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Case No: CO/114/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 November 2021

Before :

His Honour Judge Bird sitting as a Judge of this Court

Between :

THE QUEEN (on the application of SALEH SADON YAQUB AL-ATABI	**Claimant**
- and –	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

Miss Shivani Jegarajah (instructed by **AMZ Law**) for the **Claimant**
Miss Julia Smyth (instructed by **The Government legal Department**) for the **Defendant**

Hearing dates:
12th October 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

His Honour Judge Bird :

Introduction

1. This is an application for judicial review of the Secretary of State's decision to refuse the claimant's application for naturalisation on the ground that she was not satisfied that he was of good character.

2. Dr Saleh Al-Atabi is an Iraqi national. He entered the United Kingdom with his wife and 2 children on 28 August 2006 before he had earned his Ph.D. They travelled from Turkey and sought asylum based on threats he had received as result of his "ranked" membership of the Ba'ath party. At the time he did not speak English. Following a screening interview on that date and an asylum interview on 13 September 2006, Dr Al-Atabi instructed the "Immigration Advisory Service" ("IAS") to act for him on the asylum application.

The Asylum Application

3. The following information appears from the record of the interviews:

    a. He had joined the Ba'ath party in 1982 or 1983 when he was 15 or 16 years old and remained an active member until March 2003. After the fall of Saddam Hussain's regime in 2003 he was forced to move around with his family to avoid the militia.
    b. He feared for his life because he had been a "group leader" in the Ba'ath party. He gave lectures about the principles and objectives of the party and had progressed through the ranks.
    c. He had been employed by the "Military Industrialisation Committee". He had charge of 10 to 20 technicians working in the factory.
    d. He worked at Al-Taji in the North of Iraq about 20 km from Baghdad.

4. On 14 September 2006 IAS sent a statement prepared on his instructions and signed by him to the Home Office together with a "statement of additional grounds" setting out the basis of his asylum claim. In the covering letter IAS took the opportunity to correct an answer given in interview which Dr Al-Atabi felt had been misconstrued.

5. The statement was written in English, but Dr Al-Atabi confirmed it had been read to him by an interpreter and that its contents were true. The statement contained the following further

relevant details:

a. In 1992 he was recruited by a State-owned company called "Military Production Organisation" which manufactured weapons and munitions such as "bullets, explosives, small guns, AK-47s". He started working for the company in 1993 shortly after graduating from Al Mustansirya University with a degree in physics.
b. He was first employed as a trainee but was "later offered the position of a security officer". His responsibility involved "checking people and equipments (sic.) such as sensor monitors, connection leads, barometers, thermometers and carrying out repairs". He was later promoted to the position of supervisor. He remained as a supervisor until 2003 when the Saddam Hussain regime fell.

6. The asylum application (which included his wife and children) was refused on 22 February 2007. Dr Al-Atabi (no doubt with the assistance of IAS) prepared a document headed "response [to] reasons for refusal letter". In that response (which again he confirms has been read back to him in Arabic) Dr Al-Atabi made the following points:

a. He was not "merely a member of the Ba'ath party on paper like other people who simply joined to gain access to jobs and education. I was a fully committed member.... there were 5 cells and approximately 20 members in each cell under my control.... I had to flee [Iraq] because I was a group leader for the Ba'ath party before the fall of the regime".
b. He said: "not everyone got to this level of rank within the party".
c. He was "a security officer...in my capacity as a supervisor I was in charge of all the security officers in the company".

7. Dr Al-Atabi appealed against the Home Office's refusal to the First Tier Tribunal. He was represented by Hasan Solicitors who prepared a skeleton argument for him and by counsel. The skeleton notes that he was a "ranked member" of the Ba'ath party and in charge of 100 members. The FTT judge found him to be a credible witness who had given a consistent account. The asylum appeal was rejected on 4 April 2007, but the Judge found that Dr Al-Atabi qualified for humanitarian protection under paragraph 339C of the Immigration Rules and also fund for him on Human Rights grounds. None of the facts and matters set out above from his witness statement or interviews was rejected by the Tribunal.

Application for Indefinite Leave to Remain and subsequent Naturalisation

8. On 11 September 2012 Dr Al-Atabi applied for indefinite leave to remain which was granted on 30 January 2013. On 27 November 2014 he applied to naturalise as a British Citizen. The application was refused on 12 January 2017. The decision letter sets out the following:

    a. The Secretary of State sets a high standard in relation to applications for naturalisation and it is up to the applicant to satisfy the Secretary of State that he is of good character. The Secretary of State's approach is set out in published Guidance and an application will be rejected if the activities of an individual cast "serious doubts" on their character. The Guidance is that same that was discussed by Sales J (as he then was) in *Thamby* (see below).
    b. "Serious doubts" will be cast if an applicant has supported the commission of war crimes or has supported groups whose main purpose or mode of operation consisted of the commission of these crimes even if that support did not make any direct contribution to the commission of the crimes.
    c. It was made clear that the Secretary of State would take account of all relevant information she held including those matters referred to above.
    d. Under the heading "conclusion" the Secretary of State referred to Dr Al-Atabi's membership of the Ba'ath party for 21 years and his eventual position as a group leader. It was noted that the Ba'athist regime was responsible for significant international crimes including war crimes and crimes against humanity. Reference was also made to his employment with the MIC which "would have made a significant contribution to the regime's ability to function".
    e. The final conclusion is expressed in this way: "accordingly, due to your association with the Ba'ath party and the MIC, organisations that regularly committed international crimes and other abuses, I am refusing your application for nationality on the grounds that sufficient evidence has not been provided to satisfy the requirement to demonstrate good character".

9. Annex A to the decision letter sets out research upon which the Secretary of State relied in reaching her decision. The research includes the following:

    a. The Ba'athist regime in Iraq between 1980 and 2003 was responsible for "massive and grave violations of Human Rights" and created an "all-pervasive order of repression and oppression .... sustained by broad-based discrimination and widespread terror".

b. There were 8 levels of membership of the Ba'ath Party. The top four levels comprised about 30,000 members at the time of the fall of the regime when the party had up to 2 million members.

c. The MIC ran Iraq's military industrial complex. In 1996 it had a budget of $7.8 million. By 2003 that had increased to $500 million. It produced chemical munitions and was located 30 km north of Baghdad. The site was "the primary location for Iraq's indigenous long-range missile program. Activities included air frame design, construction and modification and liquid fuel rocket engine development and production".

10. Dr Al-Atabi sought a reconsideration by letter dated 16 October 2017. The letter requesting reconsideration suggested that any questions which arose should be resolved at an interview. In the same letter, dealing with his work for the MIC, Dr Al-Atabi's solicitors said:

> "*As regards our client's supposed work for the MIC. In fact, our client worked as a safety supervisor at a plastics factory, utilising his scientific training. At no stage was he involved with - and at no stage did he advocate - the production of weapons, whether of mass destruction or otherwise. In essence, our client secured a relatively easy job at a branch of the Iraqi civil service.*"

11. On 11 March 2019, the Secretary of State agreed to reconsider the refusal. The letter made clear that Dr Al-Atabi would not be invited to interview. Instead, the Secretary of State invited him to submit a statement "*with regards to the information stated in his refusal letter. We would ask that your client provide any further information with regards to his role within the Ba'ath party and his work .... for the MIC*".

12. A statement was provided on 22 March 2019. It refers to a misunderstanding as to the nature of his role at the MIC (to which I will return later) and to his membership of the Ba'ath party. In particular the statement reiterates that early translations of his role as a "security officer" or "security guard" were wrong.

13. The result of the Secretary of State's reconsideration was communicated on 12 October 2020. The request for naturalisation was again refused. It is clear that the principal reasons were Dr Al-Atabi's long membership of, and relative seniority in, the Ba'ath party and his work within the MIC. The Secretary of State considered that Dr Al-Atabi would have been aware of crimes committed by the Ba'athist regime and played an active role in supporting its work.

His work within MIC would have made "*a significant contribution to the regime's ability to function and can be viewed plainly as a provision of support*". The decision letter makes it plain that the Secretary of State has taken into account all available information. The letter compares Dr Al-Atabi's early evidence with his latter evidence, noting in particular first, how his own evidence from 2006 and from 2007 referred in some detail and with background explanations to his job as a "*security officer*" but his latter evidence refers to a different job title and secondly, how his 2006 evidence that the factory he worked in (the MPO) specialised in the manufacture of weapons but subsequently (and particularly in the October 2017 letter) his recent position was that it was concerned with the production of plastics.

14. The Secretary of State also pointed out that Dr Al-Atabi made no attempt to leave the Ba'ath party voluntarily. The conclusion was expressed in this way: "*as a result of the information you have provided which includes information about your support [for], [and] role and involvement [in] an organisation that regularly committed international crimes and other abuses, I am refusing your application for [naturalisation] on the grounds that sufficient evidence has not been provided to ... demonstrate good character*".

15. The letter contained at Annex A, once again, detailed information relied on by the Secretary of State on the Ba'ath party and Dr Al-Atabi's employer.

Relevant Policies

16. At the time of the 2020 redetermination the relevant policy was version 2 of "Nationality: good character requirement" published on 30 September 2020. The substance of the guidance is not challenged. The following points set out in the Policy are of relevance:

    a. The introduction to the guidance "explains the background to the good character requirement and summarises the factors to be taken into account when assessing whether a person meets the requirement." It sets out the types of conduct which must be taken into account when assessing whether a person has satisfied the requirement to be of good character. If there is "information to suggest that...." an applicant has "been involved in or associated with war crimes, crimes against humanity or genocide, terrorism, or other actions that are considered not to be conducive to the public good" that person will "not normally be considered to be of good character". If the applicant does not fall into one of the categories outlined in the policy "but there are doubts about their character" the application may be refused. The applicant may

be invited to interview.

b. Dealing with the evidence the Secretary of State might consider the Guidance sets out the following: "Information about an applicant must be considered against information from reputable sources on war crimes and crimes against humanity in the country concerned and, where relevant, on the groups in which the applicant has been involved. Where these sources provide sufficient evidence to support the view that the applicant's activities or involvement constitute responsibility for or close association with such crimes, the application must be refused. "

c. Dealing with war crimes, crimes against peace or humanity, genocide and serious human rights violations the guidance sets out the following:

i. You must refuse an application if the person's activities cast 'serious doubts' on their character. Examples of such activity include:

• involvement in or association with war crimes, crimes against humanity or genocide
• supporting the commission of those crimes
• supporting groups whose main purpose or mode of operation consists of the committing of such crimes, even if that support did not make any direct contribution to the groups' war crimes, crimes against humanity or genocide

ii. The involvement of an applicant with a group "responsible for committing such crimes" is highlighted as an important factor. Direct links are clearly important, but the guidance makes clear that "involvement includes activities where an applicant may not have had direct involvement in such crimes but where their activity has contributed to such crimes" and "involvement includes activities where an applicant may not have had direct involvement in such crimes but where their activity has contributed to such crimes".

The statutory framework

17. Section 6(1) of the British Nationality Act 1981 gives the Secretary of State a power to grant a certificate of naturalisation where the Secretary of State is satisfied that the requirements of schedule 1 of the Act are satisfied. Paragraphs 1 and 2 of schedule 1 deal with naturalisation

under section 6(1). Paragraph 1(1)(b) requires that an applicant be "of good character".

18. There is no statutory definition of good character. Unimpugned guidance issued by the Home Office is therefore of real importance in considering if the Secretary of State's decision is lawful.

Grounds of Challenge

19. The claimant has 3 grounds of challenge. Mostyn J granted permission in respect of all 3 grounds on 13 May 2021. In summary, they are:

    a. The Defendant's reasons for rejecting the application are perverse because millions were forced to join the Ba'ath party. Membership of the Ba'ath Party cannot rationally be considered relevant to an assessment of good character.
    b. The decision was arrived at in a way that was procedurally unfair. The defendant should have invited the claimant to interview.
    c. The defendant's assessment of the nature and extent of liability of the Iraqi State under international criminal law is fundamentally flawed and irrational. If "the allegations against the claimant are borne out.... then it should also be accepted that the British State were war criminals right up to the point when it was decided that there should UK/US intervention in Iraq".

20. In granting permission Mostyn J noted that "*clearly the grounds are not all of equal strength.... Ground 2 is of winder application than grounds 1 and 3.... the Court should look carefully at the fairness of a process that reaches a decision about good character in reliance on certain material without having confronted the applicant with that material before reaching the decision. If there is first instance authority says that this process is not unfair, then the court may wish to reconsider its correctness.*"

21. In her grounds of Defence, the Secretary of State makes the following headline points:

    a. The decision letter makes clear that the application was rejected not simply because the claimant was a member of the Ba'ath party but because of his early account that he was a "long-term active member, who became a group leader lecturing on the party's principles and objectives, and who also held a significant role as a security officer in a military weapons production company which operated despite UN

sanctions. The claim completely fails to engage with these points".

b. The Secretary of State was entitled to "have regard to the Claimant's own account. The Claimant was given ample opportunity to address .... concerns before the October 2020 decision was taken, and there was no requirement to interview him."

c. The Secretary of State's decision was based on ample and adequate material and the reasons advanced were new and were not before the decision maker.

The Case law

22. In *MH and Others v SSHD* [2008] EWHC 2525 (Admin) Blake J dealt with a number of Judicial Review claims brought by various claimants each of whom argued that the common law requirements of fairness had not been met. The Learned Judge concluded that the burden of proving good character lay (in accordance with the language of the 1981 Act) with the claimant and that the requirement of common law fairness would be satisfied "where a gist of the issues of concern would enable the claimant to make sensible submissions before an adverse decision is reached". As Blake J put it: "[t]he essence of the requirements of fairness in this context is an effective opportunity to disabuse the decision maker of some decisive adverse consideration."

23. In *R (Thamby) v SSHD* [2011] EWHC 1763 (Admin) Sales J (as he then was) was concerned with an application to Judicially Review the Secretary of State's decision to refuse naturalisation on the basis of the claimant's long-term membership of and support for the Liberation Tigers of Tamil Eelam (" the LTTE") in Sri Lanka. One ground of complaint was that the claimant in that case had not been given a fair opportunity to address the Secretary of State's concerns and that he should have been interviewed to give his account of (amongst other things) his involvement with the LTTE.

24. Lord Sales identified the relevant obligation of fairness to be that set out by Lord Woolf in Court of Appeal in *R v Secretary of State for the Home Department, ex p. Fayed* [1998] 1 WLR 763, at 773F-774A which (put broadly) required the Secretary of State to identify areas of concern in order to give the applicant an opportunity to respond. He concluded that the obligation may be fulfilled "by giving an applicant fair warning at the time he makes the application [in publicly available guidance] of general matters which the Secretary of State will be likely to treat as adverse to the applicant, so that the applicant is by that means

afforded a reasonable opportunity to deal with any such matters adverse to his application when he makes the application". If there is no fair warning at the time the application is made, then more specific notice will need to be given. He went on to say:

> "*In my judgment, on the basis of the formulation of the obligation in the first Fayed case and by Blake J in MH, the obligation of fairness will not require the Secretary of State to interview an applicant in relation to concerns she has about his good character, at any rate other than in exceptional cases*".

25. In the first *Fayed* case, fairness was achieved by giving Mr Al-Fayed an opportunity to respond to concerns in writing.

26. The guidance in force at the time of the Secretary of State's decision in *Thamby* was archived on 27 July 2017. It contained the following:

> *"Where there is some indication of involvement in war crimes or crimes against humanity, but this information is vague or lacking in detail or where it appears that the applicant has previously been evasive about his activities, more information should be sought from the applicant either via written questions or an interview. This may arise for instance where there is evidence indicating involvement in war crimes or crimes against humanity but there is not enough evidence to either to support a refusal or to consider that the good character requirement has been satisfied."*

27. The September 2020 Guidance, refers to interviews in this way:

> *"If the person does not clearly fall into one of the categories outlined above [in the introduction] but there are doubts about their character, you may still refuse the application. You may also request an interview in order to make an overall assessment. Any cases you wish to interview should be referred to the Permanent Migration Interview Team. "*

28. *SSHD v SK* [2012] EWCA Civ 16, was an appeal. It also concerned a refusal of naturalisation based upon the claimant's membership of the LTTE. The Court of Appeal concluded that the test for exclusion of an individual from the Refugee Convention and the test in respect of granting a naturalisation certificate were different tests. It did not follow that grant of refugee status would lead to naturalisation. The test in the former case is objective and the onus of establishing "serious reasons for considering" that an applicant has committed relevant

wrongs is on the Secretary of State, whereas in the latter case, it is for the applicant to satisfy the Secretary of State that he is of good character and the test is essentially subjective. The Court of Appeal also confirmed that it is for the applicant to satisfy the Secretary of State that he is of good character, not for the Secretary of State to establish that he committed a war crime or that he was not of good character. The question is: was the Secretary of State entitled not to be satisfied that he was of good character? The first instance decision was overturned.

29. *R (oao DA (Iran)) v SSHD* [2014] EWCA Civ 654 was again an appeal, this time against the refusal of judicial review in respect of a naturalisation decision. The applicant was a prison guard of unknown seniority. He guarded prisoners kept in appalling conditions; he escorted them to their deaths by stoning; and he guarded and escorted prisoners who, he knew, were detained without trial and were to be tortured. The claimant argued that he had had no alternative but to go along with the demands of his job because he was a conscript. The Judge at first instance and the Court of Appeal rejected the argument, re-emphasising the need of the applicant to put forward evidence of good character. In that case the Secretary of State attached some importance to the role of the claimant as a prison guard and compared that role to others which might be regarded as "low level".

30. *R (oao OM) v SSHD* [2016] EWHC 1588 (Admin) was a first instance Judicial Review decision. King J dismissed the claim. The Judge considered evidence relied upon by the claimant in support of an asylum claim in which he described his role within the Serbian Intelligence Service. He concluded that the Defendant was entitled to take account all of the evidence available to her and that "where there is inconsistency between the evidence provided by an applicant it is not for the Secretary of State to force resolution of such inconsistency. She can rely on whatever elements she considers apt." The Judge found that the claimant was simply disagreeing with weight and significance attached by the Secretary of State to the evidence.

31. The decision of the Court of Appeal in *R (oao Balajigari) v SSHD* [2019] EWCA Civ 673 was cited by the claimant to support the argument that fairness required that the claimant be interviewed to explain his position. At paragraph 52 of the decision, the Court of Appeal pointed out that in the case before it (dealing with refusal of indefinity leave to remain – "ILR") what was at stake was the ability to remain in the country. That was compared to naturalisation claims where the ability to remain in this country is never in doubt. In that case, the Court of Appeal was concerned with a refusal to grant ILR on the ground of dishonesty and whether procedural fairness required the applicant to have an opportunity to respond to the Secretary of State's concerns. In *Balajigari*, the applicant had declared one income to the

Secretary of State and a different (lower) income on tax returns for the same period. My attention was drawn in particular to paragraph 45 of the judgment where reference is made to *R v SSHD ex p. Doody* [1994] 1 AC 531: "Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both." At paragraph 48, citing the judgment of Singh LJ in *R (Citizens UK) v Secretary of State for the Home Department* [2018] 4 WLR 12 and the remarks of Woolf LJ in *R v Secretary of State for the Home Department, Ex p Fayed* [1998] 1 WLR 763 noting his comments on the need to be forewarned: "*are limited to cases where an applicant would be in real difficulty in doing himself justice unless the area of concern is identified by notice. In many cases which are less complex than that of the Fayeds the issues may be obvious. If this is the position notice may well be superfluous because what the applicant needs to establish will be clear. If this is the position notice may well not be required. However, in the case of the Fayeds this is not the position because the extensive range of circumstances which could cause the Secretary of State concern mean that it is impractical for them to identify the target at which their representations should be aimed*"

Expert Evidence

32. The claimant sought permission to rely on an expert report prepared by Dr Alison Pargeter. Dr Pargeter is an analyst and consultant specialising in political and security issues in North Africa and the Middle East, including Iraq. She is a Visiting Senior Research Fellow at the Institute for Middle Eastern Studies at King's College London and a Senior Research Associate at the Royal United Services Institute (RUSI), a London-based think tank. She has in the past been a Senior Research Associate at the Centre of International Studies at the University of Cambridge and a Research Fellow in the School of Social Science and Public Policy at Kings College London. She is currently leading a major study of the role of tribes and political and security actors in Libya and Iraq.

33. Dr Pargeter is clearly an expert of some renown and expertise. The Secretary of State resisted the admission of her short report on the ground that it is not CPR 35 compliant and is not reasonably necessary in order for me to resolve the issues in the case. It was also submitted that the report does not support any ground of review relied upon and that it is not clear to what extent (if at all) Dr Pargeter disagrees with the factual reports relied on by the Secretary

of State.

34. The report deals with membership of the Ba'ath party and the MIC and touches upon threats to him after the fall of Saddam's Hussain's regime. In summary Dr Pargeter notes:

    a. (Agreeing with the Secretary of State) that the Ba'ath Party has 8 ranks of membership. Only at membership level 5 (rafiq) was a member considered "fully committed". Dr Pargeter records that she does not know what rank Dr Al-Atabi held but assumes given his responsibilities as a lecturer that he must have reached the rank of at least *rafiq*. She explains that those belonging to that rank were "fully committed ot the ideology of the party and… [would have been] willing to work for its overall aims and objectives". Dr Pargeter notes: "as a committed Ba'athist, Dr Al-Atabi would doubtless have been aware of the actions and gross human rights abuses carried out by the Saddam Hussain regime".

    b. In its early days the MIC was an important body responsible for the industrialisation of the Iraq military. Its importance dwindled after the Gulf War and following the end of the war in 1991, the MIC was "a shadow of its former self". In 1995 the head of MIC defected to Jordan causing a further fall in its prominence. Dr Pargeter notes however that the MIC "remained an important institution" which "*included a wide array of companies such as the Hamurabi Company, which made light weapons; the Al-Hareth Company, which maintained and repaired military equipment; the Salaehdinne Company, which made radars and communication equipment; the Kennedy Company, which carried out research in electronics, chemistry and mechanics; and the Ibn Al-Walid Company, which carried out repairs of heavy artillery vehicles. Indeed, the MIC employed thousands of Iraqis across its vast network of facilities.*" From 1998 (after the United Nation's Special Commission ("UNSCOM") had withdrawn from Iraq), MIC became "much more of a real business organisation" although it was involved in acquiring missile parts and components. In summary Dr Pargeter says:

> *"The MIC was a hugely important institution for the Ba'athist state, and working for it brought enormous privilege and prestige, as well as money. Those graduates selected to work at its various sites were deemed to be among the best and most loyal students. Indeed, given the sensitivities around the MIC's programmes, employees were selected for their loyalty and*

trustworthiness."

35. CPR 35 governs the Court's power to adduce expert evidence. It applies to proceedings governed by CPR 54. In summary, CPR 35 requires:

    a. That the court limit expert evidence to that which is "reasonably required to resolve the proceedings" (35.1).
    b. The expert to "state the substance of all material instructions, whether written or oral, on the basis of which the report was written." (35.10(3)) and
    c. The report must "contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based" (PD 35 para.3.2(3).
    d. The report to be verified by a statement of truth as set out at PD 35 paragraph 3.3 and
    e. The report to contain a statement that the expert (a) understands their duty to the court and has complied with that duty; and (b) is aware of the requirements of Part 35, this practice direction and the Guidance for the Instruction of Experts in Civil Claims 2014.

36. The Administrative Court Guide (para.22.2.5) provides that "*Any application for permission to adduce expert evidence, and for appropriate consequential directions, must be made at the earliest possible opportunity. Ideally, this should be done in the Claim Form or, if later as soon as the need for it arises*". This requirement echoes CPR PD 23A para. 2.7 which requires every application to be made "*as soon as it becomes apparent that it is necessary or desirable to make it.*"

37. Dr Pargeter records that she has been "*asked to comment on the case of Dr Saleh Al-Atabi, an Iraqi national whose application for naturalisation has been turned down.*". There is no further attempt to comply with CPR 35.10(3) or PD 35 paragraph 3.2. The application to rely on expert evidence in this case was made on 28 September 2021 some 4 months after permission was granted and some 7 months after the decision was made. The application records that the report was "served" on 12 August 2021, some 3 months after permission was granted. It is clear that Dr Pargeter's report was not before the Secretary of State when the decision was made.

38. The basis of the application (which is verified by the claimant's solicitor) includes the following:

a. The claimant relies on the report of Dr Pargeter to "rebut the evidence that the SSHD relies upon".

b. After reference to a Court of Appeal asylum decision: "Applying that ratio to this case, the primary challenge to the decision is clearly based on mistake of fact".

39. There is no application for permission to proceed with a review on the ground that the Secretary of State based her conclusion on a mistake of fact, and, in any event, there is no explanation at all for the delay in seeking to adduce the expert report.

40. I have come to the conclusion that the report should not be admitted as expert evidence. I reach that view for a number of reasons:

a. Dr Pargeter was asked by the claimant's solicitors to "*comment on the case*". She was not asked to identify and explain any difference of opinion she might have with the factual reports upon which the Secretary of State relied at Appendix A of the decision letter and was not asked to comment on factual errors in Appendix A. In effect therefore I am asked to give permission for the claimant to rely on a document setting out Dr Pargeter's comments and general views. Such evidence is not "reasonably required" to resolve the proceedings and in my judgment is not helpful.

b. The application is very late and there is no explanation for the delay.

c. The report in any event does not go to any of the grounds for which permission has been given.

d. Further, even if I was to overlook the above it is not clear to me in what respects (if at all) Dr Pargeter does disagree with the reports the Secretary of State relied upon. It seems to me there is a very good reason for that; from the report it appears that Dr Pargeter was not asked to highlight any difference of opinion of factual error. Had she been asked to do so I am confident the report would have made any differences clear. Instead, she was asked to "comment". That is exactly what she has done.

41. Whilst not strictly a factor I take into account in exercising my discretion, I am not at all convinced that the report supports Dr Al-Atabi's case. I think it likely, had it been admitted, that I would have found that it supported the Secretary of State's position.

42. On 22 October 2021 I received a further copy of Dr Pargeter's report from the claimant's solicitor containing an appropriate statement of truth. The updated report appears otherwise to be in precisely the same format. I did not regard the absence of a proper statement of truth as a ground for refusing permission to rely on the evidence. The new report therefore does nothing to change my conclusion.

The arguments

43. Miss Jegarajah appeared for the claimant. The basis of her submissions was that the Secretary had failed to grasp that the claimant had no involvement in any military operations or production and could not be criticised for his membership of the Ba'ath party whose ideology she suggested was not "sinister". She submitted that the claimant had never been a "security guard" and that the Secretary of State had in effect misunderstood the role he played in the MIC and had no basis for concluding that his role in the MIC "would have made a significant contribution to the regime's ability to function". She submitted that seniority in the Ba'ath Party and length of membership was not relevant, that the information set out in Annex A was unreliable (and so not "reputable" as required by the Guidance) because it came in the most part from CIA resources (each footnoted) and the CIA was not a disinterested party given America's involvement in the Gulf War and the consequent ending of the Iraqi regime. She asserted that the process had been procedurally unfair and submitted that insofar as *Thamby* held that exceptional circumstances were required before an interview was needed to ensure a fair process for naturalisation requests, it should not be followed. She submitted that the 2020 Guidance had changed the Secretary of State's approach to interviews. She relied on *Balajigari*.

44. The third ground was based on a submission that the defendant's assessment of the nature and extent of liability of the Iraqi State under international law was fundamentally flawed, she should not have relied on CIA materials and should not have ignored the fact that "there were no weapons of mass destruction found in Iraq or any evidence of weaponry that related to prohibited warfare." The claimant also submits that if "allegations against the claimant are borne out" it follows that "the British State were war criminals" until it was decided that there should be intervention.

45. Miss Smyth appeared for the Secretary of State. Her headline submission was that the claimant was treating the application for judicial review as an appeal. She reminded me that the central question was: was the Secretary of State entitled to conclude that the claimant had

not satisfied her that he was of good character? She submitted that the answer to that question was yes. As to procedural unfairness she submitted that the claimant was well aware of the Secretary of State's concerns and had every opportunity to address them. She submitted that the decision was rational, lawful and that the application should be dismissed.

Discussion and Disposition

46. The burden of establishing good character is on the claimant. The relevant decision maker is the Secretary of State, not the Court. The role of the Court is not to re-make the Secretary of State's decision or to decide on the correctness of the decision. Parliament has decided where the decision making power lies and where the burden lies. The Court's role is to ensure that the Secretary acts lawfully, rationally and fairly when making her decision. That role is discharged by adjudicating upon grounds advanced by a claimant in respect of which permission has been granted.

47. In my judgment the process adopted by the Secretary of State was procedurally fair. The defendant acted at every stage in accordance with published guidance which set out the factors she would take into account. The claimant had "fair warning" (to use the language used in *Thamby*) of those factors because the Guidance was publicly available. In the present case the claimant was afforded an opportunity (which he took) to address the specific conclusions reached by the defendant in rejecting the application. On 11 March 2019 he was invited to provide further information not only "with regards to the information stated in his refusal letter" but also "with regards to his role within the Ba'ath party and his work .... for the MIC". It is difficult to see how the defendant could have done more to afford the claimant an opportunity to address her concerns. The claimant's submission that he should have been invited to interview and that the absence of an interview renders the process unfair is in my judgment plainly wrong.

48. I do not accept that there is any material difference between the approach taken to interviews in the guidance in place when the decision was initially made and the 2020 guidance. Each gives an option of interview, neither requires nor suggests that the option be taken up.

49. For those reasons I reject ground 2.

50. In my judgment it is plain that the Secretary of State was entitled to conclude on the evidence before her that the claimant had not satisfied her that he was of good character. In particular she was entitled to accept the evidence the claimant gave in early interviews and before the Tribunal (*R (oao OM)* cited above makes the point that the Secretary of State need not resolve the conflict). Further, the Secretary of State is entitled to take account of the different versions of evidence when considering if the claimant has discharged the burden that falls on him. The claimant had the opportunity to correct any answers given in interview. He understood and took advantage of that obligation, correcting in his letter of 14 September 2006 a misapprehension he had identified. The claimant's "statement of additional grounds" was prepared with the assistance of legal advice and is his own statement. It is that statement which contains reference to the claimant working in a business which produced weapons ("bullets, explosives, small guns, AK-47s"). The same statement refers to his position as a "security officer". Equally, his 2007 "response [to] reasons for refusal letter" emphasised his full commitment to the Ba'ath party and his senior position (he was not "merely a member").

51. The Secretary of State was also entitled to take account of the fact that it was only in 2017 that the claimant (in a letter written on his behalf by solicitors) suggested that he had not worked in a weapons factory but had worked in a "plastics factory". Seen in the context of his earlier evidence that he had worked at Al-Taji, just outside Baghdad and given that the factual reports relied on by the Secretary of State (Appendix A) made specific reference to the fact that Al-Taji was a plant at which weapons were produced, it is clear that the Secretary of State cannot be said to have acted irrationally when reaching her decision.

52. The Secretary of State was fully entitled to consider the length of time the claimant served as a member of the Ba'ath Party and his seniority in the organisation. The initial guidance allows for that at paragraphs 8.6 and 8.3 in respect of war crimes and crimes against humanity and the new guidance allows for it at page 30. It is entirely rational for the defendant to take account of these factors (just as was the case in *DA (Iran)* cited above where the claimant was a prison guard and not a "low level operative"). It is far more likely that a junior member of the Ba'ath Party would have a more tenuous connection to wrongs committed by an organisation than a more senior member. Conversely, a senior member is more likely to have a closer connection to wrongs than a junior member. Length of service is a potentially relevant factor, especially where a claimant has been promoted over time. One way to express dissatisfaction with the activities of an organisation is to remain in the lower ranks rather than seek preferment (the claimant made it plain in his 2007 statement that his promotion was earned: "Not everyone got to this level of rank within the party.").

53. I accept the Secretary of State's submission that the claimant's ground 1 submissions amount to a complaint about the conclusion reached rather than an irrationality challenge. In my judgment the Secretary of State's conclusion that the claimant had not discharged the burden of establishing good character is not open to a rationality challenge.

54. For those reasons I dismiss ground 1.

55. There are a number of elements to ground 3. The claimant suggests that:

    a. the Defendant's assessment of the nature and extent of liability of the Iraqi State under international criminal law is fundamentally flawed because:

        i. It is entirely disingenuous for the defendant to rely solely on reports from the CIA in order to make out the case of serious criminality.
        ii. It is entirely disingenuous for the Defendant to ignore the 2016 report from a public enquiry and to fail to have regard to what is widely known. There were no weapons of mass destruction found and neither was there evidence of any form of Weaponry, equipment or substance that related to prohibited war warfare.

    b. If the allegations against the Claimant are borne out, which they should not be, then it should also be accepted that the British State were war criminals right up to the point when it was decided that there should be UK/US intervention in Iraq.
    c. The Claimant is alleged to have been sufficiently involved in serious international crimes such that he is not a good character for the purposes of naturalisation. However, during the 1980s and beyond the British and other Western countries were selling equipment to the Iraqi State and was therefore involved in serious war crimes.

56. I can see no basis on which I can properly conclude that the conclusions reached by the defendant in respect of wrongs committed by Iraq (or perhaps more properly by its governing regime) and the Ba'athist party are fundamentally flawed. The defendant clearly regards the CIA as a "*reputable source.... on war crimes and crimes against humanity*" in Iraq, and I can see no basis on which that conclusion can be impugned. Further, the defendant's decision to refuse naturalisation was founded on the claimant's failure to establish his good character. The presence or absence of WMD at any given time is in my judgment irrelevant.

57. The ground refers to allegations against the claimant being "borne out" and therefore suggests that the Court will somehow adjudicate on the Claimant's character. Such an adjudication is

clearly no part of the Court's function. The ground also refers to an apparent need to treat the "British State" as "war criminals" if the allegations are "borne out". The relevance of the potential conclusion to the public law challenge and the basis on which it could be reached was not explained.

58. The Secretary of State's conclusion that the claimant made "a significant contribution to the regime's ability to function and can be viewed plainly as a provision of support" based on his work for the MIC is not in my judgment irrational.

59. There is nothing in ground 3 and I dismiss it.

60. The Secretary of State's conclusion is based in the most part on evidence provided by the claimant himself. There may be occasions when the facts upon which an asylum claim is based will make a naturalisation claim difficult. In the present case, the claimant's asylum evidence emphasised his leadership role in the Ba'ath party and the nature of his work for the Iraqi State in a weapon's factory. Attempts to change at least the flavour of such evidence to downplay the leadership role and the nature of the work done for the State when there is an appliciaont for naturalisation will often be ineffective. The claimant had every opportunity to establish his character. The Secretary of State's conclusion that he has failed to do so is in my judgment one that is plainly and obviously justifiable.

61. I therefore dismiss the claim for judicial review in its entirety.

62. I am grateful to both counsel for their focussed and helpful submissions.