Neutral Citation Number: [2025] EWCA Civ 1585

Case No: CA-2025-000155

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)
Upper Tribunal Judge Hoffman
UI-2024-002920

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/12/2025

Before :

LORD JUSTICE NEWEY
LORD JUSTICE SINGH
and
LADY JUSTICE YIP

- -

Between :

OM	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

George Brown (instructed by **Broudie Jackson Canter Solicitors**) for the **Appellant**
Katharine Elliot (instructed by **Government Legal Department**) for the **Respondent**

Hearing dates : 18 November 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 5 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Yip :

Introduction

1. This appeal concerns an Iranian asylum seeker who was found to have engaged in *sur place* political activities (activities which occurred after he had left Iran) which were contrived to bolster his claim for protection. It is argued that the First-tier Tribunal and the Upper Tribunal erred in failing to properly consider the Iranian authorities' 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support of Kurdish rights, notwithstanding that the appellant's participation in such activities may have been disingenuous.

2. The assessment of risk faced on return to Iran is fact sensitive. Based on the findings of fact made in the First-tier Tribunal, I have concluded that the appeal should be dismissed.

Facts

3. The appellant is an Iranian national of Kurdish ethnicity. He left Iran illegally without an exit permit in September 2020. He entered the United Kingdom in November 2020 and immediately claimed asylum. His claim was based upon a fear of persecution arising from alleged activities in support of the Komala party, a Kurdish political group.

4. The appellant later expanded the basis of his claim to include *sur place* political activities in the UK, namely attendance at demonstrations protesting against the Iranian government and Facebook posts on the same theme.

5. On 22 August 2023, the respondent refused the appellant's protection claim. The respondent accepted that the appellant was Kurdish and that he had exited Iran illegally. However, his claim to have been a supporter of the Komala party and to have carried out political activities in Iran was rejected. It was also not accepted that the appellant was a political activist in the UK.

6. The appellant appealed against that decision. His appeal was heard by the First-tier Tribunal on 23 April 2024. In a decision promulgated on 1 May 2024, First-tier Tribunal Judge Power dismissed the appeal.

7. The First-tier Tribunal made the following key findings of fact:

    i) The appellant's account of his activities in Iran and his reasons for leaving was unreliable.

    ii) The tribunal could not be satisfied that the appellant was working for the Komala party in Iran, or on probation towards becoming a member, nor that he left Iran on account of pro-Kurdish activities undertaken in support of the Komala party.

    iii) Between December 2020 and November 2023, the appellant had attended seventeen demonstrations in the UK against the Iranian government.

iv) The tribunal was not satisfied that the appellant's attendance at such demonstrations had come to the attention of the Iranian authorities or attracted publicity. There was nothing to mark him out as a leader or organiser of the demonstrations and no evidence that he had been at the demonstrations for more than the few minutes needed to take photographs of him there as part of the crowd.

v) There were various screenshots of Facebook posts dated between December 2020 and November 2023, many of which related to the appellant's attendance at demonstrations.

vi) The evidence presented to the tribunal did not establish that the appellant was active on social media or that the posts remained public beyond the taking of a screenshot. The tribunal could not conclude that the appellant's social media activity had been viewed and shared widely, if at all.

vii) There was no evidence that the appellant's Facebook account had been the subject of surveillance or that he would be of significant interest to the Iranian authorities. The tribunal was not satisfied that the appellant's Facebook activity had come to the attention of the authorities in Iran.

viii) The appellant had not attended a demonstration or posted on Facebook since November 2023.

ix) The tribunal was not satisfied that the appellant was genuinely politically motivated or that he would wish to protest on return to Iran.

x) The images posted on Facebook and the *sur place* activity were contrived to bolster the appellant's asylum claim, rather than resulting from a genuinely held political opinion adverse to the Iranian regime.

The First-tier Tribunal's reasoning and conclusions

8. In the course of the judgment, First-tier Tribunal Judge Power made reference to the country guidance provided by the Upper Tribunal in *XX v SSHD (PJAK – sur place activities – Facebook) Iran CG* [2022] UKUT 23 (IAC) and *HB v SSHD (Kurds) Iran CG* [2018] UKUT 430 (IAC).

9. Consistent with the country guidance, the respondent had acknowledged that a person would be at risk on return to Iran if they were discovered to have been critical of and to have protested against the Iranian regime and to have been involved with pro-Kurdish political activity. However, the respondent submitted that the appellant could remove any risk by deleting his Facebook account before his return to Iran.

10. The appellant argued that deletion of his Facebook account would not remove the risks since even low-level protest activity combined with his Kurdish ethnicity put him at risk of persecution or Article 3 ill-treatment.

11. In considering those competing submissions, the judge referred to the guidance in *HB*, noting "in particular" several paragraphs of the headnote, which were set out in full in the judgment.

12. The judge then said:

> "[36] Having considered all of the evidence before me and for the reasons set out above, I have not accepted the appellant's account of undertaking work for the Komala party in Iran or in the UK, nor that the appellant's Facebook activity and attendance at demonstrations has come to the attention of the authorities in Iran. There is no evidence that the appellant's Facebook account has been the subject of surveillance and no evidence that he has received threats as a result of his sur place activity. There is no evidence that the appellant would be of significant adverse interest to the Iranian authorities. I am therefore not satisfied that there are other risk factors which, in combination with the appellant's Kurdish ethnicity, would create a risk of persecution or Article 3 ill-treatment."

13. Dealing specifically with the appellant's evidence that he would keep supporting the Kurdish cause and would not delete his Facebook account if returned to Iran, the judge said that she was not satisfied that the Facebook images denoted a genuine interest in or loyalty to the Komala party or an anti-Iranian authority cause more generally. She was therefore not satisfied that the appellant would wish to protest on return to Iran.

14. Under the heading "Application of the law to the facts", the judge concluded:

> "I have considered the evidence before me today in the round and I find that the appellant's account is not credible. I have set out above my concerns with the appellant's account. Having rejected the appellant's account, I do not accept that he has a well-founded fear of persecution or serious harm or Article 3 ill-treatment and so dismiss his appeal on all grounds."

Appeal to the Upper Tribunal

15. The appellant appealed to the Upper Tribunal on four grounds. Permission was granted but the appeal was refused on all grounds. The sole ground that remains relevant for the purpose of this appeal was that the First-tier Tribunal failed to properly assess risk "having regard to the hair-trigger approach that might be elicited by the Iranian authorities from the [appellant's] sur place activities."

16. In his renewed grounds for seeking permission, the appellant argued that the assessment of risk must be done on the basis that he is not expected to lie about his activities in the UK and will therefore be expected to tell the Iranian authorities when interviewed about the opportunistic activities he had been involved in while in the UK. Therefore, the issue for the First-tier Tribunal was what the reaction of the Iranian authorities would be to the disclosure of the appellant's activities in the UK, whether disingenuous or not. That issue had to be considered applying the 'hair-trigger' approach.

17. The reference to a 'hair-trigger' approach comes from part of the guidance in *HB*, which Judge Power did not explicitly cite. Paragraph 10 of the headnote reads:

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

18. The Upper Tribunal dismissed the appeal on all grounds, finding that there was no material error of law in Judge Power's decision.

19. Upper Tribunal Judge Hoffman said that although Judge Power had not set out all the paragraphs to the headnote of *HB*, she would have been aware of all the paragraphs in that guidance. It was clear from the paragraphs she did reproduce that she was aware that even low-level political activity, or activity perceived as such, could put the appellant at risk of persecution or treatment contrary to Article 3.

20. The Upper Tribunal concluded:

> "Having made the findings … that the appellant was unlikely to have come to the attention of the Iranian authorities by protesting outside of its embassy and … that the appellant had failed to demonstrate that his Facebook posts had brought him to the regime's attention, I am satisfied that the judge was rationally entitled to conclude … that there was insufficient evidence before the tribunal to demonstrate that the appellant would be of adverse interest to the Iranian authorities on return. In the circumstances, I am not satisfied that the absence of an express reference to the Iranian regime's "hair-trigger" response amounts to a material error of law because the judge's conclusion would very likely have been the same in any event."

The appellant's appeal to this court

21. By his grounds of appeal, the appellant contends that the Upper Tribunal erred in concluding that had the First-tier Tribunal properly applied the "hair-trigger guidance", the outcome would have been the same. It is argued that the judges both at first instance and in the Upper Tribunal failed to properly apply the country guidance to the facts of this case.

22. The appellant contends that he is likely to be questioned on his return to Iran, based upon his Kurdish ethnicity alone. Therefore, the vital question, not addressed by the judge at first instance, was what he would say about his political activities irrespective of whether they were genuine or not, even if he had deleted his Facebook account and regardless of whether his political activities had come to the attention of the authorities previously.

23. Relying on *BA (Demonstrators in Britain – risk on return) Iran CG* [2011] UKUT 36, the appellant argues that his motive for joining in protest activities in the UK is unlikely to be a major influence on the Iranian authorities' perception of those activities. Accordingly, the proper assessment required the First-tier Tribunal to follow the hair-trigger approach and to ask whether when questioned on return, the

appellant would face a real risk on account of the revelation of his disingenuous *sur place* activities.

24. At the outset of his admirably clear and well-focused oral submissions, Mr Brown acknowledged that the notion that disingenuous activity should be rewarded with a successful claim for asylum may be viewed as unattractive. However, what was required was a disciplined application of the established law to the facts as found by the First-tier Tribunal.

25. This, Mr Brown argued, required Judge Power to ask and answer the question whether it was reasonably likely that the appellant would disclose the fact of his attendance at political demonstrations in the UK when questioned on his return to Iran. Since she had not done so, the only proper course was to allow the appeal and to remit to the First-tier Tribunal for this issue to be addressed.

26. Mr Brown also identified a second issue: whether even if the appellant did not disclose or volunteer his *sur place* activities, nevertheless the mere fact that he had attended seventeen demonstrations in the UK was likely to give rise to a risk of harm. He submitted that this issue needed to be considered in the context of other factors in the case, including the appellant's Kurdish ethnicity, the length of time he had spent outside Iran and what was generally known about Kurdish political activity in the UK. He submitted that this required consideration of the likely intensity of inquiry at the point of return and whether the Iranian authorities were likely to believe that the appellant did not take part in any anti-Iranian government demonstrations or to accept his political neutrality. He suggested that the case should be remitted to the First-tier Tribunal so that these matters could be developed further.

The respondent's position

27. The respondent refuted that there had been any error of law in the decisions reached by the First-tier Tribunal and the Upper Tribunal. The respondent contended that the appeal was in reality no more than a disagreement with the decisions made on the merits of his claim.

28. Ms Elliot highlighted the clear findings of fact made by the First-tier Tribunal to the effect that the appellant had not taken part in political activity in Iran, was not genuinely politically motivated and was not likely to have come to the attention of the Iranian authorities. She contended that Judge Power took account of the latest country guidance in *XX* and reached a decision applying that guidance.

29. Ms Elliot submitted that the First-tier Tribunal had addressed the key questions reasonably required on a proper reading of the country guidance as a whole. Ms Elliot acknowledged that the tribunal had not explicitly addressed the question of what the appellant was likely to say when questioned on his return to Iran. However, she submitted that the answer to that can properly be inferred from the express findings that were made. It can reasonably be inferred that he would delete his Facebook account and not volunteer information about his attendance at demonstrations in the UK.

30. Ms Elliot relied upon *S v SSHD* [2024] EWCA Civ 1482 in which the Court of Appeal upheld the decision of the Upper Tribunal refusing an asylum claim following

findings of fact that the appellant was not credible in his claim to have taken part in political activities in Iran, that his attendance at demonstrations in this country and Facebook posts were not genuinely politically motivated and that he was not likely to have come to the attention of the authorities. This she said was 'on all fours' with the present case, albeit she acknowledged that the Upper Tribunal in *S* had expressed clearer findings on what was likely to happen on return to Iran.

Analysis

The 'hair-trigger' approach

31. The ground of appeal with which we are now concerned has evolved somewhat from the way in which it was pursued in the Upper Tribunal. The focus there was on the 'hair-trigger' approach and the likely response of the Iranian authorities to a person who had taken part in political demonstrations in the UK, even if doing so had been opportunistic rather than reflecting genuinely held political beliefs.

32. The appellant was critical of the First-tier Tribunal for not making explicit reference to paragraphs 8 and 10 of the headnote in *HB*. Paragraph 8 deals with the breadth of activities that may be perceived to be political by the Iranian authorities. Here there was no issue as to the nature of the appellant's activities. He had been disbelieved about the alleged activities in Iran. His *sur place* activities (attending demonstrations and Facebook postings) would clearly be viewed as political. Since no issue arose about that, there was no need to cite paragraph 8. Taken as a whole, the judge's reasoning focuses on the likelihood of the Iranian authorities being aware of the appellant's *sur place* activities. That focus was appropriate because the activities, if discovered, would undoubtedly be perceived as political.

33. In the hearing before the Upper Tribunal, greater emphasis was placed on the omission of paragraph 10 of the headnote in *HB* and the lack of explicit reference to the 'hair-trigger' approach. I have set out paragraph 10 above. The 'hair-trigger' approach is one demonstrated by the Iranian authorities towards those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. The threshold for suspicion is low, and the reaction of the authorities is reasonably likely to be extreme.

34. The Iranian authorities' likely response to political activity was never in issue. The respondent's decision letter acknowledged that if the appellant was identified as having been involved in political activity, he would be at risk. The reasons for refusing his asylum claim focused on why it was unlikely that the appellant had come to the attention of or was of interest to the Iranian authorities. That was the central issue for the First-tier Tribunal, not how the authorities would react if the appellant's activities were discovered.

35. In those circumstances, I agree with the Upper Tribunal that the absence of explicit reference to the 'hair-trigger' approach in the judgment of the First-tier Tribunal did not represent a material error of law.

The likelihood of the appellant's activities becoming known to the Iranian authorities so as to engage the 'hair-trigger' approach

36. Before this court, the appellant's submissions were less focused upon the 'hair-trigger' approach. Instead, Mr Brown concentrated on the central issue that arises in this case: whether the appellant's *sur place* activities were known to the Iranian authorities or would become known upon his return. That is an acutely fact-sensitive issue as is apparent from the two recent Court of Appeal decisions cited to us: *S v SSHD,* relied upon by the respondent and cited above, and *FA (Iran) v SSHD* [2024] EWCA 149, which the appellant places reliance on.

37. What is required in addressing this issue is careful consideration of the relevant country guidance in light of the facts as they have been found to be.

38. The findings of fact made by the First-tier Tribunal, which I have set out above, are unassailable. The risk the appellant would face on return was therefore to be assessed on the basis that he had not been politically active in Iran and that the Iranian authorities would have no existing knowledge of his political activities in the UK.

Relevant country guidance

39. The most recent country guidance issued is that in *XX*. The Upper Tribunal confirmed that the guidance in *BA* (above), *SSH and HR (illegal exit: failed asylum seeker) Iran CG* [2016] UKUT 308 (IAC) and *HB* (above) continued to accurately reflect the situation for returnees to Iran and that the guidance in *XX* was intended to supplement that guidance on the issue of risk arising from social media use.

40. Merely having exited Iran illegally and/or returning from Britain does not lead to a risk of persecution: *BA* [67].

41. If a person has had travel documentation issued by an Iranian embassy or mission abroad, they will be questioned on arrival in Iran since they will not have an exit stamp in their document: *BA* [36].

42. *SSH and HR* confirms that an Iranian male who does not possess a passport will be returnable on a *laissez passer* obtainable from an Iranian embassy. A person returning on a *laissez passer* is likely to be questioned. At [23], the Upper Tribunal said:

> "In our view, the evidence does not establish that a failed asylum seeker who had left Iran illegally would be subjected on return to a period of detention or questioning such that there is a real risk of Article 3 ill-treatment. The evidence in our view shows no more than that they will be questioned, and that if there are any concerns arising from their previous activities either in Iran or in the United Kingdom or whichever country they are returned from, then there will be a risk of further questioning, detention and potential ill-treatment."

43. This led the Upper Tribunal to conclude (in the same paragraph):

> "… a person with no history other than being an asylum seeker who had exited illegally and who could be expected to tell the truth when questioned would not face a real risk of ill-treatment during the period of questioning at the airport."

44. The conclusion summarised in the headnote was:

> "An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution / breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return nor after the facts (i.e. illegal exit and being a failed asylum seeker) have been established."

45. While being Kurdish was accepted in *SSH and HR* to be "an exacerbating factor for a returnee otherwise of interest", being Kurdish coupled with being undocumented was not sufficient to give rise to a risk of ill-treatment. This was confirmed and restated in *HB*.

46. The country guidance suggests "pinch points" (that is moments when risk may crystallise). *XX* identifies that the first pinch point for the Iranian authorities to carry out a check of a returnee's social media activity will be the point at which he applies for an emergency travel document. However, the timely closure of a Facebook account will neutralise the risk consequential on critical postings provided that the account was not specifically monitored prior to closure.

47. The next pinch point is the time of returning to Iran. It being agreed that the appellant left Iran illegally without obtaining an exit visa, it follows that he is likely to be questioned when he arrives back in Iran.

Application of the guidance on Facebook to the facts of this case

48. Having considered the Facebook evidence, Judge Power said that she was not satisfied that the appellant was active on social media. The evidence consisted of screenshots of posts, the last of which was dated November 2023. There was no evidence that the posts had remained public beyond the taking of the screenshots and nothing to confirm the appellant's Facebook account remained publicly available. The judge found no evidence that the appellant's Facebook account had been the subject of surveillance nor that any Facebook activity had come to the attention of the Iranian authorities. It is clear from the judge's reasoning that she rejected the appellant's evidence that he would not delete his Facebook account if returned to Iran. Given the judge's findings that the posts did not represent a genuine interest in or loyalty to the Komala party and that they had been created only to bolster his asylum claim, that was an entirely logical view to take. It follows that if the account remained active, the appellant could close it before applying for travel documents so neutralising any risk relating to the social media activity.

Assessing the risk on return –other recent Court of Appeal cases

49. The cases of *FA* and *S* both concerned Kurdish Iranians who had made asylum claims based upon alleged political activity in Iran and attendance at demonstrations and social media activity in the UK. It is apparent from the Court of Appeal judgment in *FA* that the findings of the First-tier Tribunal were far from clear. The reasoning in the judgment was described as incoherent. Notably, the case was decided in the First-tier Tribunal prior to *XX*. There was no explanation as to why the appellant's Facebook postings would not pose a risk and insufficient findings to address the question of whether the appellant's *sur place* activities would create a risk on return whether because of his Facebook account or otherwise. The Upper Tribunal had not grappled with that. As a result, the Court of Appeal remitted the case to a different judge in the First-tier Tribunal to determine that issue.

50. In contrast, the Upper Tribunal in *S* had addressed the essential questions when remaking the decision on appeal. In relation to the first pinch point of applying for travel documents, the Upper Tribunal found that there was no reason why S would not close his Facebook account prior to applying for an emergency travel document and that he would not previously have been the target of social media surveillance.

51. Addressing the second pinch point on the appellant's arrival in Iran, the judge found that it was only if the authorities suspected S's involvement in political activity or support for Kurdish rights that he would be at risk. In those circumstances, the determinative question would be what he would or could reasonably be expected to say when questioned by Iranian authorities. The Upper Tribunal concluded that S would not be expected to volunteer information about his activities which were not an expression of any genuinely held beliefs, and which had been contrived solely to enhance a false claim for asylum and to deceive the UK authorities. The Court of Appeal accepted that the judge was entitled to make that finding on the facts. As his claim to have taken part in political activities in Iran had been rejected, there would be no other reason for the Iranian authorities to have any suspicion about him. As such there was no risk of persecution or Article 3 ill-treatment either by reason of second stage questioning or otherwise. On that basis, the appeal was dismissed.

Assessment of the risk on return in this case

52. In this case, neither the First-tier Tribunal nor the Upper Tribunal clearly addressed the question of what would happen at the second pinch point of return to Iran. Had they done so, given the findings that were made, they would have approached it on the basis that:

    i) The Iranian authorities would have no prior knowledge of or interest in the appellant or his activities in the UK.

    ii) The appellant's Facebook account had not been monitored, and the historic posts would not be available to be detected.

    iii) The appellant did not hold any genuine political beliefs which would put him at risk.

iv) The appellant's attendance at demonstrations had been contrived to support a false asylum claim.

v) There was no evidence the appellant had been at the demonstrations for more than the few minutes needed to secure photographic evidence for his claim.

53. The country guidance demonstrates that a Kurd returning from the UK as a failed asylum seeker would be questioned. However, those factors would not lead to second stage interrogation unless something of concern to the Iranian authorities arose during the initial questioning. On the findings of Judge Power, such concern would only emerge if the appellant disclosed his attendance at the UK demonstrations to the authorities. The truth, as found by Judge Power, was that the appellant was not politically motivated but had attended demonstrations to secure evidence to use in his asylum claim.

54. The appellant claimed that he would not delete his Facebook page and would wish to continue to protest if he returned to Iran. Judge Power did not believe him. It is apparent that the question of what the appellant might say during questioning has only been brought into sharp focus during the hearing before this Court. Although Judge Power did not expressly find that the appellant would not volunteer the fact of his attendance at demonstrations when questioned, it is clear from reading the judgment as a whole that the judge would inevitably have reached that conclusion given the unassailable findings of fact she had made. Given the findings that the appellant's activities were contrived and not genuinely motivated, it is reasonable to infer that he would not disclose them on return.

55. On that basis, his position is not materially distinguishable from the appellant in *S*.

Conclusion

56. There was no material error of law in the findings of Judge Power, which were reached in accordance with the relevant country guidance. The absence of explicit reference to the 'hair-trigger' approach of the Iranian authorities does not represent a material error of law given what was in issue.

57. Having rejected the appellant's claim that he was genuinely a political activist, the central issues for the judge were whether his contrived *sur place* activities were likely to have come to the attention of the Iranian authorities or whether they were likely to do so at the pinch points of applying for travel documents and returning to Iran. The judge explained why the appellant was unlikely to already have come to the Iranian authorities' attention. She rejected his claim that he wished to continue to protest in Iran and would not delete his Facebook account. On the express findings made by the judge, it can properly be inferred that the appellant would not be expected to volunteer information about his contrived activities in the UK when questioned on arrival in Iran. In those circumstances, as in *S*, the judge was entitled to reach the conclusion she did that the appellant did not have a well-founded fear of persecution, serious harm or Article 3 ill-treatment.

58. It follows that I would dismiss this appeal.

Lord Justice Singh:

59. I agree.

Lord Justice Newey:

60. I also agree.