



GARDEN COURT CHAMBERS

Ali Bandegani

YEAR OF CALL: 2009



Ali Bandegani specialises in international protection, human rights and public law.

"He is a fighter who is able to bring a judge around to his case in the most uncompromising cases."

LEGAL 500, 2020

"Incredible knowledge of asylum and immigration law."

LEGAL 500, 2021 (IMMIGRATION)

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NOTABLE CASES

FB (Afghanistan) v SSHD [2020] EWCA Civ [2020] EWCA Civ 1338: The court declared the Home Secretary's removal policy was unlawful as it breached the constitutional right of access to justice.

DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 00223: The Refugee Convention 1951 provides greater protection than Directive 2004/83/EC. A Particular Social Group may include a person who has or is perceived to have a disability or mental illness even where no firm diagnosis is possible.

MSU (S.104(4b) notices) Bangladesh [2019] UKUT 00412: the Upper Tribunal (IAC) has the power under S25 of the TCEA 2007 to extend time for continuing with a refugee status appeal otherwise deemed abandoned by statute and the procedure rules.

KV v SSHD (Helen Bamber Foundation, Freedom from Torture, and Medical Justice intervening) [2019] UKSC 10: Landmark Supreme Court ruling reasserting the role of the Istanbul protocol for the investigation of torture and medical expertise in asylum claims. Ali represented all three intervenors.

R (on the application of MW) v SSHD (Fast track appeal: Devaseelan guidelines) [2019] UKUT 00411: The "starting point" principle in second asylum appeals is not a legal straitjacket. Judicial fact-finders may depart from the earlier judicial decisions on a principled and properly-reasoned basis.

AS (Afghanistan) v SSHD (UNHCR intervening) [2019] EWCA Civ 873: A guideline case on the correct approach to 'internal relocation' under Art 1A(2) of the Refugee Convention 1951. Ali represented the UNHCR whose core submission was accepted by the court.

R (N) v SSHD (JR/ 7389/2018): By consent the SSHD amended her policy "Withdrawing Asylum Claims Version 5.0" introducing a range of procedural safeguards to protect disabled or incapacitous persons from inadvertent withdrawal of their asylum claims, and created a procedure for re-opening claims incorrectly treated as withdrawn.

R (FB and another) v SSHD (Public Law Project Intervening) [2018] UKUT 428 (IAC): In the course of this claim, the SSHD amended her removal policy to allow individuals to request access to advice, documents and the courts. Lane J held the amended policy was legally deficient in two further significant respects.

S.A.C. v United Kingdom, App no. 31428/2018: The ECtHR granted S.A.C. interim relief under Rule 39 of the court's procedures. On communicating the case it asked whether concealment of sexual orientation to avoid ill-treatment is compatible with convention rights. Before trial the UK conceded and granted SAC refugee status.

R (Bah) v SSHD [2018] EWHC 2942: Mr Bah was a serious offender posing a high risk re-offending. When his mental health deteriorated, the decision maker appeared to "focus on looking for reasons not to release rather than a clear application of the AAR policy in light of the new evidence." Substantive damages awarded for the last 35 days' detention.

KV (Sri Lanka) v SSHD [2017] WLR(D) 159: Successful intervention on behalf of the Helen Bamber Foundation in which the Upper Tribunal's controversial guidance in KV (scarring - medical evidence) Sri Lanka [2014] UKUT 00230 was disapproved.

LT (Kosovo) v SSHD [2016] EWCA Civ 1246: Authority on the tribunal's approach to deportation orders made on the basis that an individual's offending had caused "serious harm" per para. 398(c) of the immigration rules.

R (HN and SA) (Afghanistan) v SSHD [2016] EWCA Civ 123: Ali secured 15 individual injunctions from McCloskey J, and an historic generic injunction from the Court of Appeal preventing removal to Afghanistan by charter flight which led to the suspension of charter flights to Afghanistan.

Sanneh & Ors v SSWP [2015] WLR(D) 62: Authority on issues concerning the entitlement to social benefits of non-EU nationals who were the primary carers of children who were EU citizens and British nationals.

R (Ali Zahid) v SSHD [2013] EWHC 4290: The SSHD's failure to give the Claimant notice of removal, then telling him removal would not occur, amounted to an illegality and the Claimant was entitled to more than nominal damages.

FA (Iraq) v SSHD [2010] 1 WLR 2545: Authority on the tribunal's jurisdiction in 'upgrade appeals' (s83. NIAA 2002) to determine status pursuant to subsidiary protection in addition to refugee status. Ali drafted

initial permission applications for permission to appeal.

SM (Section 8: Judge's process) Iran [2006] INLR 149: Authority on approach to and meaning of s.8 of the 2004 Act concerning the Judge's assessment of credibility.

Country Guideline cases

KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 00023

Effectively became *QD & AH (Iraq) -v- SSHD* [2009] Imm AR 132, authority on the core scope and meaning of subsidiary protection in situations of armed conflict pursuant to Art. 15(c) of the Qualification Directive.

MA (Palestinian Arabs - Occupied Territories - Risk) CG [2007] UKAIT 00017

Held Palestinian males suspected of terrorist involvement by the Israeli state will be at real risk of persecution and/or Article 3. Denial of right of return without more does not give rise to a real risk of persecution, a finding upheld by the Court of Appeal: *MA (Palestine) -v- SSHD* [2008] Imm AR 617.

FK (FGM - Risk and Relocation) Kenya CG [2007] UKAIT 00041

Held a woman will be at real risk in her own home area if she comes from an ethnic group (or sub-group) where female genital mutilation (FGM) is practised but such women can reasonably relocate and will not be at risk of FGM from the 'Mungiki'. In the Court of Appeal it was held the tribunal did not consider FK's case with sufficient specificity: *FK (Kenya) v SSHD* [2008] EWCA Civ 119.

NS (Iraq: perceived collaborator: relocation) Iraq CG [2007] UKAIT 00046

Held those suspected of perceived collaboration with Multi National Forces are at real risk of persecution and/or Article 3 ECHR breach in Iraq. No internal relocation to the Kurdish Region.

LM (Educated women - Chaldo-Assyrians - risk) Iraq CG [2006] UKAIT 00060

Held that Christian, English-speaking Iraqi women are at real risk of persecution because of the armed conflict in Iraq. There is no possibility of relocating to the Kurdish Region.

PUBLICATIONS

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- Ali is a contributor to *Macdonald's Immigration Law and Practice, 9th Ed*
 - *We will make you forget everything: torture in Iran since the 2009 election - Freedom from Torture - Advised and edited FFT's clinical report on human rights abuses in Iran*
 - *The UN Special Rapporteur on Iran drew heavily on the research for his report to the UN Human Rights Council (2013)*

- *Joint Council for the Welfare of Immigrants (JCWI) - case summaries posted on the JCWI blog (2008 - 2010)*
- *Assessment of UKBA Operational Guidance Note on Occupied Palestinian Territory (2012) - Amnesty International (Still Human Still Here)*
- *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. BADIL Resource Centre for Palestinian Residency & Refugee Rights, University of Cairo (2010) - UK contributor*
- *Country Information in Asylum Procedures: Quality as a Legal Requirement in the EU- Hungarian Helsinki Committee (2008) - UK contributor*

TRAINING AND SEMINARS

- **Immigration Law Practitioners' Association (ILPA)**
- **Joint Council for Welfare of Immigrants**

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