



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

BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC)

THE IMMIGRATION ACTS

**Heard at Field House
On 5 and 6 October 2010**

Determination Promulgated

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Before

**Mr Justice Cranston
Senior Immigration Judge McGeachy
Senior Immigration Judge Nichols**

Between

BA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Basharat Ali of Messrs Aman Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

- 1 *Given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain.*

- 2
 - (a) *Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Students, particularly those who have known political profiles are likely to be questioned as well as those who have exited illegally.*

 - (b) *There is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain. The conclusions of the Tribunal in the country guidance case of **SB** (risk on return -illegal exit) Iran CG [2009] UKAIT 00053 are followed and endorsed.*

 - (c) *There is no evidence of the use of facial recognition technology at the Imam Khomeini International airport, but there are a number of officials who may be able to recognize up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might well be picked up for questioning and/or transferred to a special court near the airport in Tehran after they have returned home.*

- 3 *It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed.*

- 4 *The following are relevant factors to be considered when assessing risk on return having regard to sur place activities:*
 - (i) Nature of sur place activity**
 - *Theme of demonstrations – what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime?*

 - *Role in demonstrations and political profile – can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or*

passive (e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime>

- *Extent of participation – has the person attended one or two demonstrations or is he a regular participant?*
- *Publicity attracted – has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?*

(ii) Identification risk

- *Surveillance of demonstrators – assuming the regime aims to identify demonstrators against it how does it do so, through, filming them, having agents who mingle in the crowd, reviewing images/recordings of demonstrations etc?*
- *Regime's capacity to identify individuals – does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?*

(iii) Factors triggering inquiry/action on return

- *Profile – is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable?*
- *Immigration history – how did the person leave the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated (overstayer; forced return)?*

(iv) Consequences of identification

- *Is there differentiation between demonstrators depending on the level of their political profile adverse to the regime?*

(v) Identification risk on return

- *Matching identification to person – if a person is identified is that information systematically stored and used; are border posts geared to the task?*

DETERMINATION AND REASONS

INTRODUCTION

1. This is an appeal against a decision of Immigration Judge Chana. The judge had dismissed the appellant's appeal against a decision of the Secretary of State to refuse to grant the appellant asylum and to give directions for his removal. The case comes to us as an appeal but has been designated as an intended country guidance case in relation to those like the appellant who seek to resist removal to Iran by reliance on risk arising from sur place activities.
2. We have decided this appeal strictly on the basis of the evidence before us. However, since in the course of our deliberations we were made aware of a decision in draft by a separate panel of the tribunal dealing with some related issues [now reported as SA () Iran CG [2011] UKUT 41(IAC)] we would simply note that that panel's conclusions appear to be very much in line with ours.

THE APPELLANT'S CLAIM

3. The appellant entered the United Kingdom on 12 July 2008 with his own passport and with a student visa, valid until 31 October 2009. He had worked in Iran at his father's company. He is unmarried and has no children and the rest of his family live in Iran.
4. In June and early July 2009 the appellant participated in five demonstrations outside the Iranian Embassy in London. That was at a time when there were protests both in Iran and around the world following what were perceived to be malpractices leading to the re-election as President of Iran of Mahmud Ahmedinejad over his rival, Mir-Houssein Mousavi. The appellant features briefly, for 2-3 seconds, in a video clip of the demonstrations, chanting anti-regime slogans. The clip was uploaded onto YouTube and is thus available on the internet. The appellant's photograph also appeared in a story about the protests in the October 2009 edition of a magazine called Bamdad e Iran, which is an anti-regime publication. The Supreme Leader of Iran appears on the cover of that edition as the devil. The YouTube feature and magazine are associated with a secular nationalist group, the United Front of Iranian Nationals, UFIN, based in the Iranian community in London.
5. The appellant applied for asylum on 13 November 2009. There was a screening interview that day, and an asylum interview was conducted on 24 November 2009. On 26 November 2009 the Secretary of State refused the application, with detailed reasons. The appellant appealed and there was a hearing before Immigration Judge Chana on 15

December 2009. The judge rejected the claim and promulgated her detailed reasons on the following day. At the hearing the appellant was represented by counsel.

The judge's findings

6. As part of his case before the judge the appellant alleged certain incidents to demonstrate a heightened threat of mistreatment should he be returned to Iran, for example, his previous arrest in 1999; his sister's arrest on 15 June 2009 in Tehran, which led to his demonstrating in London; and the detention of his father, who appeared before a revolutionary court in November 2009, because of his son's activity. The judge discounted or disbelieved the appellant's account of these matters.
7. That left the appellant's own participation in demonstrations outside the Iranian Embassy. The judge found that the appellant "deliberately and opportunistically attempted to establish a claim as a refugee sur place" by participating in the demonstrations. However, the judge added: "I do not however take this into account when assessing the appellant's risk upon return". Even if the appellant had been involved opportunistically in demonstrations to lay the basis of his asylum claim sur place, the judge said, on his own evidence he had only attended five demonstrations, with hundreds of others. He was not politically active while in Iran.
8. The judge then made findings – which we have re-examined in the light of the additional evidence adduced before us – about the extent to which the Iranian authorities could, or would try to, identify the appellant from among the demonstrators and the risk he faced, were he to be identified, when he was not perceived to be a political dissident by the Iranian authorities. Even applying the lower burden of proof, and resolving doubts in the appellant's favour, the judge was not satisfied that there were substantial grounds for believing that the appellant, if returned to Iran, would face a real risk of persecution, death, torture or inhuman or degrading treatment or punishment.

RELEVANT COUNTRY GUIDANCE CASES

9. Although only obliquely referred to in submissions a bundle of the country Guidance cases relating to Iran was placed before us. Although most of the determinations refer to the brutality of the regime in Iran the only determination in a country guidance case which deals in part with a similar factual matrix to that of this appellant is that in SB (risk on return – illegal exit) Iran [2009] UKAIT 00053. In that determination the Tribunal considered evidence of what happens on arrival to those

who are returned to Iran. In paragraph 53 the Tribunal set out various relevant risk factors as follows:

- (i) Events in Iran following the 12 June 2009 presidential elections have led to a government crackdown on persons seen to be opposed to the present government and the Iranian judiciary has become even less independent. Persons who are likely to be perceived by the authorities in Iran as being actively associated with protests against the June 12 election results may face a real risk of persecution or ill treatment, although much will depend on the particular circumstances.
- (ii) Iranians facing enforced return do not in general face a real risk of persecution or ill-treatment. That remains the case even if they exited Iran illegally. Having exited illegally Iran is not a significant risk factor, although if it is the case that a person would face difficulties with the authorities for other reasons, such a history could be a factor adding to the level of difficulties he or she is likely to face.
- (iii) Being a person who has left Iran when facing court proceedings (other than ordinary civil proceedings) is a risk factor, although much will depend on the particular facts relating to the nature of the offence(s) involved and other circumstances. The more the offences for which a person faces trial are likely to be viewed as political, the greater the level of risk likely to arise as a result. Given the emphasis placed both by the expert report from Dr Kakhki and the April 2009 Danish fact-finding report's sources on the degree of risk varying according to the nature of the court proceedings, being involved in ongoing court proceedings is not in itself something that will automatically result in ill-treatment; rather it is properly to be considered as a risk factor to be taken into account along with others.
- (iv) Being a person involved in court proceedings in Iran who has engaged in conduct likely to be seen as insulting either to the judiciary or the justice system or the government or to Islam constitutes another risk factor indicating an increased level of risk of persecution or ill treatment on return.
- (v) Being accused of anti-Islamic conduct likewise also constitutes a significant risk factor.
- (vi) This case replaces AD (Risk-Illegal Departure) Iran CG [2003] UKAIT 00107.

Although we have included points (iii), (iv) and (v) above, though they are not relevant to this appellant we considered that the conclusions in that country guidance case, based on the evidence before the Tribunal, is an appropriate starting point for our consideration of the appellant's claim of what might happen to him on return.

10. We have also, although it was not placed before us, taken cognisance of the judgment of the Court of Appeal in SS (Iran) [2008] EWCA Civ 310. That was an appeal by an Iranian of Kurdish ethnicity who claimed to have been involved with Komala, a Kurdish political party, in Iran and that Komala leaflets had been found in his home. He had said that after fleeing Iran and applying for asylum here he had become more involved with Komala. A photograph of him had been posted on the Internet and film of a demonstration he had attended in London had been broadcast on Komala Television in Sweden. The appeal was remitted to the AIT because the Court of Appeal considered that the Immigration Judge's conclusions on the credibility of the appellant were not sustainable. However, the Court of Appeal did also consider the appellant's sur place activities. In paragraphs 22 through 25 of his judgment, Lord Neuberger of Abbotsbury, having commented that it was not easy to decide whether or not the Immigration Judge was entitled to claim that it was fanciful for the appellant to claim that his presence and activities were known to the authorities, noted that the appellant had not produced any evidence to show that the website or television station concerned were monitored or that the appellant would be identified in the film or on the web site and make the connection if he were returned to Iran. Bearing in mind that the burden of proof lay on the appellant he found that the Immigration Judge had been entitled to reach the conclusion he did. He commented:

“There must be a limit as to how far an applicant for asylum is entitled to rely upon publicity about his activities in the UK against the government of the country to which he is liable to be returned. It seems to me that it is not enough for such an applicant simply to establish, as here, that he was involved in activities which were relatively limited in duration and importance, without producing any evidence that the authorities would be concerned about them, or even that they were or would be aware of them.”

11. It is, of course the central purpose of this appeal to consider relevant evidence on that issue.

The appeal

12. Reconsideration of the judge's decision was ordered by SIJ Spencer. In his view it was arguable that the judge had made an error of law in refusing the appellant the opportunity of adducing evidence, in the form of an expert's report, to show that the Iranian authorities would be able to identify him demonstrating outside the Iranian embassy. It was also arguable that the judge's conclusion, that the appellant would not be recognised by the Iranian authorities from material showing him demonstrating, was unreasonable.

13. First-stage reconsideration by SIJ Storey in December 2009 concluded that challenges to the immigration judge's assessment of the appellant's personal and family history and circumstances had failed to identify any error. However SIJ Storey considered that, in the light of the background evidence, there was a strong possibility that the Iranian authorities had been taking steps to identify from camera evidence and other sources the identities of persons participating in demonstrations outside their Embassy in the latter part of 2009. The real question in most cases would therefore be what follows for the individual claimant. SIJ Storey agreed with the appellant that there was need for an expert report. The reasons given by Senior Immigration Judge Storey for finding a material error in law in the determination of Immigration Judge Chana are annexed to this determination at annex 1.
14. At the appeal hearing we were taken through a large volume of evidence as to the situation in Iran and the treatment of dissidents, including those coming from abroad. Included in that evidence was a submission of 29 September 2010 from Amnesty International UK, prepared for the hearing. Amnesty's reputation and knowledge mean that we attach particular weight to that submission. We also had the advantage of a report and evidence from an expert, following SIJ Storey's ruling. The expert is Anna Enayat, an Iranian by origin who left Iran at the time of the revolution in 1979 and has never since returned. Ms Enayat has kept abreast of developments in Iran through, for example, her previous position as a senior editor at IB Tauris, a publisher of books on the Middle East. Ms Enayat has been a senior associate member at St Anthony's College, Oxford, and has organised seminars there on current Iranian developments. We found her report and oral evidence to be most helpful.

BACKGROUND EVIDENCE

Developments in Iran post June 2009

15. The expert's report begins with the recent political history of Iran. The account was not disputed by the Secretary of State. The report summarises developments such as the election of President Ahmedinejad in 2005, his re-election in June 2009 over the reform candidate Moussavi, and the mass protests which followed as a reaction to what was widely perceived as a rigged result. Those political developments have three important implications relevant to our considerations. First, there has been the grim reaction of the ruling regime to the protest movement, and the repression of anyone associated with dissent. Secondly, those associated with the regime have attempted to extend their control over organisations of the state and to all parts of society. Thirdly, although there has long been a focus in Iran on Britain as a threat, in recent times that has become a paranoia

about this country's supposed role in encouraging unrest and a consequent suspicion of those with British connections.

(a) Post-June 2009 repression

16. The repression which followed the 2009 protests is addressed in several reports. Most notable are the Amnesty International report, From Protest to Prison. Iran One Year After The Election, June 2010 ("the Amnesty Report"), and the report from the Iran Human Rights Documentation Centre, Violent Aftermath. The 2009 Election and Suppression of Dissent in Iran, February 2010. Both describe the arbitrary arrests of those involved in the protests after the 2009 election; the detention of many without charge or trial; the use of violence, including torture, against those detained; the use of show trials on vaguely worded charges; and the imposition of death sentences on a number of those convicted or, in other cases, very lengthy prison sentences.
17. There are other reports as well. On 28 January 2010, The Guardian published a spreadsheet of the dead and detained, collated from a number of sources. 1259 names were listed. In April 2010 the International Campaign for Human Rights in Iran alleged that the Iranian Intelligence Ministry, MOIS, was manipulating the judicial process by forcing the issue of harsh and long sentences for activists, regardless of the lack of evidence against them. The United States State Department Country Report for Iran for 2009 commented on the lack of recognition in Iran of the concept of the independence of the judiciary.
18. The point made in the Amnesty Report, and underlined in the 29 September 2010 Amnesty International UK submission for the purposes of this hearing, is that repression has continued in Iran to the present day. Some commentators have characterised it as a policy of zero tolerance. Hundreds of people remain detained for their part in the protests or for otherwise expressing dissenting views, and the imprisonment of ordinary citizens has become an everyday phenomenon, with the occurrence of arbitrary arrests and detention. Those with only tentative links to banned groups, as well as family members of former prisoners, have been subjected to arbitrary arrest in the past year. Those detained have been held incommunicado. The secrecy surrounding the arrests has made it easier for interrogators to resort to torture and ill-treatment, in some cases extracting false confessions. The United States State Department has said that the victims of repression post June 2009 have included anyone suspected of being in opposition to the regime, but in particular fall into categories such as student activist, women's rights reformer, ethnic minority rights activist and religious minority: Country Report on Human Rights

Practices 2009, 11 March 2010. The expert told us of raids on student dormitories at university campuses.

19. We note that there are difficulties in painting a full picture of the situation in Iran. As Human Rights Watch noted on 21 September 2009, no independent international human rights organisation has been allowed to work inside Iran and Iranian human rights organisations have either been closed or have faced constant threats and intimidation. As we have said, the Secretary of State did not attempt to contest the fate of those expressing dissent. The Foreign and Commonwealth Office Annual Report on Human Rights 2009, released in March 2010, summarised the position as follows:

“[I]t has been a particularly grim year in 2009 for human rights in Iran, largely defined by the Government’s brutal response to widespread protests after the disputed presidential elections in June. Freedom of assembly was curtailed and peaceful protestors and political activists were subjected to repeated, well documented abuses. However, human rights in Iran have been a source of shared concern and widespread criticism for many years and the post election crackdown only served to compound these concerns and further illustrate Iran’s failure to live up to its international obligations”.

(b) Extension of state control

20. Under this head our attention was drawn to a number of developments. In the expert’s description there has been a “militarisation” of intelligence and the institutionalisation of a brutal and uncompromising attitude, which has driven the response of the security establishment to the post 2009 protests and to dissent generally. We were shown charts of the reorganisations of the state apparatus after the 2009 protests, including changes in the structure of law enforcement as hardliners have assumed more power. In particular we were taken to an article by Professor Ali Ansari of St Andrew’s University which describes changes in the intelligence apparatus. Thus a former head of the Basij (the regime’s militia), and a conservative cleric instrumental in suppressing the 2009 protests, has become the head of the intelligence office of the Islamic Revolutionary Guards Corps, IRGC. Moreover, President Ahmedinejad removed the head of MOIS so that the IRGC now has a greater role in state security. The penetration generally of the IRGC into Iranian society, economy and politics is dealt with in a report, The Rise of the Pasdaran. Assessing the Domestic Roles of Iran’s Islamic Revolutionary Guard’s Corps, prepared for the United States Office of the Secretary of Defence by the Rand Corporation in 2009.
21. Our attention was drawn in particular to the report by Stratfor Global Intelligence, a consultancy based in the United States, entitled Iranian Intelligence and Regime Preservation, June 2010. As well as covering

the history of the intelligence community in Iran, and the increasing role played by the Iranian Supreme Leader Ayatollah Ali Khameni in intelligence matters, the report refers to Iran's reputation for having a capable intelligence apparatus abroad, particularly adept at managing militant proxies, all in the name of regime preservation. Iranian embassies and missions contain large intelligence sections. As is standard practice among the world's intelligence agencies, Iranian agents abroad are also placed in cover jobs. The Ministry of Intelligence and Security, MOIS, employs as unofficial cover for its officers the role of student, professor, journalist and employee of state owned or state connected Iranian companies. As in its domestic efforts MOIS' first priority on foreign soil is to monitor, infiltrate and control Iranian dissident groups.

22. Another aspect of developments in Iran under this head is technology. The internet is used widely in Iran, including by the security forces. It provides a simple method for Iranian security to conduct surveillance. The expert gave evidence that the oil wealth available to the ruling regime – even if it may not have benefited the general population to the same extent – enables the intelligence agencies to fund an extensive network of surveillance, in particular through information technology systems. Within Iran the post June 2009 crackdown has led to an intensification of surveillance of the new media. In particular, that has taken the form of online surveillance and the use of filtering systems.
23. Evidence from Reporters Without Borders of 10 June 2010, and the Open Internet Initiative (2009), explains how internet sites have been blocked and messaging services have been suspended. The Nokia – Siemens Networks acknowledged that it had supplied traditional surveillance equipment to Iran capable of tapping phone conversations, but denied that it had sold software capable of intercepting data or monitoring internet activities. However, dissidents using the internet and messaging services have been arrested. The architecture of the Iranian internet is apparently conducive to widespread surveillance as all traffic from the dozens of the internet service providers serving households is routed through the state controlled telecommunications structure. The Freedom House Report, Freedom On The Net 2009 – Iran, dated 1 April 2009 states that the Iranian regime wields one of the world's most sophisticated apparatuses for controlling the internet and other digital technologies. In its country report on human rights practices in Iran for 2009, the United States State Department referred to Iranian government monitoring of internet communications via Facebook, Twitter and YouTube, with technology purchased in 2009.

(c) Iran and the UK

24. The expert outlined the low ebb of British-Iranian relations following the June 2009 protests. Especially significant was the detention of eight employees of the British Embassy in Tehran on 27 June 2009, accused of involvement in the unrest. That included the Embassy's chief political analyst. In her report the expert quotes anti-British rhetoric, including the statement by President Ahmedinejad at the beginning of August 2009 that "a large number of Iranians with anti-government backgrounds were travelling to Iran from the United Kingdom in the lead up to the elections". Ahmedinejad has also accused the intelligence ministry of gross neglect for allowing the influx. Britain is sometimes described as the little devil, the United States being the big devil.
25. Current advice from the Foreign and Commonwealth Office is that British travellers to Iran, including dual British/Iranian nationals, face greater risks than nationals of most other countries. Iranian paranoia about Britain's supposed role in its politics means that the security forces are suspicious of people with British connections. There is therefore a risk that British nationals could be arbitrarily detained, despite their complete innocence. The FCO explain that the risk is less for tourists, particularly those in tour groups, visiting tourist centres where the local security authorities are more likely to be involved with foreigners. Similarly, business visitors are less at risk if they have been invited by local business contacts.

The situation outside Iran

26. In describing the operation of Iranian intelligence the Stratfor Global Intelligence report, referred to earlier, describes how MOIS units in Iranian Embassies abroad have it as a primary duty to monitor, infiltrate and control Iranian dissident groups. The report contends that there has been a shift in Iran in intelligence tactics abroad to the harassment, intimidation and de-legitimisation of Iranian dissidents. The Amnesty International UK submission for the purposes of this hearing contains specific examples from its own experience of this type of treatment of Iranian dissidents. As Amnesty explained to us, those arrested and released who have then left Iran have reported receiving warning telephone calls or have been confronted by unknown Iranians in the street, who threaten them. Our attention was drawn to instances of Iranians demonstrating against human rights violations, who had stood outside the Amnesty International secretariat in central London in 2009, when unidentified Iranians approached them and warned them that they were being watched.
27. In January 2010 the Immigration and Refugee Board of Canada has reported instances where persons in Iran, who have relatives who are dissidents abroad, are called into local police or intelligence offices and themselves threatened or detained so as to exert pressure. The focus is

on active opponents at the present rather than those who were active 30 years ago during the revolution. While Amnesty is unable to confirm to us indirect threats from Iranians via relatives, they retell a number of instances reported to them. The United States State Department Country Report, mentioned earlier, refers to similar cases.

28. Certainly general threats by high government officials have been made to Iranians abroad. In a speech in November 2009, published in a pro government newspaper, Brigadier Masoud Jazayeri of the Islamic Republic of Iran's Armed Forces Joint Command, characterised protestors after the 2009 election as "acting as a plot" and as an "American-British coup". He continued:

"A large number of individuals involved in the plot had not been identified until today and they will be confronted in time ... [D]espite being patient the Islamic Republic of Iran could not allow agents of regime change and soft coup to plot against it and if forced to, shall even create "serious challenges" for the agents of the coup outside the country".

In the course of her report the expert refers to an announcement on 5 April 2010 by the Minister of Justice, Morteza Bakhtiari, that a High Council for the Affairs of Iranians Abroad had been established and that the judiciary was in the process of organising a special prosecutor's office for Iranians resident abroad. The unit would consist of a number of investigative branches supervised by the Tehran Prosecutor, two courts at first instance and two appeal courts. The revolutionary court was cooperating with the project.

29. On 4 September 2009, the Wall Street Journal reported that part of the effort of harassing and intimidating members of the Iranian diaspora involved tracking the Facebook, Twitter and YouTube activity of Iranians around the world and identifying them at opposition protests abroad. A later article in the Wall Street Journal, on 10 February 2010, stated that former Iranian law makers and former members of the Iranian security forces claimed that monitoring of sites such as Facebook, Twitter and YouTube enabled the authorities to identify Iranians who attended overseas opposition protests. On the basis of such material the Australian Government Refugee Review Tribunal, in its current country advice on Iran, concludes that it is likely that the Iranian authorities would be aware of protests against the Iranian regime by overseas Iranian communities.
30. There is also evidence of more direct surveillance of Iranian protests abroad. The UK Border Agency Country Of Origin Information Report . Iran quotes from an article in The Times, 11 June 2009, regarding the demonstrations against the disputed presidential election which occurred outside the Iranian Embassy in London (and in which the

appellant participated). The Times quoted a Metropolitan police officer, who had been patrolling the demonstrations since they had begun three days previously as saying: “They are filming quite a lot. Any intelligent person would assume they are sending the footage back to Iran”. The expert refers us to a report in The Telegraph of 20 June 2009, that an Iranian Embassy camera was recording the protestors outside. The Immigration Judge accepted the truth of this.

31. On 19 March 2010 the Wall Street Journal contained an article about Mohamad Reeza Heydari, the senior Iranian diplomat in Norway, who had sought asylum there. Mr Heydari told the newspaper that he had been asked to inform on Iranian expatriates, including his son, because they had marched in anti-government protests. As the protests escalated the acting head of the Embassy in Oslo asked Mr Heydari to identify Iranian expatriates protesting in front of it. Intelligence agents filmed the protestors, Mr Heydari told the Wall Street Journal, and asked him to identify faces in the crowd. The newspaper reported that an Iranian Embassy spokesman denied the demonstrators were videotaped or that there was an attempt to identify them. Describing the protest as small groups of activists the spokesman said there was no need to record them since it was already known who they were.
32. Before us particular emphasis was laid on what the Deputy Head of German Intelligence in Hamburg, Manfred Murck, said publicly in October 2009. That was that Iranian secret service personnel circulated in demonstrations abroad, that there was evidence that people were filmed, and that there was an attempt to identify them. The expert has translated from the Persian the full interview which was given by Mr Murck and quotes from him as follows: “[B]asically I think that those who are active in Germany will have to answer for it if they return to Iran or, at a minimum, will be placed under surveillance”.

Leaving and re-entering the country

33. In considering this issue, we take into account the evidence that was before the Tribunal in SB and its evaluation at paras 47-52 of that determination.

(a) Formal procedures

34. The United Kingdom Border Agency COI report on Iran contains information derived from various sources on the procedure for Iranians leaving the country. First, an Iranian wishing to travel needs a passport. At the time the passport is issued there is a security check in relation to any security issues such as outstanding warrants. That is done by use of a specialised data base, which is the same system used at the airport checkpoint when conducting the final verification of travel. At Iman

Khomeini airport, which was newly opened in 2007, checks are undertaken by the immigration police and by the revolutionary guards.

35. Secondly, Iranians wishing to travel abroad must obtain an exit permit. After verification of the applicant's background an exit permit is stamped in the passport indicating that there is permission to leave the country. Exit permits are of three types: a green exit stamp is valid as long as the passport is valid; a blue exit stamp is valid for the period it mentions; and a red exit stamp, which the appellant received, is valid for one exit only. There is a list with the names of persons who are not able to leave Iran.
36. For re-entry of an Iranian at Iman Khomeini International Airport there are separate counters for Iranians and foreigners. The immigration officer scans the passport and registers all the personal data from the passport of the arriving passenger in the computer system. The personal information is already registered in the system and the immigration officer checks the validity of the passport. If the person is entering Iran on illegal grounds, or has outstanding issues with the authorities, he will be held. A Danish Immigration Service Report of April 2009, quoted in the COI report, records the official in charge of passport border control at the airport as saying that, although the computer system in use was a few years old, it had been able to detect forged visas, passports and other documents. If a person has had travel documentation issued by an Iranian Embassy or mission abroad, they will be questioned, since there is no exit stamp in their new travel document. The head of passport control told the Danish Immigration Service that if a person has left Iran legally, so that they had the requisite exit stamp, he or she will not face any problems with the airport authorities when re-entering Iran.

(b) Leaving and entering in practice

37. The background evidence also dealt with the arrangements at the airport at Tehran for those discovered to have exited illegally to be transferred to a special court nearby. However it takes matters no further than they were in the evidence considered (and evaluated) by the Tribunal in SB at paras 47-52.
38. What happens in practice with border control at Iman Khomeini Airport is not, on the evidence, entirely certain. In February 2008 the Prosecutor General of Tehran, who is in charge of the prosecutor's office at the airport, asserted that Iranians who had committed offences, or whose actions were suspicious, would be subject to "rapid action". As the expert explained, since Iranian dissidents abroad have generally avoided travel to Iran in recent years, it is not possible to give an accurate account of what has happened to those returning. There were figures in evidence as to the number of removals from the United Kingdom of

Iranian nationals, both compulsory and voluntary, and in both the asylum and non-asylum categories but these were disputed by the expert. For our purposes there is no need to reach any definite findings on the figures.

39. Prior to 2009 there are several reports where Iranians returning through Tehran airport were subject to mistreatment. Thus the expert refers to the case of Haleh Sahba, who was removed from Canada in late 2004 after her asylum claim failed. She had left Iran illegally and was arrested on arrival at the airport, detained for 26 hours, interrogated, apparently with the use of some violence, and subsequently charged. The expert also quotes from the Australian Financial Review in late 2003, which described an Iranian man who had been forcibly removed from Australia to Iran. He was arrested on arrival at the Tehran Airport by intelligence officers, taken to Evin Prison where he was beaten, tortured and interrogated, but was later released on bail. The report of the Immigration and Refugee Board of Canada, referred to earlier, gives instances in 2005 where Iranian deportees from Canada were subject to mistreatment when they were returned to Iran, including one case where the returnee died after receiving a thousand lashes in prison. That was based on a newspaper report in the Globe and Mail.
40. After the June 2009 protests, there is evidence of some persons being detained on arrival at Iman Khomeini International Airport for activity abroad. A report in the Wall Street Journal on 4 December 2009 was based on interviews with some three dozen persons who had travelled to Iran after June 2009. It gave the example of two travellers who reported that they were arrested and questioned about their Facebook accounts. One was an Iranian engineer in his thirties who attended protests in the country where he was living, and who described having his mobile phone and laptop confiscated. He told the newspaper that he had been called in for questioning several times, after being allowed to leave the airport, and had been blindfolded, kicked and abused and asked to hand over his email and Facebook passwords. Interrogators showed him images of himself participating in protests in Europe and he was pressed to identify other people in the images. He had only attended a few demonstrations and did not even live in Iran. He was given the choice of facing trial in Iran or promising to act as an informant in Europe. He agreed to the latter, left Iran after a month, but did not respond to follow up emails and telephone calls.
41. Other sources suggest that there are photographs kept at the airport of those protesting abroad. There was a report published in February 2010 by International Campaign for Human Rights in Iran, an NGO comprising persons mostly of Iranian origin in different parts of the world. It recounts that when leaving Tehran airport some Iranian citizens have been randomly taken to rooms and, after being questioned

about the country and city to which they were travelling, had had their faces checked against available photographs in an attempt to identify Iranians who had been attending such gatherings. The report says:

“Several people who have recently returned from Iran told International Campaign for Human Rights in Iran that at Iman Khomeni Airport they spent a few hours with anxiety as their faces were compared to available photographs. One of these individuals who has recently returned from Iran told International Campaign for Human Rights in Iran ‘... after I checked in my luggage an officer asked me to follow him to the side entrance door. In the room I noticed people sitting behind monitors showing hundreds of faces on them. They were not passport photographs but photographs of people in different gatherings. In one photograph a girl had raised a fist and in another a young man was yelling’. These individuals said at departure time officers asked the names of destination states and cities and when they took people to the room where they checked the photographs they searched the cities where the individual was heading to see whether he or she had participated in rallies”.

42. Then there is a report in the newspaper, The Australian, of 8 April 2010, about Iranian students living in Australia who had been interrogated and threatened with severe punishment, during visits to Iran, because of their support for the Iranian pro-democracy movement in Australia. One of the cases cited by the newspaper was of an Iranian born student, who now had Australian citizenship. She had been summoned for interrogation by the state security bureau in Tehran after returning there to visit her sick mother. She was told by the interrogator that the government had photographs of her and colleagues taking part in a pro-democracy protest in Brisbane. The second, a troubling, case was of an Iranian born man who lived in Queensland and who was detained at the airport after arrival and interrogated about his political activities in Australia. He was shown photographs of himself at rallies in Brisbane and was given a list of names of Iranian pro-democracy activists in Queensland and asked to identify them. He was threatened with the death penalty.
43. Another example of someone arrested after entry through the airport is of a PhD student at Durham University, Eshan Abdoh Tabrizi. The expert describes how Tabrizi travelled to Iran for a family visit during the Christmas vacation of 2009. His passport was confiscated on arrival. Two weeks later he was arrested after he was summonsed for an interview with the Bureau of Foreign Citizens concerning his passport. He awaits trial on political charges although there is no information that he was politically active. The expert notes that some believe that his fate could be linked to his father’s position as the manager of the pro-Moussavi reformist economic affairs newspaper, Sarmaiye.

44. It is difficult to understand what triggers arrest at the airport or arrest later. The Christian Science Monitor, on 8 February 2010, reported that while several prominent journalists and human rights activists had been detained at the airport, a surprisingly large number believed to be on watchlists have slipped through.

“[W]hile several prominent journalists and human rights activists had been detained at the airport, a surprisingly large number believed to be on the Government watch list have slipped through, thanks to bureaucratic delays and also because Tehran’s new airport may not be integrated into the country’s security network”.

45. Passengers on arrival are checked against two watch lists, issued by the MOIS and Revolutionary Guards. They are either arrested on the spot, or are allowed to pass through, subject to surveillance, or have their passports confiscated and must attend interrogation sessions at the MOIS offices. The report says that those on the lists are normally allowed to pass through, only to have their movements inside the country monitored. They may be later arrested at the airport when they are leaving Iran.
46. The report includes the story of a dissident journalist who escaped to Turkey through the airport without problem. It also quotes a former regime insider who claimed that one reason several dissidents have slipped through the MOIS checklist at the airport is because it is manually updated every twelve hours, allowing fugitives a slim window of opportunity. The author of the Christian Science Monitor article records that when he had been held in Tehran’s Evin Prison for three weeks in the summer of 2009, he was pressured to name anti-regime demonstrators and witnessed intelligence officials using marker pens to circle recurring faces in freshly printed images, shot by intelligence ministry subsidised photographers at demonstrations.
47. In the article Nicola Pedde, the director of the Rome based Institute for Global Studies, a frequent visitor to Iran, is quoted as saying that the new Tehran Airport is a middle level security standard international airport like a Turkish or Egyptian one. Although cameras are fitted, it was not known whether they were equipped with facial recognition technology or the equipment to machine read passports. Officers tap names and passport codes manually into computers. The authorities, however, may be alerted to individuals of interest when their tracked mobile phones enter the airport mobile phone coverage area. Moreover, there were spotters at the airport who keep watch for up to two hundred suspects whose pictures they have memorised.
48. A month earlier, on 4 January 2010, the Christian Science Monitor had another report suggesting that facial recognition technology was not available at the Tehran airport. That report was to the effect that

following demonstrations in December 2009 the Iranian law enforcement authorities had published circled photographs of around 165 anti-regime protestors on the pro-Ahmadinejad Raja News website, asking readers to assist them in identifying individuals. The report continued that shoddy file keeping and other security practices at the intelligence ministry were corroborated by a Dubai based activist who was detained during the summer in one of the post election demonstrations, but whose worries dissipated after he realised that, even assuming his prior detention had been registered, poor information sharing between different intelligent branches shielded him from discovery. In December 2009 he successfully tested this theory when he returned to Iran to plan demonstrations and entered and exited the country unhindered.

LEGAL PRINCIPLES

49. In legal terms it was common ground between the parties that the issue for us is the reasonable degree of likelihood of the appellant's mistreatment as a result of his sur place activity. One gloss on that is that if questioned on return to Iran the appellant could not be expected to lie about that activity: IK (Turkey) CG [2004] UK IAT 00312; see now also RT (Zimbabwe) [2010] EWCA Civ 1285. It is clear from YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360 that opportunistic sur place activity is not an automatic bar to a claim. We were also referred to the dictum of Sedley LJ, in giving judgment in that case:

"[18] Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility - and perhaps more - that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that the claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)(d) of the Directive."

50. We were taken to two decisions of the Refugee Status Appeals Authority of New Zealand both of which considered whether there was a real chance of the Iranian appellants being persecuted on return to Iran because of sur place activity in New Zealand. In the first the appellant arrived in New Zealand in 2004 and almost immediately claimed

refugee status. Refugee appeal number 76454, 8 March 2010, resulted from his third refugee claim. It was on the basis that he had been a person leading protests in New Zealand at which radical slogans had been chanted about the widely disputed presidential election in 2009. He had attended the protests in the middle of June 2009, wore a green scarf, held a placard and chanted slogans such as “down with the dictator” and “death to the dictator”, the dictator being a reference to Ayatollah Khamenei, the Supreme Leader of Iran. In later demonstrations the appellant became responsible for keeping the slogans chanted during those held in Auckland. The first demonstration resulted in a four minute item on New Zealand’s TV 1 News, including footage, briefly, of the appellant’s image. On 17 June the New Zealand Herald published a story about the protest and a photograph showed the appellant holding a placard. Later that month, or early in July, he learnt from his brother that his image had appeared on satellite television in Iran on Voice of America’s Persian News Network. He also became aware that he had appeared in footage uploaded to YouTube at a point where he was leading the demonstrations.

51. The Authority recorded that it was not aware of any report by an NGO dealing with what happened to persons moved or deported to Iran whom the Iranian authorities knew or suspected of participating in post election protests while abroad: para [57]. It noted that the country information established that Iranian security and intelligence services, including those working at the airports, were increasingly sensitised to the role that new media such as YouTube, Facebook and Twitter could play as an intelligence gathering tool or as a mechanism to stifle dissent: para [59]. It also noted that in the light of the increasing sensitivity by the regime to the role of the new media in assisting with intelligence gathering there was an increased likelihood that the TV 1 broadcast and the YouTube videos might have been viewed by Iranian Embassy staff in New Zealand and some participants identified. The broadcast by Voice of America into Iran increased the chance that some participants in the New Zealand demonstrations might have been identified by the Iranian authorities.
52. As to the appellant, he was clearly identifiable in both the TV 1 and a Voice for America broadcasts and on YouTube. He could be seen in these in a prominent position. The slogans being chanted were radical. The Authority continued as follows:

“In terms of assessing the risk to the appellant against this evidential void, the Authority notes the documented history of serious human rights abuses perpetrated against detainees in Iran generally and, more specifically, against some persons detained after engaging in peaceful public protest over the 2009 elections. It is in these circumstances appropriate for the Authority to apply a

benefit of the doubt. Noting that the appellant has on occasions played a more 'leadership' role and the radical tone of the appellant's activity on these occasions has been captured in YouTube video postings, the Authority finds, by a narrow margin, that there is a real chance the appellant will be detained on arrival and interrogated about that activity. In this circumstance the Authority accepts that there is a real chance that he will be subjected to serious harm amounting to his being persecuted because of the particular nature of his involvement in leading the chanting of radical slogan on these occasions. The first principal issue is answered in the affirmative."

However the Authority concluded that the case turned on its own specific facts and that the situation inside Iran was dynamic so that the risk presently existing might dissipate with time.

53. The second Refugee Status Appeals Authority decision is Refugee appeal number 76345, 30 June 2010. There the appellant claimed to have absconded while on bail in Iran. That had been granted in respect of what he said were false charges brought against him by a high ranking police officer. The police officer had a vendetta against him because he accused the colonel's son of theft. He attended demonstrations in Auckland in response to the 2009 presidential elections in Iran. He had no part in organising the events but held placards and joined in chanting slogans. Towards the end of June 2009 the appellant had telephoned his family and had told his mother that he had attended at least one protest. Two or three days later she contacted him and reported that two members of the Iranian authorities had visited her home asking where he was, whether she knew any of his friends and what they had talked about. In late 2009 he learned that video footage of some of the protests had been posted onto internet sites on YouTube, two of which contained footage in which he could be seen for several seconds in one of the items, fleetingly in the other.
54. The Authority rejected the appellant's account, apart from the sur place activities. That included the suggestion that the Iranian authorities had overheard the telephone call with his mother. As to the possible threat of harm to the appellant because of his participation in the protests, the Authority quoted reports such as that in the Wall Street Journal, 4 December 2009. It concluded that the evidence did not establish that all individuals identified as having participated in the protests have been routinely mistreated. While some were physically mistreated, these appeared to be a small minority and there was no information as to the particular profiles of the individuals concerned. The footage of the New Zealand protests recorded that the appellant was one among many individuals. He played no part in leading the organisation of the protests. He had no history of posting material critical of the Iranian

government on the internet, whether in a blog, on Facebook or Twitter. Nor did he fall within any of the categories such as that of student activist. Even if the appellant was to be detained briefly and questioned on return, the country information did not establish that ordinary protesters such as the appellant were at risk of serious harm.

THE PARTIES' SUBMISSIONS

55. As advanced by Mr Basharat Ali the appellant's case was built on the evidence. It began with the Iranian regime's uniformly brutal human rights record and its ill-treatment of political and other dissidents. The general background evidence demonstrated very serious human rights abuses being committed by the Iranian regime against those it viewed as being opposed to it, no matter where they are on the political spectrum, and whether or not they were on the periphery. The intelligence apparatus was multi-layered, sophisticated in its intelligence gathering and ruthless in its suppression of dissent. Those regarded as not brutal enough had been dispensed with, so that only hardline officials remained. The gathering of intelligence in Europe was widely reported. The photographing, filming and identification of dissidents and those opposed to the Iranian regime were widespread.
56. As to the appellant, Mr Basharat Ali submitted, he had attended demonstrations in London which have been filmed by the Iranian Embassy. Footage of his participation at one demonstration has been loaded onto YouTube. His photograph has been published in an opposition magazine with highly objectionable content. There was a reasonable degree of likelihood that the appellant has been identified by the Iranian authorities, given the meticulous way they collect data and seek to match names to faces. The expert had opined that MOIS officials at the airport would have easy access to reports and material submitted to Tehran by their agents at Embassies abroad such as London, or to the data collected by its internet surveillance units based in Iran, where it is almost certainly electronically stored and retrievable.
57. This appellant would be returning from the United Kingdom, which has been singled out for fomenting unrest in Iran after the 2009 elections. Those returned from here were at a particular risk of being mistreated. In the case of the appellant he is likely to be a forced return from the United Kingdom and is without a valid visa. That would draw attention to him and trigger a search of any footage collected. The possibility that he may be known to someone in the Embassy or Embassy circles and already had been named could not be excluded. Although he left the country legally and his passport is still valid, his student visa expired in October 2009, around a year ago. Coupled with a forced return, which would surely not escape the notice of the airport authorities in Iran, the lapsed visa was likely to draw attention to him and uncover that he has

claimed asylum in the United Kingdom. That would in turn lead to an investigation. Given his age group and his student visa, there was a considerable risk that Iranian security would consult the archived films and photographs to determine whether he had participated in protests in the United Kingdom.

58. Thus, the appellant's profile could trigger an investigation and put him at risk of human rights violations, including torture. As to the appellant's participation on the protests being opportunistic, there is the statement by the Minister of Justice, Morteza Bakhtiari, on 5 April 2010, that individuals who did not have a political profile in Iran and who had introduced themselves as a political activist solely to get residence abroad would be detained on return at Iman Khomeini International airport and thereafter be subjected to prosecution. Alternatively, there was a real risk that the appellant would be persecuted after entry into Iran, even if he were allowed to pass through the airport without mistreatment. There is no sufficiency of protection available to this appellant and internal flight is clearly not reasonable on the facts of the case.
59. In submissions for the Secretary of State, Mr Tarlow was content to rest his submissions on the evidence of the appellant's own expert. That acknowledged that of the many arrested after the demonstrations in Iran, most were quickly released. There were a limited number of reports of cases of mistreatment of persons returning to Iran via Tehran Airport, but there was no evidence that it was systematic. The cases of mistreatment had to be placed in the context of the many persons passing through that airport and also the numbers of persons being forcibly returned by the United Kingdom to Iran. Tehran had been described as a middle security airport, and there was no evidence that facial recognition technology was available, not surprising given the sanction on the sale of such technology to Iran.
60. In the Secretary of State's submission the appellant had not demonstrated that the Iranian authorities could filter the vast amount of material, including their own recordings of demonstrations, or the YouTube upload, momentarily featuring the appellant at the front of the demonstrations. That was a distinguishing feature from the first New Zealand case, no 76454, when the appellant there had appeared on national television and in a photograph in a national newspaper. The Iranians may well have spotters, both at the demonstrations and Tehran airport, but the difficulties in identifying specific persons, such as the appellant were obvious. There was evidence of dissidents, who had escaped mistreatment. The appellant had been found to be opportunistic in demonstrating and he did not fit any of the known categories of those identified for arrest such as student activities.

61. In response to a question from the Tribunal Mr Tarlow wrote to SIJ McGeachy on 29 October giving the information that in the year between March 2009 and March 2010 there were 966 applications for student (now tier 4) visas in Tehran. 641 were issued and 311 refused. (the mismatch of the figures relates to those which were decided in the period but which were received before March 2009).
62. Mr Tarlow also wrote that the maintenance of passenger information as not within the domain of UKBA. An airline which carries returned failed asylum seekers had clarified the position as follows:
 - “1. The flight manifest and other paper records are not provided to the authorities at the destination airport (Tehran).
 2. It is the current airline practice for airline staff (or their agents) at all their destination airports to query the passenger manifest in order to identify the presence of arriving escorted and unescorted removals for the purpose of fulfilling any appropriate handling arrangements upon arrival, or where it is locally required, to obtain pre-clearance from local immigration authorities for passengers on the flight.
 3. In case of a local requirement, the data given (verbally) to the local immigration authorities comprises only the names of the escorted or unescorted removal(s). (We are advised that the date of birth is not information that is normally contained within the reservation record).”

DISCUSSION AND CONCLUSIONS

63. Our task is to assess the risk to an Iranian who has demonstrated here being subjected to persecution if returned to Iran, because of his sur place activity here in the United Kingdom. The starting point is that he is to be returned to a country where on all accounts the human rights situation gives rise to grave concern. In the last year, since the disputed election of June 2009, repression has intensified. Protestors have been detained and in some cases, tortured. There has been a crackdown on dissent. Detainees have been systematically denied access to outside contact and legal assistance. There have been show trials, in some cases leading to severe sentences. That repression inside Iran has been coupled with express threats made by high officials to dissident Iranians abroad. Institutional measures to prosecute such Iranians have been taken.
64. Against that backdrop of an announced intention to proceed against dissident Iranians abroad, we need to make a judgment about the risk on return for an Iranian, having regard to his sur place activities. In this type of case the factors that bear on that judgment can be conveniently placed under four main heads: (i) the type of sur place activity involved;

(ii) the risk that a person will be identified as engaging in it; (iii) the factors triggering inquiry on return of the person and; (iv) in the absence of a universal check on all entering the country, the factors that would lead to identification at the airport on return or after entry. For each factor there is a spectrum of risk. The factors are not exhaustive and may overlap.

(i) Nature of sur place activity

- Theme of demonstrations – what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime?
- Role in demonstrations and political profile – can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive (e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime?
- Extent of participation – has the person attended one or two demonstrations or is he a regular participant?
- Publicity attracted – has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?

(ii) Identification risk

- Surveillance of demonstrators – assuming the regime aims to identify demonstrators against it how does it do so, through, filming them, having agents who mingle in the crowd, reviewing images/recordings of demonstrations etc?
- Regime’s capacity to identify individuals – does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?

(iii) Factors triggering inquiry/action on return

- Profile – is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable?
- Immigration history – how did the person leave the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry

and/or being detained for more than a short period and ill-treated (overstayer; forced return)?

(iv) Consequences of identification

- Is there differentiation between demonstrators depending on the level of their political profile adverse to the regime?

(v) Identification risk on return

- Matching identification to person – if a person is identified is that information systematically stored and used; are border posts geared to the task?

65. As regards the relevance of these factors to the instant case, of especial relevance is identification risk. We are persuaded that the Iranian authorities attempt to identify persons participating in demonstrations outside the Iranian Embassy in London. The practice of filming demonstrations supports that. The evidence suggests that there may well have been persons in the crowd to assist in the process. There is insufficient evidence to establish that the regime has facial recognition technology in use in the UK, but it seems clear that the Iranian security apparatus attempts to match names to faces of demonstrators from photographs. We believe that the information gathered here is available in Iran. While it may well be that an appellant's participation in demonstrations is opportunistic, the evidence suggests that this is not likely to be a major influence on the perception of the regime. Although, expressing dissent itself will be sufficient to result in a person having in the eyes of the regime a significant political profile, we consider that the nature of the level of the sur place activity will clearly heighten the determination of the Iranian authorities to identify the demonstrator while in Britain and to identify him on return. That, combined with the factors which might trigger enquiry would lead to an increased likelihood of questioning and of ill treatment on return.

66. As regards identification of risk back in Iran, it would appear that the ability of the Iranian regime to identify all returnees who have attended demonstrations, particularly given the number of those who do, on return, remains limited by the lack of facial recognition technology and the haphazard nature of the checks at the airport. The expert frankly admitted that it was extremely difficult to estimate the risk to identified participants in protests against the Iranian government. Mr Basharat Ali's careful submission was not that all of those returning, or returned from the United Kingdom, would be subject to mistreatment. We conclude therefore that for the infrequent demonstrator who plays no particular role in demonstrations and whose participation is not

highlighted in the media there is not a real risk of identification and therefore not a real risk of consequent ill-treatment, on return.

67. In the country guidance determination in SB the Tribunal identified a number of risk factors for those returning to Iran. These we have set out in paragraph 9 above. While we have had considerably more information about some aspects of the procedures at the Iman Khomeini airport on return we consider that the conclusions in that determination remain correct: we have seen no evidence to lead to the conclusion that merely having exited Iran illegally an appellant might be subjected to persecution. While returning from Britain is at present an increased risk factor, the mere fact that an appellant is returning from Britain does not lead to a risk of persecution.

DETERMINATION OF THE APPELLANT'S APPEAL

68. In the case of this appellant we note Immigration Judge Chana did not accept the appellant's claims of what had happened to him and to members of his family in Iran. Her conclusions were upheld by SIJ Storey. Moreover, the appellant left Iran on a properly issued passport with an exit visa. He would be able to return using that passport although, if escorted on removal, the airline would be likely to inform the grounds staff.
69. However, we consider that there are a number of factors which would mean that the resources available to the Iranian regime would be used to identify this appellant. He participated in five demonstrations outside the Iran Embassy in London, over a short period, 17 June to 9 July 2009. The appellant's association in the demonstration was with the secular/nationalist group, UFIN, and his participation in the demonstrations was recorded in the YouTube film and the photograph in UFIN's publication, Bamdad e Iran. The demonstrators as a whole were chanting incendiary slogans. While the appellant was not a leader or organiser, he was, for at least part of the time, not on the periphery either and the short video on Facebook does show him shouting particularly inflammatory slogans. We place weight on the fact that his face is clearly recognisable in the photograph in Bamdad e Iran and, given the pictures on the cover of that magazine which would certainly be offensive to the Iranian regime, we consider that he is a demonstrator whom the Iranian authorities would particularly wish to identify and that there is a real risk that they would be able to do so; because of the nature of his association with Bamdad e Iran there is also a real risk that he would then face ill-treatment which would amount to persecution because of his political beliefs. Even if he were not picked up at the airport we consider that he would still be at risk on return, as the nature of the Iranian regime is that if they wish to detain a particular individual they have the means to do so.

70. We therefore conclude that, on the low standard of proof, there is a real risk that this appellant would face persecution for a Convention reason on return to Iran and that the decision of the Immigration judge should not stand. We remake the decision allowing this appeal on asylum grounds and for the same reason find that his appeal succeeds on human rights grounds (Article 3). As the appeal is allowed on asylum ground the appellant is not entitled to humanitarian protection.

DECISION

This appeal is allowed on asylum grounds.

This appeal is allowed on human rights grounds.

The appellant is not entitled to Humanitarian Protection.

Signed

The Honourable Mr. Justice Cranston

Annex 1

DECISION AS TO MATERIAL ERROR OF LAW

- i. The appellant is a national of Iran. In a determination notified on 16 December 2009 Immigration Judge (IJ) Chana dismissed his appeal against a decision by the respondent made on 27 November 2009 to remove him from the United Kingdom by way of directions having refused to grant him asylum. His appeal was heard within the fast-track procedure.
- ii. The grounds for reconsideration contended that the IJ erred in failing to take the case out of the fast track pursuant to para 30 of the Asylum and Immigration (Fast Track Procedure) Rules 2005 so as to enable him to obtain expert evidence relating to risk on return arising from surveillance activities; in failing to correctly follow YB (Eritrea) [2008] EWCA Civ 360; in making perverse findings in relation to risk on return; in making mistakes as to certain aspects of the appellant's evidence; and in failing to direct herself as to the correct approach when considering corroborative documentary evidence, in particular the court document for the appellant's sister's sentence in Iran and the summons.
- iii. I shall deal with the last two grounds first as they are the only ones that seeks to challenge the IJ's findings of fact concerning the appellant's personal and family history and circumstances. The mistakes of fact identified as having been made at paras 17 and 46, even accepting they are indeed mistakes, were not such as had any material effect on the IJ's assessment of the appellant's account. The IJ gave a surfeit of other reasons for rejecting credibility. In addition, the IJ elsewhere clearly proceeded on the basis that there was both a camera used by the Iranian Embassy as well as pictures taken by other persons not connected with the Embassy which found their way on to U-Tube and into the printed media. Her assessment of risk arising from these had regard to each of these.
- iv. I see no merit in the challenge to the IJ's treatment of the appellant's documents. In paras 9 and 49 the IJ correctly noted that she was obliged to consider the appellant's claim in the light of the evidence as a whole. Although the IJ did not specifically refer to the case of Tanveer Ahmed [2002] UKIAT 00439, her approach to the various documents submitted by the appellant was entirely consistent with the guidance in that case. The IJ gave sound reasons for placing no reliance

on the document relating to his sister's detention in Iran and the court summons addressed to the appellant's father dated 19 August 2009. The grounds fail to identify any error in those reasons. The IJ was quite entitled to find these documents unsatisfactory.

- v. As regards the IJ's assessment of the appellant's personal and family history and circumstances, I consider that it was well-reasoned and free of legal error. These grounds fail to mount any real challenge to the IJ's findings of fact relating to these matters.
- vi. However, it remains to consider whether the IJ erred in assessing risk on return. This is the focus of the remaining grounds for reconsideration, which I will not deal with individually. Although rejecting most of the appellant's account (and that of his witness) the IJ did accept that: (i) he had attended five demonstrations in quick succession outside the Iranian Embassy in London from 17 June to 9 July 2009; (ii) that the Iranian Embassy had a camera recording these and other demonstrations held in the aftermath of the mass demonstrations which took place in Iran following the June 12 Presidential elections; that the appellant appeared in a U-Tube video recording of one of these demonstrations outside the London Embassy; and that a Farsi magazine called "Devil" had carried a photograph of the appellant protesting outside the London Embassy.
- vii. The IJ made two findings as to this evidence: first, that the appellant had "deliberately and opportunistically attempted to establish a claim as a refugee sur place by participating in demonstrations outside the Iranian Embassy" (para 38); second that it was necessary nonetheless to consider whether his sur place activities would expose him to a real risk of suffering relevant harm on return as a result of his participating in demonstrations outside the Iranian Embassy (paras 38-48). In my judgment her finding on the latter issue of risk on return was vitiated by legal error. Essentially she based her assessment on speculation about whether the Iranian authorities would have the resources to identify individuals involved in these demonstrations. She concluded they would not. However, as Sedley LJ stated in YB at para 17, when dealing with a similar factual scenario, it was necessary to consider:

"whether the AIT has materially erred in law by

- (a) relying on the absence of objective evidence that the Eritrean authorities had the ability or desire to monitor the activities of expatriates throughout the UK, or
- (b) concluding that, even if photographs were taken of demonstrators, it was unlikely that the Eritrean authorities

would be able to identify the appellant and/or place his name on a list of people of interest to the authorities.”

viii. At para 18 Sedley LJ continued:

“18. As has been seen (§7 above), the tribunal, while accepting that the appellant's political activity in this country was genuine, were not prepared to accept in the absence of positive evidence that the Eritrean authorities had "the means and the inclination" to monitor such activities as a demonstration outside their embassy, or that they would be able to identify the appellant from photographs of the demonstration. In my judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility - and perhaps more - that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that the claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)(d) of the Directive.”

- ix. Here too I consider that in the light of the background evidence it is at least right to say that there is a strong possibility that the Iranian authorities have been taking steps to identify from camera evidence and other sources the identities of persons participating in demonstrations outside their Embassy in the latter part of 2009 and that the real question in most cases will be what follows for the individual claimant. The IJ's speculation to the contrary amounted to a departure from the approach set out in YB (Eritrea) and was not sustainable in fact.
- x. This leads me to rule on whether or not the case should remain in the fast track. I do not consider it would be just to keep it in the fast-track procedure. As regards the issue of whether a person who has attended a number of demonstrations outside the Iranian Embassy in the second half of 2009 would meet with adverse treatment by the Iranian

authorities on return, there is a clear need for more targeted evidence and also for up-to-date evidence. I agree with Mr Aslam that this is a subject on which the Tribunal would be greatly assisted by evidence from an expert with accepted credentials in giving an informed opinion on recent political events in Iran and the likely behaviour of the Iranian authorities towards their national abroad known to have participated in recent demonstrations.

- xi. I should emphasise, however, that further expert evidence should confine itself to: (1) the general issue of risk to a person who has demonstrated outside the Iranian Embassy since June 12 2009; and (2) the general issue of risk to a person whose demonstrating outside the Iranian Embassy has been found to be opportunistic and not based on any real political convictions or involvements. The expert report should not seek to consider the appellant's own account of his history and family circumstances. The basis of the further reconsideration in this appeal is that the appellant has been found not credible except in relation to his mere attendance at five demonstrations outside the Iranian Embassy in London post-June 12 2009.

DR H H Storey (Senior Immigration Judge)

APPENDIX: LIST OF DOCUMENTATION CONSIDERED

Item	Document	Date
1	Foreign and Commonwealth Office, "Travel advice for Iran"	24 September 2010
2	Radio Free Europe / Radio Liberty, "Iran jails rights activist for six years"	18 September 2010
3	Radio Free Europe / Radio Liberty, "Spouse of jailed Iranian lawyer 'threatened with arrest'"	16 September 2010
4	Radio Free Europe / Radio Liberty, "Another Iranian diplomat seeks asylum in Norway"	14 September 2010
5	Radio Free Europe / Radio Liberty, "Iranian diplomats defect in Finland, Belgium"	13 September 2010
6	Radio Free Europe / Radio Liberty, "Exiled ally talks about jailed Iranian activist's torture allegations"	11 September 2010
7	United Kingdom Border Agency table, "Iran removals and voluntary departures" with an explanatory note	3 September 2010
8	Radio Free Europe / Radio Liberty, "Iran's human rights lawyers increasingly facing their own days in court"	2 September 2010
9	International Campaign for Human Rights in Iran, "Arrests and convictions of rights activists and lawyers escalate"	1 September 2010
10	International Campaign for Human Rights in Iran, "Reporter's guide"	September 2010
11	United Kingdom Border Agency, "Country of Origin Information Report - Iran"	31 August 2010
12	Human Rights Watch, "Iran: Stop abuse of political	6 August 2010

Item	Document	Date
	prisoners”	
13	Reporters Without Borders, “A year in prison and five-year political ban for dissident journalist”	26 July 2010
14	United Kingdom Border Agency, “Operational Guidance Note - Iran”	28 January 2009 (re-issued July 2010)
15	Stratfor Global Intelligence special report, “Iranian intelligence and regime preservation”	21 June 2010
16	Medical Foundation for the Care of Victims of Torture, “A year on from Iran's disputed election, Iranian torture survivors speak out”	21 June 2010
17	Amnesty International, “Iran: Student activist detained in Iran: Behzad Bagheri Kahkesh”	21 June 2010
18	Voice of America News, “In Iran, internet is lifeline and a noose”	9 June 2010
19	The Guardian, “Iran election anniversary protests face severe crackdown”	9 June 2010
20	Amnesty International, “Iranian political prisoners detained for dissent since the 2009 election”	9 June 2010
21	Amnesty International, “Iran's crackdown on dissent widens with hundreds unjustly imprisoned”	9 June 2010
22	Voice of America News, “Fallout from contested Iran election outcome still reverberates”	8 June 2010
23	Reporters Without Borders, “Using skilfully devised strategy, regime's repressive policies succeed”	8 June 2010
24	RAND Corporation, “The rise of the Pasdaran”	June 2010
25	Amnesty International, “From protest to prison: Iran	June 2010

Item	Document	Date
	one year after the election”	
26	Office of the United Nations High Commissioner for Human Rights (OHCHR), “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: Summary of cases transmitted to governments and replies received” (Iran excerpt)	26 May 2010
27	The Australian, “'Spies' report back to Tehran on Pre-democracy activists”	24 May 2010
28	Iran Focus, “Two hanged in central Iran prison”	19 May 2010
29	AFP, “Iran confirms death sentence for opposition activists”	15 May 2010
30	Freedom House, “Iran continues use of executions and brutal tactics to silence opposition”	11 May 2010
31	Australian Government Refugee Review Tribunal, “Country Advice Iran - IRN36407 - Overseas protests - Sydney vigil - Post-election protests - Internet monitoring - Social networking websites - Returnees”	15 April 2010
32	The Australian, “Court targets Iranian expats”	9 April 2010
33	The Australian, “Iranian students living in Australia held on trips back to Iran”	8 April 2010
34	The Australian, “Iranian embassy in Canberra 'spying' on activist students”	6 April 2010
35	Radio Free Europe / Radio Liberty, “Special court to be established for Iranians abroad”	5 April 2010
36	Reporters and Human Rights Activists in Iran, “Son of Tehran stock exchange's former Secretary-General	1 April 2010

Item	Document	Date
	detained for 3 months”	
37	Amnesty International, “Iran executions send a chilling message”	30 March 2010
38	Reporters and Human Rights Activists of Iran, “Letter by Saeed Malekpour: A shocking account of torture, interrogation & forced confessions”	27 March 2010
39	Reporters Without Borders	12 March 2010
40	U.S. Department of State, “2009 Human Rights Report: Iran”	11 March 2010
41	The Times, “BBC an arm of MI6, says Police Chief of Iran”	22 February 2010
42	AFP, “Over 65 reporters face spying charges in Iran: Rights group”	16 February 2010
43	BBC, “MEPs condemn Nokia Siemens 'surveillance tech' in Iran”	11 February 2010
44	Amnesty International, “Iran: Fears for demonstrators as authorities warn of zero tolerance amid ongoing arrests and trials”	9 February 2010
45	CS.Monitor.com, “How Iranian dissidents slip through Tehran’s airport dragnet”	8 February 2010
46	Iran Human Rights Documentation Center, “Violent aftermath: The 2009 election and suppression of dissent in Iran”	February 2010
47	Amnesty International, “Submission to the UN universal periodic review for Iran, 7 th session of the UPR working group of the Human Rights Council”	February 2010
48	The Times, “Iran hangs alleged dissidents to warn	29 January 2010

Item	Document	Date
	opposition”	
49	Amnesty International, “'Shocking' execution of Iran protesters condemned”	28 January 2010
50	United Kingdom Parliament House of Commons, “Hansard debates 19 January 2010 (oral answers to questions): Iran”	19 January 2010
51	Voice of America News, “Iran demonstrators facing death sentence”	17 January 2010
52	Human Rights Watch, “Iran: End persecution of peaceful activists”	9 January 2010
53	Amnesty International, “Urgent action: Hundreds held in Iran after Ashoura protests”	8 January 2010
54	International Campaign for Human Rights in Iran, “Authorities attempt to crush remaining active human rights NGOs”	6 January 2010
55	Immigration and Refugee Board of Canada, “Iran: Student protests in Iran; treatment by Iranian authorities of student protestors (December 2007 - December 2009)”	5 January 2010
56	Immigration and Refugee Board of Canada, “Iran: Treatment by Iranian authorities of relatives of persons who have left Iran and claimed refugee status, including former members of the Bureau of National Security (SAVAK), of a Fedayeen organization, or opposition protestors”	4 January 2010
57	Christian Science Monitor, “Iran uses internet as tool against protestors”	4 January 2010

Item	Document	Date
58	International Committee Against Executions, "Bulletin of the International Committee Against Executions"	January 2010
59	Freedom House, "Freedom in the World 2010: Iran"	2010
60	Wall Street Journal, "Iranian crackdown goes global"	4 December 2009
61	Amnesty International, "Election contested, repression compounded"	December 2009
62	Rooz 1260, "Guards threaten to punish activists outside Iran"	9 November 2009
63	Human Rights Watch, "Iran: Stop covering up sexual assaults in prison"	6 November 2009
64	United Press International, "Iranian spies active in Germany"	16 October 2009
65	Human Rights Watch, "Iran: Crisis deepening one year after disputed elections"	17 July 2009
66	Scoop News, "Demonstration outside Iranian embassy in London"	29 June 2009
67	The Telegraph, "Iran 'to downgrade ties with UK' after accusing London of interference in election"	24 June 2009
68	Islamic Republic News Agency, "Students' sit-in protest outside UK embassy cancelled"	23 June 2009
69	Words, "Iran embassy staff secretly film British protesters taking to the streets in wake of election rigging claims"	20 June 2009
70	The Telegraph, "Iranian embassy camera watches protesters in London"	20 June 2009
71	The Free Library, "Embassy camera spies on protests"	19 June 2009
72	Politics.co.uk, "Iranian solidarity protest outside"	18 June 2009

Item	Document	Date
	London embassy”	
73	Newspark, “Iran election protest footage, Iranian embassy (London)”	18 June 2009
74	The Guardian, “Students in solidarity protest at Iran embassy”	18 June 2009
75	YouTube, “Protest against Iran's election result”	17 June 2009
76	Demotix, “Election protests outside Iranian embassy”	17 June 2009
77	Flickr, “London Iranian embassy demonstration”	14 – 18 June 2009
78	Anonymous Iran, “June 16 – London – Iranian embassy”	June 2009
79	Danish Refugee Council and Danish Immigration Service, “Human rights situation for minorities, women and converts, and entry and exit procedures, ID cards, summons and reporting, etc.”	April 2009
80	Immigration and Refugee Board of Canada, “Iran: The treatment of student protestors or activists (June 2006 – November 2007)”	9 January 2008
81	Immigration and Refugee Board of Canada, “The treatment of student protestors or activists since 2002”	26 June 2006
82	Immigration and Refugee Board of Canada, “Arrest warrants and other court documents; trial in absentia in criminal cases; punishment for persons charged with helping anti-revolutionaries; procedure when someone acts as surety”	20 June 2006
83	Immigration and Refugee Board of Canada, “Exit and entry procedures at airports and land borders, particularly at Mehrabad International airport”	3 April 2006

Item	Document	Date
84	Immigration and Refugee Board of Canada, "The repatriation of failed refugee claimants to Iran, including reports of claimants being detained, mistreated and tortured upon removal from Canada on the basis they made refugee claims in Canada"	7 December 2005
85	OpenNet Initiative, "Internet filtering in Iran"	
86	The National Interest, "The revolution will be mercantiled"	

Item	Case Law Considered	Date
1	New Zealand Refugee Status Appeals Authority - Refugee appeal no. 76345	30 June 2010
2	New Zealand Refugee Status Appeals Authority - Refugee appeal no. 76454	8 March 2010
3	SB (risk on return - illegal exit) Iran CG [2009] UKAIT 00053	16 December 2009
4	SZ and JM (Christians - FS confirmed) Iran CG [2008] UKAIT 00082	12 November 2008
5	YB (Eritrea) [2008] EWCA Civ 360	15 April 2008
6	SH (Baha'is) Iran CG [2006] UKAIT 00041	27 April 2006
7	RM and BB (Homosexuals) Iran CG [2005] UKIAT 00117	8 July 2005
8	IK (Returnees - Records - IFA) Turkey CG [2004] UKIAT 00312	2 December 2004
9	FS and others (Iran - Christian Converts) Iran CG [2004] UKIAT 00303	17 November 2004

Item	Case Law Considered	Date
10	AH (Gashgai nomads - no persecution) Iran CG [2004] UKIAT 00169	22 June 2004
11	ME (Male Adulterer - Convention Reason? - Risk) Iran CG [2003] UKIAT 00166	9 December 2003
12	HA (Article 3 - Refugee - Adultery - Punishment) Iran CG [2003] UKIAT 00095	17 October 2003
13	SS (Risk - Manastry) Iran CG [2003] UKIAT 00035	8 August 2003
14	ZH (Women as Particular Social Group) Iran CG [2003] UKIAT 00207	6 June 2003
15	FT (Fair Trail - Adultery) Iran CG [2002] UKIAT 07576	3 April 2003
16	MT (Refugee - Communist Party) Iran CG [2002] UKIAT 06995	3 March 2003
17	BZ DR (Risk - Political Journalist) Iran CG [2002] UKIAT 06452	11 February 2003
18	FM (Risk - Homosexual - Illegal Departure) Iran CG [2002] UKIAT 05660	5 December 2002
19	FK (Persecution - Refugee - Political Writer) Iran CG [2002] UKIAT 01328	2 May 2002
20	SF (Article 3 - Prison Conditions) Iran CG [2002] UKIAT 00973	4 April 2002