encrypted data representing broader account activity. All personally identifiable information is stripped and permanently lost although such information is retained by Facebook for technical diagnostic and research purposes. It is said this content is not accessible to the public or law enforcement and even if it was leaked to or otherwise accessed the material could not be reconstructed into any meaningful form. The opinion of the expert is that even if the records could be obtained it would be difficult to determine the original account username but in any event, it would not be possible to reconstruct any posts/comments made online or media that had been shared.

16. In relation to the Iranian State, the expert states the Iranian State operates a sophisticated Internet filtering, inspection and monitoring capability. This provides the authorities with the capacity to identify individuals accessing specific websites, using certain search terms in email correspondence, instant messaging, or posting certain multimedia files. Such online user activity may be easily identified, the user is traced, and all the relevant online activity blocked. The Iranian State has data retention legislation mandating that telecoms and Internet service providers maintain logs for all user activity for three months. Whilst the expert states it is technically feasible for the regional authorities to recover deleted content from Facebook several months after the account and all relevant files have been deleted from the service platform it is said it should be noted that due to security

and privacy controls in place, as well as the sheer volume of data present on the Facebook platform, which is described as being very dynamic and changing constantly, it is technically very challenging to copy meaningful amounts of Facebook data. As a result, despite mistaken beliefs that persist on the Internet, the expert states it is highly unlikely that any government or industry organisation could have comprehensive copies of all Facebook content that has been generated or accessed globally or even specific to their respective region.

17. The expert finds it would be technically feasible for a State actor with a dedicated Internet filtering inspection and monitoring capacity, as employed by the Iranian government, to be more focused with the data collection endeavours. Targeted individuals or groups could be readily identified using the Internet inspection capabilities based upon the websites and Facebook pages accessed by specific individuals. Targeting scope then broadened to include all members of a specific group or individuals that are friends of or have commented on content posted by a specific person. That targeted group may then be monitored extensively and all online activity inspected in real time and all activity archived. For example, all websites viewed, or email sent, Facebook posts created, can be logged and copies retained indefinitely.
18. It must be noted in respect to the country -related comments that the author of the report is not a country expert and the source of the information upon which the above observations are based appears to be Wikipedia.
19. Question 4: If a person A comments on/likes/shares person B's post can person A be identified from person B's post, even if person A deletes their own Facebook account?

A person with a Facebook account, a user, may generate content such as a picture, website link, and/or text, which forms a post. Users may show approval for a given post by clicking on a button labelled "like" or may leave their own text-based "comment" or response to the post. The expert states it is possible to share the media or post that has been made by a third party by a user simply selecting the 'shared' button underneath the post and that they may add a personal comment or specify whether to share with the public or only with their friends. The expert states upon deletion of a Facebook account all 'comments,' 'likes' and shared content is removed. This content is no longer visible to users of the Facebook service or members of the public. Person B's shared post would no longer be shared by person A and all reference to this content/areas removed, including 'likes' and 'comments'.

It is also said that when person A deletes their account, all references that may identify person A (names, comments, likes

and user IDs) are no longer visible to Facebook users, the public, or any lawful access by investigative agencies.

20. Question 5: If person A's post is shared by person B, what happens to the shared post if person A deletes it?

In the context of a shared post being that of using the Facebook functionality of sharing, if person A deletes the post (person A being the originating poster), person B and those who have subsequently viewed the post will no longer be able to view the post. In effect, this original post will have vanished from their respective timelines. The expert states that person A's original content is still effectively "possessed" by them, even after sharing or being shared by person B. Such content is technically replicated for the time in which the post has not yet been deleted, it is not duplicated (copied) to person B.

21. Question 6: Can person A's Facebook post be copied/screen-printed by person B - does that mean person A can never delete the screen-printed copy?

The expert states there are no technical means of preventing information displayed on the screen from being copied as a result of a screen capture. The process of screen-printing means that content has been taken out of the control of Facebook and entirely into the hands of the person screen-printing which means the resulting copy data is not stored under the control of the Facebook platform.

22. The expert also confirms that it is possible for a user to download a full archive of the entire content of their active Facebook account by accessing the Settings page.

23. Question 7: Can the Facebook friends of a person A see everything person A posts/comments on/likes? How are person A's friends notified that person A has posted something?

The expert refers to accessibility restrictions to sharing posted content, adding comments, and even 'liking' content. When a post is created five options are available to the user allowing for restrictions for accessibility to view:

- | | |
|--------------------|---|
| • Public | Anyone on and off Facebook |
| • Friends | Users friends on Facebook (default setting) |
| • Friends except.. | Don't show to some friends |
| • Specific friends | Only show to some friends |
| • Only me | Only the user can view |

In addition, if person A is a member of a private group (approved membership by the group administrator - no content is publicly visible), any comments, likes and posts are only visible to other members of that private group. With regard to post notifications,

this can depend on the “friendship” and active communication between person A and their Facebook friends. The expert states that Facebook uses algorithms to determine relevant posts to notify the user about new posts:

- Posts created by organisations and groups typically notify their friends
- “Paid for” posts by organisations and groups will notify their friends
- Posts where person A mentioned or “tagged” will appear in person A’s notifications.

Additionally, if person A likes particular posts by friends or associated groups, these will be increasingly prioritised to be the first posts to be seen on person A’s homepage.

24. Question 8: Can the Facebook friends of person A see everything person A posts/comments on/likes? How are the Facebook friends of person A’s Facebook friends notified that person A has posted something?

The expert states that if person A mentioned or “tagged” in a post, friends of friends of person A will not be notified; however, they will be able to view the post if the friend of person A shares the post to others on their own timeline. If the friend of person A mentioned or “tagged” in the same post as person A, the friends of the friend to person A will be able to see the post. If person A subsequently deletes their account, no identifiable information about person A will be available to either the friend of person A or to the friends of the friend of person A – if person A’s named in a post, their name will not be visible. This also goes for the case where person A is tagged in a video or image; however, if person A is not the original poster of the content, the video or image will still be visible to users (but person A’s identity will no longer be linked by name or account).

25. Question 9: Who can see public posts? How can public posts be searched for?

The expert writes that both Facebook members and unregistered web users are capable of viewing public posts. Three possible routes identified as being available to search and view a public post:

- Using the search functionality of the Facebook website to search for specific people, groups and organisations
- Through third-party services where the public Facebook post has been shared (e.g. News media outlets, blogs and commercial websites etcetera)-this functionality is provided by Facebook, called embedding.

- Using search engines such as Google or Yahoo to search for specific people, groups and organisations.

As noted previously, for each of the methods once a Facebook post or account is deleted, the content will not be visible/accessible to the public or any law enforcement agency.

26. During the course of the hearing Mr Bates raise the issue of the ability of an individual to edit posts, i.e. to alter the content. Mr Bedford objected to this line of submission on the basis the expert had not been asked to specifically comment upon whether it is possible to edit a post. The reason the expert was not asked to comment upon it was because the appellant did not put a question to the expert in those terms. There is, however, available on Facebook an official help page in which guidance is given to users. That material sets out a number of questions and then provides answers. One of the questions posed is "How do I change a posts date or backdate a post so it appears in the past on my Page?". The answer provided by Facebook clearly shows that to change the date of the post all the user has to do is to go to the Pages timeline choose the year, month and day to allow when you want the post to appear on your Pages timeline and click 'save'. It is therefore possible for the user to manipulate posts to make them appear as if they had been created earlier by this method. Similarly, the Facebook guidance makes it possible to backdate a new post through the user's timeline although posts cannot be backdated to dates earlier than when the users Facebook page was created.
27. The guidance also poses the question "How do I edit a post that I shared from my Page?" Facebook guidance shows that if the user clicks on the individual post and selects 'Edit Post' it can be edited.
28. The Facebook guidance also shows it is possible to view a post's edit history but that without using this facility a person would not know whether the posts they were viewing is the one that was originally created; especially as since early 2017 Facebook no longer clearly labels edited posts.
29. Another aspect of a person's Facebook account is the timeline, to which there is reference above. A person's timeline is where they can see their posts or posts they have been 'tagged in' displayed by date. The timeline is also part of a Facebook users profile.

Discussion

30. Material posted on Facebook is more commonly seen by claimants from certain countries, such as Iran, and can on the face of it appear to contain material which the appellant claims will create a real risk for them if it is discovered by the Iranians authorities or others.
31. The expert above comments upon the technology employed by the authorities in Iran and the Tribunal's own case law refers to a 'choke point' on return when a person may be asked by the authorities in Iran if they have a Facebook account and, if so, for them to enter the password to enable the authorities to view that account. The fact the

authorities have to ask an individual returning from the UK, for example, whether they have a Facebook account or not and requiring the cooperation of that person to gain access to such account is evidence that the authorities do not have the ability to ascertain for themselves whether a person has such an account or the content. The expert refers to Iranian law requiring retention of data for the minimum specified period but this does not arguably impact upon social media networks operating outside Iran, especially companies such as Facebook whose main data servers are in the United States of America.

32. Whilst the expert records it is technically feasible, i.e. theoretically possible, for the regional authorities to recover deleted content from Facebook several months after an account and all relevant files have been deleted from the service platform if they have the necessary software and computing capacity, it is highly unlikely that any government or industry organisation could have comprehensive copies of all Facebook content that has been generated or accessed globally or even specific to their respective region. Relevant to this issue is the use of security and privacy controls by the service providers and data encryption. If an appellant asserts otherwise, it is for them to establish the fact. No arguable tension is made out between the experts reply to question 1, at paragraph 13 above and paragraph 16.
33. A modern phenomenon that has arisen with the expansion of social media and electronic data in general is that of 'fake news'. Fake news, or hoax news, refers to false information or propaganda published under the guise of being authentic news. Social media sites enable users to create and edit their own material and permit members to share information with others.
34. One of the problems that faces a tribunal faced with what are often pages of printouts from an individual's Facebook account is how to assess the authenticity of such material, especially in light of the ease by which it can be created, manipulated, and disseminated.
35. An issue may arise in relation to (a) the weight to be given to that evidence (b) whether that evidence represents the alleged genuinely held political opinion or belief or characteristic of the appellant, and (c) whether even if the material does not represent a genuinely held opinion it may give rise to a real risk on return if that material was to be found by the authorities of the country to which a person is being returned.
36. In *HJ (Iran) & HT (Cameroon) [2010] UKSC 31* the Supreme Court effectively found that if a person will not act in a way which invites persecution, preferring to avoid persecution by concealing fundamental parts of his identity and personality, then he is entitled to asylum i.e. a situation that may arise if an individual has material on their Facebook that represents a genuinely held political opinion or view the forms part of their fundamental identity but which that person can avoid a real risk of persecution for if such information is deleted.

37. Evidence from Facebook may appear as both evidence in a first asylum claim and later claims when earlier assertions of an entitlement to international protection have been dismissed but a claim made on the basis of an alleged adverse political opinion, sometimes in a sur place context. When assessing the evidence, the decision-maker will have to consider whether an appellant has shown that he or she does genuinely hold those beliefs or political opinions the material is said to support, or whether they are only pretending to do so in order to obtain asylum.
38. It has not been made out that a person has a right to have a Facebook account or any other form of social media account and possession of an existing account has not been shown to amount to a fundamental part of an individual's identity. There is, therefore, in principle no arguable defence to a suggestion that a person in the United Kingdom with a Facebook account cannot be expected to delete that account if the material on it does not represent a genuinely held belief or opinion. If an account is deleted, as shown above, it will cease to exist and any posts created or sent by the account holder will be deleted and not accessible. If information on a Facebook account does represent a genuinely held aspect of an individual that forms a fundamental part of their identity then it may offend the *HJ (Iran)* principles to expect an individual to delete such data or to act in a discreet manner in relation to such data; subject to the guidance provided in *HJ (Iran)* when such an approach may be arguably permissible.
39. It is also arguable that a religious belief or political opinion which is not central but is only marginal to the asylum seeker's way of life may be something that he can reasonably be expected to keep quiet about when he goes back, or to delete the Facebook account on which material that may reflect such a belief may be found. This is a fact sensitive issue.
40. The following potential guidance can be given in relation to social media produced in the context of protection proceedings:
 1. *Any person in the United Kingdom with access to the Internet and the sites of social media providers such as Facebook is able, without precondition, to open and operate a social media account.*
 2. *Social media accounts contain a number of accessibility restrictions the default of which is that 'posts' can be seen by friends only although an account user is able to change the default setting; providing wider or restricted access to posted content.*
 3. *If Information is relied upon in support of a protection appeal that originates from Facebook and other social media sites it will be necessary for the person adducing such evidence to establish the applicable accessibility restrictions in relation to both that persons account and any individual messages/posts being relied upon.*

4. *If issues arise in relation to such evidence being relied upon the person adducing such material through their Facebook or other social media account must be willing to provide a printout of the original timeline to enable the person assessing such evidence to be made aware of when such evidence came into existence, whether it was created by the user him or herself or has been shared by another Facebook user, and whether the information has been subject to any form of manipulation within the user's Facebook or social media account.*
5. *The burden of establishing an entitlement to international protection by, for example, asserting a person has a genuinely held adverse religious or political opinion remains on the person so alleging. If no such genuinely held adverse belief or opinion is made out there appears no reason, in law, why any potentially offending social media post or the account containing such information cannot be deleted.*
6. *It is not made out that it is a fundamental aspect of a person's identity to own or have the use of a personal Facebook or social media account. No breach of any fundamental right or breach of refugee law is made out if such account is deleted per se.*
7. *Evidence adduced from social media is subject to the normal procedure rules of the Tribunal including the need for that not written in English to be accompanied by a properly certified translation.*
8. *In light of the comments regarding the difficulties in accessing data on Facebook, a person relying upon such evidence will be required to establish that there is a real risk of the authorities in their home state being able to access their Facebook account or media posted upon the same whilst they create and operate such account from within the United Kingdom or elsewhere.*
9. *If the appellant asserts that the authorities will be aware of their activities as a result of posts made to or received from accounts adverse to the individual regime, and whose content it has been shown is likely to be monitored by that regime perhaps allowing the regimes Internet filtering software to monitor individuals whose names appear on such sites, the burden will be upon the appellant to substantiate such an assertion.*
10. *It is not made out that mere possession of a Facebook or social media account creates a real risk per se. If a person has nothing posted on their account that will give rise to a real risk on return it is arguable that disclosing the existence of the Facebook account and the password to the authorities will not itself create an actual or implied adverse profile.*
11. *If it is not found that the alleged adverse profile is genuinely held and it would not breach the HJ (Iran) principle for a person to delete their Facebook or social media account, the fact posts may have been shared with other individuals will not automatically create any real risk in light of the fact that*

the deletion or closure of the appellant's account will have the automatic effect of deleting all posts they have sent and removing any reference to them.

12. *The fact a Facebook user may set their privacy settings to 'public' does not mean the content will be automatically disclosed to other Facebook users. This setting means that anybody conducting a search against the appellant or related link to an article with this privacy will be able to see the article whilst it remains in existence, no more.*

13. *Deletion of a Facebook account will only have the effect set out in the report of the expert of deleting the content of the users account and all other posts that they have sent. It will have no impact upon the entries on individuals Facebook account that had been screen-printed or converted into another format, such as a hard copy.*

Discussion of the application of the above guidance to the facts of this appeal

41. The respondents Country Policy and Information Note Iran: Journalists and internet based media, Version 2.0, October 2016 contains the following:

2.2 Assessment of risk to the journalist, blogger or online activist

2.2.1 The Iranian authorities severely restrict freedom of speech and press freedom. It reviews all potential publications – including foreign printed materials – prior to their domestic release and may deem potential publications unpublishable, remove text or require word substitution for terms deemed inappropriate (see Legal position). However, simply being subject to such censorship does not of itself give rise to a protection need.

2.2.2 The Iranian authorities reportedly harass, detain, abuse, torture, and use vaguely worded criminal provisions to prosecute, flog and otherwise severely punish publishers, editors and journalists. This also includes those involved in internet-based media, such as bloggers and users of social media, where their reporting is, or is perceived to be, critical of the government or offensive to public morality. Perceived government critics including journalists and bloggers are at risk of torture and are likely to be held in poor detention conditions, some of which are capable of breaching the Article 3 ECHR threshold (see Treatment by the authorities and the country policy and information note on Iran: prison conditions).

2.2.3 The authorities monitor the press, internet cafes, cyberspace and private communications including social networking sites and messaging apps, and charge persons with crimes against national security and insulting the regime based on letters, e-mails, and other public and private communications (see Internet access).

2.2.4 Since the Iranian Government is not able to monitor the activities of every individual, decision makers must consider the level of involvement of the person, in addition to any political activity that the person may have previously been involved with in Iran.

2.2.5 Decision makers must be satisfied that persons claiming to be journalists or bloggers are able to demonstrate that their activities have brought, or will

bring them, to the adverse attention of the Iranian authorities. Decision makers should give consideration to all relevant factors, including in particular: □ the subject matter of the material in question; □ the language and tone used; □ the method of communication; □ the reach of the publication (i.e. how many people are they communicating with); □ the publicity attracted; □ the frequency of such publications; □ any past adverse interest by the authorities.

2.2.6 With regard to sur place activities, decision makers must assess risk taking account of factors similar to those set out in the country guidance case of BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC).

42. Current guidance provided by the Upper Tribunal is to be found in *AB and Others (internet activity – state of evidence) Iran [2015] UKUT 257 (IAC)* in which it was held that the material put before the tribunal did not disclose a sufficient evidential basis for giving country or other guidance upon what, reliably, can be expected in terms of the reception in Iran for those returning otherwise than with a “regular” passport in relation to whom interest may be excited from the authorities into internet activity as might be revealed by an examination of blogging activity or a Facebook account. However, the determination was reported so that the evidence considered by the Upper Tribunal is available in the public domain.
43. In *EZ v Secretary of State for the Home Department [2017] CSOH 30*, the Court of Session repeated that *AB* was not a country guidance case. To say that a great deal of activity was not necessary for someone to become prominent (which was the import of the last sentence in paragraph 466 of *AB*) was not the same as saying that all one need show was that the applicant carried on a little activity and the risk could not be excluded that he had become known to the authorities. The onus was always on the applicant to establish his claim. The Court of Session thereupon found that the Secretary of State for the Home Department had not erred in her refusal to accept further submissions as a fresh claim where inter alia there was reliance on four Facebook posts but it was not known how widely circulated those posts had been or whether the posts were accessible to the public as opposed to Facebook friends.
44. The appellant in this case has a Facebook account and has provided a number of documents he says have been printed from that account.
45. In relation to a person such as the appellant who left Iran illegally, in *SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC)* it was held that (i) 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; (ii) An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and

- being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.
46. In *SSH and HR*, the appellants were Kurds and the Upper Tribunal said that it was not suggested to them that an individual faced 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 and the Upper Tribunal concluded that the evidence did not show a risk of ill-treatment to such returnees, though they accepted that it might be an exacerbating factor for a returnee otherwise of interest.
 47. In *MA v SSHD [2017] CSOH 134* the First-tier Tribunal had concluded that the appellant had been a supporter of the Kurdish cause but had not been a member of KDPI, that he had involved himself in sur place activity in the UK to the extent of attendance at one meeting and contact with the KDPI but that was highly unlikely to cause him to be of interest to the authorities. The Court of Session concluded that it had been reasonably open to the First-tier Tribunal in the light of country guidance to find that even full disclosure by MA of his activities (when questioned at the airport by the authorities) would not create an interest in him as his activities were of such a low level.
 48. The appellant in this appeal sought continue to rely upon his witness statement of 30 September 2016 which was that considered by the original Judge the First-tier Tribunal. The account set out in that statement was rejected by the Judge in [28 – 30] of the earlier determination in the following terms:
 28. The Appellants ready records to dishonesty leads me to reject his account. I do not accept that he fled Iran in the circumstances he claims and conclude that he is economic migrant.
 29. I find that his attendance at the KDPI gathering was a further attempt to bolster his claim. He was not involved in politics in Iran and is not a member of the party. There is no evidence that he was a singer in Iran. He has provided what he says is a picture from the PDKI Facebook page together with a translation which says “leaders are identified”. There is no mention of the Appellant and I am not persuaded that he can be identified.
 30. He also provided picture from what he says is his own Facebook page together with the transcript. It refers to the anniversary of “our party” and an exhortation to stand against the “mollas”. He was not a member of the party he describes as “ours” and I am satisfied that his behaviour was opportunistic. I note that the Facebook pages in his name and that he can be identified from the picture provided to me.
 49. The appellant’s reliance upon the same evidence does not itself justify a departure from these original findings. In the appellants oral evidence, he claims that he does appear on the Facebook website of the KDPI singing a song praising this group and wanting to be part of them. The appellant claimed to have a reputation as a singer amongst friends and family. The appellant was asked about whether the songs he was singing were banned in Iran to which he claimed those in

Teheran were not published as no one is allowed to sing political songs, except Kurdish folksongs could be at the Kurdish New Year when not banned. When asked whether he sings political songs the appellant claimed that he did but not publicly, but when his amongst friends, as he would not be allowed to sing political songs in the public area. The appellant claims the song he was singing was in support of both Kurds and the conflict in Kurdistan. When asked whether before Iran the appellant considered himself to be a political opponent of the regime, he claimed he did not consider celebrating in Iran but had private thoughts, and that the job he had did not allow him to do more.

50. The appellant was also asked about his statement made on 17 January 2017 which he confirmed to be true. The appellant was asked about his own Facebook account and whether he was aware of the various settings available on the same, to which he claimed he was not familiar but stated he could set up the account, download, and share data. The appellant was asked about photographs on his account noted as being 'public' which the appellant confirmed he had noted but claimed not to know what it meant.
51. The appellant claims he appears on one of the photographs on his account at an event amongst friends when he was singing. Other photos in June 2016 were taken in Tehran although in reply to questioning the appellant claimed the photos were taken in 2013 but put on his Facebook page on 9 June 2016. When the appellant was asked when he opened his Facebook account he claimed it was September 2016. When asked how he could put a photograph on his Facebook page in June 2016 if the account had not been opened until September 2016 he claimed that he may have been wrong about the date he opened his account. Mr Bates asked whether the appellant wanted time to reconsider but he claimed he sure it was 2016. The appellant was referred to paragraph 12 of his witness statement in which he claimed he did not have a Facebook account but had one in September 2016 which he had confirmed was true.
52. The appellant claimed a friend helped him to set up his Facebook account but that he had not discussed privacy settings. The appellant claimed in addition to singing on the KDPI Facebook page he also participated in active demonstrations as shown on his Facebook account. When the appellant was asked why such activities only appear on his Facebook account and not elsewhere, the appellant claimed he did not have time to publicise information with friends. The appellant claimed to have met Facebook friends in person but claimed, when asked, not to have asked them to provide witness statement in support of his claim even though he claims they were aware of his beliefs and difficulties.
53. The appellant claimed to support the Kurdish cause. The appellant confirmed his Facebook friends write comments on his Facebook account such as 'like' and sometime share items the appellant has published.

54. The appellant claimed the KDPI page was popular and famous and visited and that lots of videos had been published. The appellant claimed there was an organised event and they did not need his permission to post videos of him singing.
55. The appellant has maintained his claim before the Upper Tribunal that he is a genuine activist whose made posts on Facebook despite early having been found not to be credible.
56. Having considered the report of the appellant's expert, particularly in relation to the issue regarding privacy settings in the Facebook privacy statement, I find the appellants claim not to know anything about this aspect lacks credibility. The appellant set up his account and claims to be able to post entries to his account and share posts that he receives which requires a degree of knowledge of how to operate the Facebook system. The expert report also confirms that the default position when an individual sets up a Facebook account is 'friends' rather than 'public' indicating that this must have been changed in relation to those posts in which the appellant appears to have allocated the lowest level of privacy setting.
57. It is accepted from the expert report that as a Facebook account owner the appellant has full control of all editing privileges which could also include changing subject matters and other aspects of a post.
58. The appellant's credibility was also undermined in relation to his claim to have posted an item to his Facebook account in June 2016 even though he did not open that account until September 2016.
59. I accept the evidence shows that posts on a person's Facebook account can be manipulated and that the failure of the appellant to provide the activity log relating to his Facebook account, which would detail any changes made by him, was not provided. This document would have shown the date anything had been changed even if the exact nature of the changes was not disclosed.
60. The appellant also claims to be a supporter of the KDPI and to have attended an event and had a video posted of him singing. The First-tier Tribunal Judge comments upon this element of the claim made before that Tribunal, but there is nothing from this group or otherwise in support of the appellants claim.
61. It is accepted that the appellant's account shows comments such as 'likes' and 'accepts' but nothing more. Mr Bates referred to an entry on the 18th April which could be a comment but which had not been translated.
62. It is also the case the appellant failed to produce any evidence to show how many times people had viewed his Facebook account but it is noted the First-tier Tribunal found the appellant had no pre-existing profile. I accept the submission this is relevant as the appellant's own Facebook account is evidence of a limited involvement or spreading of his 'message'.
63. The earlier adverse findings are preserved and I find the appellant has failed to establish that what is entered on his Facebook account represents a genuinely held political view adverse to the Iranian

regime or as a supporter of the Kurdish cause. I find it is a manufactured Facebook account for the purpose of enhancing a weak asylum claim; not reflective of a fundamentally held belief.

64. I find it is reasonable in all the circumstances, and will not contravene the *HJ (Iran)* principle for the appellant to close down his Facebook account which will have the effect of removing all posts he has created.
65. In relation to the point of return I support the finding made earlier that the appellant is no more than an economic migrant and a failed asylum seeker. In relation to the risk on return, as such, in *BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC)* the Tribunal held that (i) 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; (ii) (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. (iii) 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. (iv) The following are relevant factors to be considered when assessing risk on return having regard to sur place activities (a) 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)? (b) 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? (c) 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)? (d) Consequences of identification. Is there differentiation between demonstrators depending on the level of their political profile adverse to the regime? (e) 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?

66. In *SF and Others v Sweden* (Application no. 52077/10) ECtHR (Fifth Section) 15 May 2012 the ECtHR commented that the relevant country information confirmed that Iranian authorities effectively monitored internet communications and regime critics both within and outside of Iran. A specific intelligence “Cyber Unit” targeted regime critics on the internet. Further, Iranians returning to Iran were screened on arrival. There were additional factors such as the fact that the Appellant was a well-known musician and prominent Iranian athlete also increased the risk of his being identified which taken with his record in Iran indicated those resources might bring him to the authorities' attention.
67. It is not made out that the appellant is a well-known musician or prominent individual in Iran or that there is anything in his profile that increases the risk of his being identified on return. There is no evidence the appellant has been subject to any adverse interest from the Iranian authorities before he left Iran, such that may create a risk of being identified and receiving greater attention.
68. It is not made out the Iranian authorities would have the ability or desire to access the appellant’s Facebook account and it is not made out that even if questioned at the “pinch point” that the authorities in Iran would have any knowledge of those matters that the appellant claims will place him at risk. I find the appellants claimed political allegiances do not represent a view genuinely held by him but are

matters created for the purposes of enhancing an otherwise non-existent asylum claim. I find the appellant will not be required to reveal to the Iranian authorities he previously had a Facebook account. I find it is reasonable and not contravening any established principles to delete the Facebook account in the appellant name, on the available evidence. It is not made out the Iranian authorities have the capacity or ability to access a Facebook account once it has been closed down and the expert's report quite clearly indicates that for individuals and international third parties, such as governments, this task is not feasible.

69. I find the appellant has failed to discharge the burden of proof upon him to the required standard to establish he is anything other than a failed asylum seeker, and accordingly dismiss this appeal.

Decision

70. **I remake the decision as follows. The appeal is dismissed.**

Anonymity.

71. 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.

Signed.....

Upper Tribunal Judge Hanson

Dated the 8 March 2018