



GARDEN COURT CHAMBERS

Sonali Naik KC

YEAR OF CALL: 1991 | YEAR OF SILK: 2018



Sonali Naik KC specialises in public law cases and in all aspects of immigration, asylum and nationality law and practice. She is ranked in immigration and public law in the Chambers & Partners and the Legal 500 Bar Guides.

Sonali is a senior practitioner with over 28 years' experience. She was appointed King's Counsel in 2018 and conducts almost exclusively leading work at all levels: the European Court of Human Rights, the Supreme Court, the Court of Appeal, the Administrative Court and in the Upper Tribunal in statutory appeals and judicial reviews.

She has very substantial immigration and asylum experience in her High Court and appellate court practice, acting in various country guidance asylum cases, most recently in

AS(Afghanistan) v SSHD [2019] WLR 5345 in the Court of Appeal, (with UNHCR intervening) : the leading case on internal relocation under the Refugee Convention post *AH(Sudan)* in 2006 and the ensuing appeal in the Upper Tribunal.

Sonali appeared on her feet for the first time in the Supreme Court in *KO(Nigeria) v SSHD* [2018] 1 WLR 5273 on the test case on the proper interpretation of 'unduly harsh' with regard to children's best interests' in deportation appeals. Since then she acted in the Court of Appeal in the successful deportation appeal in *KB (Jamaica) v SSHD* [2020] EWCA Civ 1385.

Sonali has an extensive judicial review practice in challenges to Home Office policy, trafficking and unlawful detention, Article 8 ECHR certification and nationality and brought the first successful generic injunction cases in charter flight removals in *HN(Afghanistan)*.

This year in *FB v SSHD* [2020] EWCA Civ 1338 in the Court of Appeal Sonali successfully challenged the lawfulness of the Secretary of State's 'no notice' removal policy heard before the Lord Chief Justice (linked with appeal in *Medical Justice v SSHD* [2019] EWHC (Admin) with EHRC intervening).

She has acted in the judicial review test case of *Watson v SSHD* on the implementation of out of country appeals in the Upper Tribunal, (one of only two cases where an Appellant has successfully persuaded a Court to order a person's return to pursue their appeal in-country previously certified under section 94B). Sonali acted in the other case as well, *YT v SSHD*.

Following the successful appeal in *Hysaj* in the Supreme Court in long-running judicial review claims on the purported nullification of British nationality, and her numerous deprivation test cases, Sonali advised on and acted in a number of deprivation cases including the test case of *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 128 (IAC) now seeking to appeal from the decision of the Presidential panel in Upper Tribunal.

Sonali also acted as counsel for the intervention by Migrants Rights Network in the *Balajigari v SSHD* judicial review appeal in the Court of Appeal in 2019 and continues to advise them on strategy going forwards.

Her work has been, to date, predominantly publicly funded test cases. Sonali also undertakes a significant amount of private immigration advisory work and acts for individuals in high-profile exclusion and protection cases including in the extradition context.

Sonali is on the Policy Council of Liberty and is a trustee of Freedom From Torture and the Immigrant's Aid Trust (charitable arm of the Joint Council for the Welfare of Immigrants) and was appointed to the Justice Working Group on Reform of Immigration and Asylum system led by Sir Ross Cranston. She is also a long-standing Patron of Clean Break Theatre Company. She has been elected as a Bencher of Middle Temple.

She won Lawyer of the Year at the Diversity Legal Awards 2018. She was one of the winners of a Highly Commended Award at the Lawyer Awards 2022 for a pro bono initiative to assist Afghan judges secure UK visas. She won Highly Commended for Outstanding Contribution to Diversity & Inclusion at the Chambers Bar Awards 2019. She was a finalist for Legal Aid Lawyer of the Year in 2016 and was featured as The Times' Lawyer of the Week in January 2018.

In 2023, Sonali was listed in The Lawyer magazine's Hot 100 list, which recognises excellence in the legal profession.

"Her knowledge and the strategy behind her practice is just phenomenal."

CHAMBERS UK, 2024 (IMMIGRATION, BAND 1)

'Sonali is a tenacious advocate. She has a real breadth of experience to draw on and is therefore able to think strategically in legally novel and difficult cases.'

LEGAL 500, 2024

"She has tremendous knowledge and intellect and is extremely generous with her time."

CHAMBERS UK, 2023

"I would highlight her incredible intellect and capacity to handle extremely complex cases with tight deadlines."

CHAMBERS UK, 2022 (ADMINISTRATIVE & PUBLIC LAW)

"A go-to silk who is a complete pleasure to work with. She takes on last-minute difficult cases very bravely and effectively."

CHAMBERS UK, 2022 (IMMIGRATION)

"Sonali is a go-to silk for complex immigration and asylum related matters."

LEGAL 500, 2022 (IMMIGRATION)

If you would like to get in touch with Sonali please contact the clerking team:

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IMMIGRATION AND ASYLUM

Sonali has a long record of acting for asylum-seekers and refugees at all levels in the context of judicial review and statutory appeals. Over the last few years she has acted in the leading appeals on the assessment of safety and reasonableness of internal relation to Kabul, Afghanistan.

Sonali also acted in a significant public law case in this context: obtaining three interim injunctions from the Court of Appeal preventing the removal of asylum seekers on charter flights to Afghanistan during the course of this protracted litigation, challenging decisions on fresh protection claims on the basis of risk of serious harm from indiscriminate violence and the safety and reasonableness of internal relocation to Kabul (*R (on the application of HN and SA) (Afghanistan) v SSHD* [2016] EWCA Civ 123).

She acted in the Court of Appeal in a preliminary issue hearing against the decision of the Upper Tribunal (in which she acted as leader) in the Country Guidance *AS (Safety of Kabul) Afghanistan* [2018] UKUT 0018 (IAC) raising a procedural fairness question about the circumstances in which the Tribunal can correct errors in the reasons which it gives for its decisions, as contended for the SSHD, *AS Afghanistan v SSHD (part 1)* [2019] 1 WLR 3065.

Sonali then acted in the substantive Court of Appeal case. This was a country guidance appeal on the legal test to be applied with regard to the reasonableness of internal relocation for asylum-seekers on return to Afghanistan. The main issue in the appeal was the interpretation of the ‘significant minority’ test from Lord Brown’s judgment in *AH(Sudan)* [2007] and whether the UT erred in law in their assessment of risk of serious harm in their interpretation of reasonableness. The Appellants succeeded on their interpretation and the appeal was remitted in light of the material mistake of fact by the Tribunal. *AS(Afghanistan) v SSHD* [2019] 1 WLR 5345. She then acted in the remitted appeal *AS (Safety of Kabul) Afghanistan CG* [2020] UKUT 130 (IAC).

Sonali has acted regularly as leading counsel in other Country Guidance appeals including *HB (Kurds) Iran (illegal exit: failed asylum seeker) CG* [2018] UKUT 430 (IAC) (12 December 2018), *BM and Others (returnees - criminal and non-criminal) DRC CG* [2015] 00293 (IAC) *BM (DRC) CG and BM (false passport) DRC* [2015] UKUT 00467 (IAC). Pre-silk she was also led by Mike Fordham QC in *HM(Iraq) v SSHD* [2011] EWCA Civ 1536, *HM and others (Article 15c)(Iraq) v SSHD* [2012] UKUT 409 (IAC) and the ensuing Court of Appeal case of *HF(Iraq) v SSHD* [2014] 1 WLR 1329.

IMMIGRATION AND HUMAN RIGHTS

In immigration, Sonali has particular experience in Article 8 ECHR, cases outside the immigration rules involving policy considerations, and in ETS/TOIEC judicial review claims. She is now advising many individuals on strategy and remedies in light of the Court of Appeal judgments in *Ahsan and others* and *Balajigari v SSHD* [2019] 1 WLR 4647.

Sonali was instructed by the Migrants Rights Network (MRN) to intervene in *Balajigari* in the Court of Appeal. The cases concerned the lawfulness of the use by the SSHD of the 322(5) rule to refuse indefinite leave to remain to those who had made tax amendments with HMRC. MRN had a group of 400 persons affected, whose interests were at stake in these appeals. Sonali advised on strategy and evidence and made written submissions, though formal permission to intervene orally was refused. The judgment clearly reflects the arguments made as a central part of the reasoning. Sonali is now instructed by MRN in respect of a variety of consequential matters as to remedy and costs arising from the judgment.

She is now instructed to act in *MY (refusal of human rights claim) Pakistan* [2020] UKUT 89 (IAC) listed in the Court of Appeal in May 2021.

Sonali is acting in *QH v SSHD* in respect of a damages claim inter alia under the Human Rights Act 1998 for a former disputed minor who claim for unlawfully removed from the UK to Germany in breach of Article 27 of Dublin III was allowed. Having achieved his return to the UK by bringing a successful judicial claim under Article 29, this claim for damages was determined by the Upper Tribunal and the appellant is now seeking permission to appeal as a test case on engagement of Article 8 family life ECHR and damages.

Costs

Arising from the Ahsan litigation Sonali was instructed to lead in the test case of *Rahman v SSHD* [2018] EWCA 1572 addressing the costs consequences for a large cohort of appellants concerning the remedies available to students whose leave had been curtailed by the SSHD following an allegation of deception in the ETS language testing. The question of remedy was partly resolved in Ahsan, which led to the question of disposal and costs. Four cases were chosen, with a view to the CA giving guidance to enable many or all of the other cases to be disposed of by consent. The SSHD's approach to the belated offer of a remedy of consideration of an article 8 ECHR claim and appeal, as opposed to a judicial review of the decision to curtail leave. The CA ordered the SSHD to pay the costs of the appeal in the judicial review, and directed that the UT deal with the question of the costs of the judicial review below, pending the outcome of any article 8 appeal and further settlement.

Deportation

In Article 8 ECHR cases, Sonali appeared on her feet in the Supreme Court in *KO(Nigeria) v Secretary of State for the Home Department (SSHD)* [2018] 1 WLR 5273 a test case on the proper interpretation of the reasonableness of removal of children from the UK and in the context of deportation whether that was 'unduly harsh' on the child and the meaning of that phrase within section 117 A to D of the Nationality Immigration and Asylum Act 2002.

She acted in the successful appeal against deportation in the Court of Appeal in *KB(Jamaica) v SSHD* [2020] EWCA Civ 1385.

Sonali acted in a test case in the Upper Tribunal before the President on the status of foreign convictions for the purpose of the deportation regime: *SC (paras A398-339D: 'foreign criminal': procedure) Albania* [2020] UKUT 187 (IAC).

Exclusion and SIAC

Sonali has acted as leading counsel in high profile exclusion cases (the details of which are confidential) but have for example involved complex hearings in the Administrative Court, including disclosure applications, PII applications and has appeared against senior government leading counsel.

Out of Country Appeals

Sonali acted for the First Intervener, Bail for Immigration Detainees, led by Michael Fordham QC, in the landmark test case as to the lawfulness of the SSHD's out of country appeals regime under section 94B of the Nationality Immigration and Asylum Act 2002 in *R (Kiarie; Byndloss) v Secretary of State for the Home Department* [2017] UKSC 42; [2017] WLR 2380. The Supreme Court ruled that the certification of two human rights claims under section 94B of the Nationality, Immigration and Asylum Act 2002 was unlawful under Article 8 ECHR. She also acted as leading counsel in *OO(Nigeria)* in the Court of Appeal one of the few cases to succeed outright in challenging a 94B certificate *OO (Nigeria) v SSHD* [2017] EWCA Civ 338. This was a successful challenge to the lawfulness of the SSHD's approach to the power to deport first, appeal later, in cases involving children, where the Court considered the public interest in removal pending appeal in such cases.

Sonali is acting in a test case in an appeal (*ZF v SSHD*) where the Appellant is deceased (killed in Afghanistan by the Taliban whilst waiting for his appeal). Sonali is instructed by his widow and 4 minor British citizen children who are Human Rights Act 'victims'. The first issue in the appeal is whether the appeal has been abated, the second part is whether if there is an appeal his removal breached article 3/8 ECHR.

She is also acting in another 94B test cases of *Watson v SSHD* and *YT v SSHD* another case where the Tribunal determined that the Appellants cannot have procedural fair out of country appeals and where they were separately ordered to be returned to the UK by the judicial review court.

POLICY CHANGES

Sonali acted in a leading test case concerning the lawfulness of the SSHD's removal policy and specifically whether giving notice of liability only (and not notice of the date or time of the actual removal) is *ultra vires* section 10 of the Immigration Act 1999, because it abrogates the constitutional common law right of access to justice, breaches the public law duty to give adequate notice of a decision and/or is too uncertain and therefore arbitrary to be compliant with the rule of law and/or is a disproportionate means of achieving removal.

The President of the Upper Tribunal (UT) held that the policy was lawful but granted permission to appeal to the Court of Appeal and the case was heard by the Lord Chief Justice. The Court in *FB v SSHD* [2020] EWCA Civ 1338 held that the Secretary of State's 'no notice' removal policy was unlawful (linked with appeal in *Medical Justice v SSHD* [2019] EWHC (Admin) with EHRC intervening on the basis that there was a real risk of denial of access to justice by those subject to it.

Sonali acted in *Tekalign and others v Lord Chancellor* in relation to the lawfulness of the *Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020* ("the Amendment Regulations"). The Amendment Regulations established a new fee regime for the remuneration of legal aid providers for appellants whose asylum and immigration appeals are being dealt with under a new Online Procedure. The claimants challenged the Amendment Regulations on the grounds that the Lord Chancellor had failed to conduct a lawful consultation before making the Regulations and that the Regulations result in the unlawful restriction of access to justice for the claimants and many others. The claims were highly significant for all asylum and immigration appellants who qualify for legal aid. The Lord Chancellor wrote to the claimants accepting that the making of the Amendment Regulations was unlawful on the basis that the consultation had been inadequate and that he had failed to satisfy his duty of inquiry. He therefore revoked the Amendment Regulations and put in place a temporary fee regime which allowed providers to be remunerated at hourly rates.

***R (Kiarie; Byndloss) v Secretary of State for the Home Department* [2017] UKSC 42; [2017] WLR 2380**

In a landmark judgment of general application, the Supreme Court ruled that the certification of two human rights claims under section 94B of the Nationality, Immigration and Asylum Act 2002 was unlawful under Article 8 European Convention on Human Rights. Sonali with Bijan Hoshi represented the First Intervener, Bail for Immigration Detainees, led by Michael Fordham QC.

***Hysaj v SSHD* [2016] 1 WLR 673, [2016] Imm AR 329, [2015] WLR(D) 482, [2016] INLR 343, [2015] EWCA Civ 1195, [2016] WLR 673**

Test case judicial review of the SSHD's decision to treat British citizenship as a nullity rather than adopting statutory procedure on deprivation where obtained by fraud. Judgment from the Supreme Court expected shortly.

The Court gave guidance following *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, [2014] 1 WLR 795 and *Denton v T.H. White Ltd, Decadent Vapours Ltd v Bevan and Utilise T.D.S. Ltd v Davies* [2014]

EWCA Civ 906, [2014] 1 WLR 3926. Whether the approach to extensions of time to lodge appellant's notice is distinct from application for relief from sanctions and the line of authority in *Sayers v Clarke Walker* [2002] EWCA Civ 645, [2002] 1 WLR 3095 is wrong inter alia in light of the approach in UKPC decision in *Attorney General of Trinidad & Tobago v Matthews* [2011] UKPC 38.

UNLAWFUL DETENTION

Sonali regularly acts in complex detention claims.

Sonali recently acted in the Court of Appeal concerned with the lawfulness of the SSHD's policy concerning access to medical treatment in Short-Term Holding Facilities (prior to the STHF Rules 2018) (*ZA v SSHD* [2018] 4 WLR 34), following the partial victory in the Administrative Court on the failure to conduct a rule 34 Detention Centre Rules 2001 compliant assessments.

Sonali is currently acting in a challenge to the lawfulness of detention following the unlawful certification of a torture victim and certification of their asylum claim and whether the rule 35 process was compliant in *ROO(Nigeria) v SSHD* again following a partial success in the Administrative Court. This is a post-Hossain challenge to the Detained Asylum Casework ("DAC") process guidance and the failure to conduct a proper medical assessments in detention.

Sonali also currently acts in a very complex challenge concerned with the detention of a mentally ill torture survivor VRG dealt with in the Detained Fast-Track ("DFT") before 2014 which was stayed behind the test case of *TN(Vietnam)* in the Supreme Court.

Sonali acted in a test case in the Court of Appeal one concerning damages arising from the unlawful failure to provide bail accommodation and the other relating to re-detention of individuals whilst on bail granted by the FTT. The issue was whether when the Appellant was released on bail by the First-Tier Tribunal ("FTT"), the general powers in Paragraph 2(3) of Schedule 3 of the Immigration Act 1971 to detain persons subject to a deportation order could not be used by the SSHD to re-detain a person where a bail order was in force (*SSHD v Lucas* [2018] EWCA Civ 2541).

She is now acting for a detainee released by the High Court in a systemic challenge to the failure to provide section 95 accommodation to those granted bail by the Tribunal.

NATIONALITY

Sonali acts in high profile and complex nationality cases both judicial reviews and statutory appeal and undertakes a significant amount of advisory work.

In nationality following the long running nationality test case in *Hysaj* (from 2013 to 2017) challenging the SSHD's decisions to treat as a nullity British citizenship obtained by deception, culminating in the Supreme Court judgment *Hysaj v SSHD* [2017] UKSC 1195 allowing the appeals by consent, Sonali is now acting in a number of now statutory appeals challenging the ensuing deprivation decisions, including *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 128 (IAC). She also advises and acts in judicial reviews in relation to refusals to issue or decisions to withdraw British passports, and other related satellite litigation arising from this litigation, particularly now in light of the impact of the 'hostile environment' including immigration status on deprivation.

Prior to *Hysaj*, Sonali had acted in the leading cases on deprivation in the Upper Tribunal: *AB (Nigeria) AB (British citizenship: deprivation; Deliallisi considered) Nigeria* [2016] UKUT 00451 (IAC) a complex deprivation of nationality case on the test to be applied in such cases (foreseeability of the consequences of deprivation) where no simultaneous order for deportation made, whether a person retains ILR on deprivation of British citizenship, and *Deliallisi (British citizen: deprivation appeal: Scope)* [2013] UKUT 439 (IAC).

She has also been involved with challenges to the SSHD's practice in relation to the registration of British citizen children, refusals of nationality on good character grounds in the High Court including *BE v SSHD* [2015] EWHC 905 (Admin) and in *SIAC [HN v SSHD - HN \(Naturalisation : Substantive\)](#) [2015] UKSIAC [SN_9_2014 \(28 July 2015\)](#)* (naturalisation refused on grounds of national security, first in series of test cases as to the application of SIAC rules to these naturalisation JR's (private)).

CHILDREN'S RIGHTS

Throughout Sonali Naik KC's 30-year practice both as a junior and as a silk at the public law bar in the immigration and asylum field, she has been involved in promoting the rights of children, whether as Human Rights Act 'victims' (*Beoku-Betts* in the House of Lords) or in the assessment of their best interests in deportation cases (*KO (Nigeria)* and *Kiarie & Byndloss* in the Supreme Court) as minors, including those age-disputed in the asylum process and deprivation of liberty (*QH (Afghanistan)* in the Court of Appeal).

Most recently, she is representing UNHCR intervening in the High Court case concerning the rights of refugee children seeking family reunion (*DM Eritrea*).

PUBLICATIONS

Sonali is a contributor to a leading text in the immigration field Macdonald's Immigration Law and Practice.

She has appeared in the media: TV, radio and press - writing articles in broadsheet newspapers and legal journals alike.

Sonali was interviewed for a [feature article in The Guardian](#) on the changing face of law (19 January 2018) and in September 2018 for [Counsel Magazine's article, 'Not \(yet\) glass shattering'](#) on the diversity, or lack thereof, among QCs in the UK.

TRAINING AND SEMINARS

Sonali is frequently invited to lead or contribute to seminars and conferences on human rights, immigration and asylum, and nationality, both on commercial immigration and most recently with UNHCR on Cessation of Refugee Status.

Sonali regularly delivers specialist immigration training on the Article 8 ECHR and the various aspects of asylum and immigration law including for the Immigration Law Practitioners' Association (ILPA).

She was the consultant to the Project for the Registration of British Citizen Children (PRBCC) funded through the Strategic Legal Fund which resulted in the publication of their report in November 2014 and which led to several High Court judicial review cases arising from this research.

She has been appointed as the Chair of the Anti-Racism Commission at Lincoln College, Oxford. She is also a Bencher of Middle Temple.

EDUCATION

BA (Oxon) Jurisprudence

Inns of Court School of Law

PROFESSIONAL MEMBERSHIP

Immigration Law Practitioners' Association (ILPA)

Administrative Law Bar Association

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