



GARDEN COURT CHAMBERS

Ali Bandegani

YEAR OF CALL: 2009



Ali Bandegani specialises in immigration, international protection, human rights and public law. Ali is recognised as a leading junior by the Legal 500 (Immigration), and Chambers and Partners (Immigration and Public Law).

He is regularly called upon by individuals and organisations to provide practical advice on business immigration matters, entry clearance, leave to remain, citizenship and licensing.

Ali is also a public law practitioner routinely instructed in cutting edge cases relating to asylum, immigration, and human rights at all levels up to and including the UK Supreme Court and the European Court of Human Rights.

He is one of a handful of UK barristers on the panel of expert counsel for the United Nations High Commissioner for Refugees and is regularly instructed to intervene in cases of significant public importance by organisations such as the UNHCR, Freedom from Torture, Medical Justice, the Helen Bamber Foundation, Detention Action, and the Joint

Council for the Welfare of Immigrants.

Ali is also a visiting lecturer at SOAS, University of London on refugee law and procedure and contributes to leading textbooks in the field.

"His oral advocacy is absolutely brilliant. His ability to take on a number of cases and deliver a high level of work is always really impressive."

CHAMBERS UK, 2024 (ADMINISTRATIVE & PUBLIC LAW)

"Ali's work has been excellent and thorough, acting quickly to developments in the case."

CHAMBERS UK, 2024 (ADMINISTRATIVE & PUBLIC LAW)

"Ali's advocacy is absolutely brilliant."

CHAMBERS UK, 2024 (IMMIGRATION)

"A strategic thinker with a razor-sharp legal mind."

CHAMBERS UK, 2024 (IMMIGRATION)

"Ali is a truly exceptional barrister, delivering amazing results in the most difficult cases. He brings his grounding in the principles of asylum and public law to bear in every case."

LEGAL 500, 2024 (IMMIGRATION)

"He has some incredibly cutting-edge work. He has a remarkable eye for the wider issues."

CHAMBERS UK, 2023

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PUBLIC LAW

B4 v SSHD [2024] EWCA Civ 900, Singh LJ (with whom Jackson LJ and Holroyde LJ agreed) held that national security advice given to the Secretary of State in deprivation of nationality cases must be fair and balanced, and whether there has been procedural fairness is an objective question for the court to determine itself, not a Wednesbury review.

MP1, R (On the Application Of) v Secretary of State for Defence [2024] EWHC 410 (Admin), Mr Justice Julian Knowles ruled that the decision of the Defence Secretary rejecting the (anonymous) claimant's application for relocation to the UK pursuant to the Afghan Relocations and Assistance Policy ("ARAP"), was unlawful.

R (VT & Ors) v Commissioner of the British Indian Overseas Territories (BIOT/SC/No.1 & 2/2023), Following a grant of permission by the BIOT Supreme Court, the Commissioner agreed to amend the asylum determination procedure in Diego Garcia by providing a 'minded-to' process. See coverage: [The Guardian](#)

R (DM) v SSHD (UNHCR intervening)[2023] EWHC 740 (Admin), Lavender J. Ali represented the intervenor in this judicial review of the SSHD's failure to provide a route under the immigration rules for child refugees to reunite with their parents.

R (AAA) & Ors v SSHD (UNHCR intervening) [2022] EWHC 3230, Lewis LJ and Swift J declared that individual decisions made by the SSHD were unlawful and directed they be remade. Ali acted for the two lead claimants.

R (Bari) v MOJ, Kent Magistrates Court, Kent Crown Court (DPP as interested party) [2022] (unreported), Lavender J: Mr Bari's conviction under s.24 of Immigration Act 1971 (entering the UK without leave) was quashed.

R (BA (Afghanistan)) v SSHD, FCDO, MOD [2022] EWHC 1422 (Admin), Choudhary J held that the procedure adopted to reconsider BA's application for evacuation from Afghanistan under 'Operation

Pitting' was fair.

R (Watson) (s. 94B process; s.25 powers) v SSHD [2022] UKUT 00156 (IAC), Lane J: in an appeal under section 12 of the Tribunals, Courts and Enforcement Act 2007, where the appellant has been removed pursuant to a section 94B certificate, section 25 of the 2007 Act empowers the Upper Tribunal to require the SSHD to return the appellant to the UK.

R (SV) v SSHD (ECAT: lawfulness of policy guidance) [2022] UKUT 39 (IAC), Lane J: (1) although the European Convention Against Trafficking (ECAT) is not a part of domestic law it is given "normative effect" by the Home Office in policy guidance instructing caseworkers how to make decisions giving effect to ECAT, (2) the lawfulness of the discretionary leave policy guidance falls to be determined by reference to the test in *R (A) and BF (Eritrea)*, and (3) notwithstanding the language of the discretionary leave policy, leave for more than 30 months merely requires the applicant to show 'good reason'.

R (Cardona) v SSHD [2021] EWHC 2656 (Admin), Linden J: the section of the Defendant's Work Policy for asylum seekers (v.8) titled "Application in respect of children" fails to comply with s.55 of the Borders, Citizenship and Immigration Act 2009 and was declared unlawful.

R (AA) v SSHD [2021] EWHC 1869 (Admin): Wall J ordered the SSHD to bring back a potential victim of trafficking from France who was removed following the application of a secret policy by the SSHD at the screening stage.

R (NB) v SSHD (Liberty and JCWI intervening) [2021] EWHC 1489 (Admin): Linden J held that the living conditions for asylum seekers accommodated at Napier Military barracks were 'inadequate' and restrictions on liberty breached Art 5 ECHR and the common law. Ali intervened on behalf of the Joint Council for the Welfare of Immigrants.

R (Mahabir) v SSHD [2021] EWHC 1177 (Admin): the Claimant was granted Indefinite Leave to Remain under the Windrush scheme, but her family was required to pay unaffordable application fees to join her (£22,000). That breached the Claimant's Art 8 ECHR rights, and discriminated against her family under Art 14 ECHR.

R (SM) v Lord Chancellor (BID intervening) [2021] EWHC 418 (Admin): Swift J held that the failure to afford immigration detainees held in prison access to publicly funded legal advice, to an extent equivalent to that available under the Detained Duty Advice Scheme to immigration detainees held in immigration removal centres, amounted to discrimination within ECHR article 14 read with articles 2, 3, 5,

and 8 ECHR.

R (C6) v SSHD (asylum seekers' permission to work) [2021] UKUT 0094 (IAC) UTJ Smith held that the Secretary of State's policy 'Permission to work and volunteering for asylum seekers, version 8.0, 29 May 2019', admits no exceptions, has not been justified, and is unlawful.

FB (Afghanistan) v SSHD [2020] EWCA Civ [2020] EWCA Civ 1338: The court (the LCJ, Hickingbottom LJ, Coulson LJ) held the SSHD's removal policy breached the constitutional right of access to justice and was declared unlawful.

R (MW) v SSHD (Fast track appeal: Devaseelan guidelines) [2019] UKUT 00411: Lane J held 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.

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) 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.

R (Bah) v SSHD [2018] EWHC 2942 (Admin): When 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.

R (HN and SA) v SSHD [2016] EWCA Civ 123: Ali secured 15 individual injunctions from McCloskey J, and a 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.

R (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.

REFUGEE LAW & PROCEDURE

Mohamed & Ors, R. v (Rev1) [2023] EWCA Crim 211. The Lord Chief Justice provided guidance on the correct approach to offences under sections 24(D1) or 25(1) of the Immigration Act 1971 ("the 1971 Act") which criminalises refugees who arrive in the UK on small boats.

Hussain v SSHD [2022] EWCA Civ 145 (MOR, Dingemans LJ, King LJ): the paper determination by the Upper Tribunal of an appeal from the First-tier did not satisfy the requirements of common law fairness.

KK and RS (Sri Lanka) v SSHD [2022] EWCA Civ 119 permission decision reported for (1) meaning of 'motivation' when assessing sur place political activity, and (2) approach to applications for permission to appeal under CPR 52.5(1) and (2).

KK and RS (Sur place activities: risk) Sri Lanka [2021] UKUT 0130 (IAC): The Upper Tribunal (IAC) clarified and supplemented the guidance given in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 UTIAC and allowed both appeals.

DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 00223: Authority for the principle that under the Refugee Convention 1951 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: Authority on the Upper Tribunal (IAC)'s 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 (Sri Lanka) v SSHD (Helen Bamber Foundation, Freedom from Torture, and Medical Justice intervening) [2019] UKSC 10: Landmark ruling reasserting the role of the Istanbul protocol for the investigation of torture and medical expertise in asylum claims. Ali represented all three intervenors.

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.

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.

***Sanneh 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.

***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.

***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:** Palestinian males suspected of terrorist involvement by the Israeli state will be at real risk of persecution and/or Article 3.

***FK (FGM - Risk and Relocation) Kenya CG* [2007] UKAIT 00041:** 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'. The Court of Appeal 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:** Civilians suspected of perceived collaboration with Multi National Forces are at real risk of persecution in Iraq.

***LM (Educated women - Chaldo-Assyrians - risk) Iraq CG* [2006] UKAIT 00060:** Christian, English-speaking Iraqi women are at real risk of persecution because of the armed conflict in Iraq.

INTERNATIONAL HUMAN RIGHTS

***Osagiede v United Kingdom* (App no 228/20)** Pending decision of the ECtHR concerning the correct approach to Article 8 ECHR in expulsion cases.

***Ottie v UK*, App no. 18339/19.** The ECtHR found that the Article 8 ECHR balancing exercise carried out by the UK courts had taken place solely within the framework of the domestic Immigration Rules and not with

reference to the Court's case law but ultimately found that no violation of Article 8 had taken place. Ali intervened in this case on behalf of JCWI.

S.A.C. v UK, 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.

PUBLICATIONS

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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