IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: PA/02971/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 October 2024

Before

Mr C.M.G. OCKELTON, VICE-PRESIDENT
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

MOHAMMAD HAKIM-HASHEMI
(ANONYMITY ORDER SET ASIDE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Hodson, Elder Rahimi Solicitors
For the Respondent: Ms S Cunha, Senior Presenting Officer

Heard at Field House on 30 September 2021, 12 April 2022 and 16 November 2023

DECISION AND REASONS

Introduction

1. This appeal necessitates the panel to interpret the requirement of article 1F(b) of the 1951 Convention Relating to the Status of Refugees that the provisions of the Convention shall not apply to any person with respect to whom there are serious reasons for considering that they have committed a serious non-political crime "outside the country of refuge prior to his admission to that country as a refugee". This requirement establishes both geographical and temporal limitations upon exclusion from the protection of the Convention.

2. In their preparation for the hearing of this appeal, neither party was able to identify any domestic judicial consideration of this issue.

3. The respondent has acknowledged that the appellant will be subject to breach of his protected rights under articles 2 and 3 of the European Convention on Human Rights ("ECHR") if returned to Iran. Through this appeal the appellant seeks the wider benefits provided by the 1951 Convention.

4. Consideration of this matter has required three hearings over recent years. A significant reason for the Upper Tribunal being required to take approximately three years to promulgate its decision since the date of the first hearing has been the approach adopted by the respondent to these proceedings. Having requested, and been granted, time to prepare and file written submission at the conclusion of the evidence stage on 12 April 2022, the respondent failed to engage with the Upper Tribunal for some sixteen months. We cannot say that the respondent sat on her hands during this time as we were informed by Ms Cunha at the hearing in November 2023 that the respondent specifically introduced before Parliament what is now section 36(3) of the Nationality and Borders Act 2022 consequent to knowledge of these proceedings. The appellant may read this provision of domestic legislation at his leisure with knowledge that the legislator had him at the forefront of their mind at the drafting stage. We observe that this statutory provision commenced on 28 June 2022, and to date the Upper Tribunal has not received any coherent explanation as to why the respondent's written submissions were not filed until 2 August 2023.

5. It is unfortunate that the additional time secured by the respondent did not prove beneficial in ensuring that her written submissions were internally consistent and presented a clear understanding of the

relevant legal regime. Their poverty required a third hearing to be listed before the panel, though even then the respondent proved incapable of cogently articulating her case by endeavouring to run two mutually incompatible arguments as if they were one and the same. The lack of adequate preparatory care did not aid the panel in its task. The approach adopted was not consistent with the respondent's duty to help the Upper Tribunal to further the overriding objective and to cooperate fully with the Upper Tribunal generally: rule 2(4) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

6. We address below our concerns as to the respondent's conduct in these proceedings.

Background

7. The appellant is a national of Iran. Having been granted entry clearance, he entered the United Kingdom on 20 January 2010 in possession of a spousal visa valid from 7 January 2010 to 27 September 2011. His leave was subsequently varied, and he enjoyed leave to remain expiring on 19 September 2014.

8. UN Security Council Resolution 1737 (2006) establishes an embargo on the export to and import from Iran of certain items and technology potentially related to nuclear weapons. The coverage of the ban includes items and technology related to the delivery and production of rocket systems and unmanned aerial vehicles, and so includes items commonly used in the production of conventional weapons, especially missiles and combat aircraft. Additional sanctions are imposed upon Iran by UN Security Council Resolution 1929 (2010). All Member States are to prevent the transfer to Iran of any tanks, armoured combat vehicles, large-calibre artillery systems, attack helicopters, or missiles and related systems or parts.

9. In 2011, the United States Department of Homeland Security received information that two individuals were utilising a company to purchase military parts on behalf of Iran. Two undercover agents were introduced to the conspirators, and there was discussion as to quotes for parts. The agents informed the conspirators that shipping military parts from the United States without proper licences was illegal and shipping military parts to Iran would be a violation of the embargo.

10. In or around March 2012 a conspirator identified the appellant to an undercover agent as being a contact based in the United Kingdom. The appellant's role was to transfer purchase funds to the supplier, though he would not undertake this step until he met the CEO of the company supplying the military parts, which was based in Italy. An undercover agent contacted the appellant in April 2012 to discuss attending a

meeting consequent to which the appellant travelled to Italy in early May 2012. He met executives of the Italian supplier and then transferred funds from a bank account he controlled as final payment for the purchase and shipment of the military parts.

11. On 7 August 2012, having travelled to the Czech Republic, the appellant held a meeting with two undercover United States law enforcement agents. Later that day he was arrested by the Czech police and interviewed. He stated in his initial police interview that he had not bought, sold or arranged logistics in respect of prohibited military parts. He detailed his understanding that certain people he dealt with were representatives of Bell Helicopter, a United States aerospace manufacturer, and that engine parts and spare parts for airplanes were being shipped with their end user to be the Iranian Red Crescent Society. He explained that he attended the meeting in Italy to see a document proving that the goods were being legally exported to Iran. Upon the document being presented and being satisfied that the military parts being exported did not breach the embargo, he made the required bank transfer.

12. Later, he agreed to provide the United States authorities with information about other persons involved in the conspiracy. He acknowledged that he was aware of the licensing requirements imposed by the United States and that no proper licence would be obtained by any party involved in the conspiracy to facilitate export to Iran. He admitted that a co-conspirator had transferred 100,000 Euros to him, and in return he had forwarded 70,000 Euros to the Italian supplier.

13. After approximately five months in detention, he was extradited with his consent to the United States.

14. The American authorities charged him with conspiracy to export prohibited items to an embargoed country. He subsequently signed a guilty plea agreement. A pre-sentence report, prepared by a probation officer and dated 17 July 2013, records the Assistant United States Attorney identifying the appellant as not being a leader or organiser of the conspiracy, but “essential to the commission” of the offence as the “go between” in the conspiracy. He was the “middleman”, using his own company to wire money for the purpose of purchasing the military parts. It was noted in the report that the appellant met undercover agents on multiple occasions to discuss future endeavours.

15. The pre-sentence report confirms that the appellant entered into a plea agreement and details the parties’ joint recommendation that he be sentenced at the low end of the advisory guideline range.

16. In December 2013, before the United States District Court for the Southern District of California, the appellant was convicted of violating the International Emergency Economic Powers Act (1977). Specifically, the appellant was convicted of knowingly and wilfully agreeing and conspiring with others, known and unknown, to export and cause the exportation, sale, and supply, indirectly, of military aircraft parts from the United States to Iran without having first obtained the required licences and authorisations from the Office of Foreign Assets Control, United States Department of Treasury ("OFAC"), and to have engaged in transactions within the United States that evaded and avoided, and had the purpose of evading and avoiding, the prohibition against exporting, re-exporting, selling and supplying, directly and indirectly, aircraft parts from the United States to Iran without having first obtained the required licences and authorisations from OFAC. At the heart of the prosecution was the appellant's attempt to purchase military aircraft parts for engines used by the Islamic Republic of Iran Air Force and to ship the parts to a customer in Iran, knowing that such act was a violation of an embargo imposed by the United States government.

17. The appellant was sentenced to twenty-seven months' imprisonment and three years of supervised release. He was released from prison on 14 August 2014 having served one year, six months and ten days in custody. Upon his release the United States authorities conveyed him to an airport and returned him to the United Kingdom where he arrived the following day. On his arrival, being in possession of extant spousal leave to remain, he was admitted into this country. He claimed asylum the following week and attended a screening interview on 2 September 2014.

18. In November 2014, the United States Department of Commerce issued an order denying export privileges to the appellant, preventing him and his agents from directly or indirectly participating in any way in any transaction involving any commodity, software or technology exported or to be exported from the U.S. The order runs for ten years. The ban remains in force.

19. The appellant attended two substantive asylum interviews on 5 February 2015 and on 10 February 2015. By a decision dated 14 March 2019, the respondent refused the application for international protection, deciding that the appellant was excluded from protection under the 1951 Convention by application of article 1F(b). The respondent issued an attendant certificate under section 55(1)(a) of the Immigration, Asylum and Nationality Act 2006 confirming that the appellant was not entitled to the protection of article 33(1) of the 1951 Convention concerned with prohibition of expulsion or return.

20. On the same day, the respondent granted the appellant restricted leave to remain for six months, having accepted that his removal to Iran would breach his rights protected under articles 2 and 3 ECHR, as incorporated into domestic law by the Human Rights Act 1998. We have been informed that such leave continues to be varied by repeated extension on a six-monthly basis awaiting our decision.

The Appeal

21. The appellant's appeal against the respondent's decision refusing his protection claim was dismissed by the First-tier Tribunal on 2 July 2019.

22. The appellant was granted permission to appeal to the Upper Tribunal. Upper Tribunal Judge O'Callaghan set aside the First-tier Tribunal's decision on 6 December 2019. All findings of fact were to stand, and the decision was to be remade by the Upper Tribunal.

Proceedings

23. Following case management, and in accordance with directions, the parties filed and served skeleton arguments. The appellant filed an expert opinion from Professor Geoff Gilbert, University of Essex, dated 15 January 2021. On 11 August 2021, in response to directions, Professor Gilbert addressed seventeen questions posed by the respondent.

24. At the initial hearing before the panel on 30 September 2021, and aided by observations from Professor Gilbert, it was decided by the panel to adjourn part-heard permitting the parties further opportunity to address whether the appellant is a person who was admitted to the United Kingdom as a refugee within the meaning of article 1F(b) of the 1951 Convention.

25. In accordance with various directions, the appellant filed and served a supplementary expert opinion from Professor Gilbert focusing upon article 1F of the 1951 Convention, dated 14 November 2021.

26. The hearing resumed on 12 April 2022, with Professor Gilbert being examined by the representatives for over four hours.

27. Consequent to the conclusion of Professor Gilbert's evidence at the hearing, and prior to oral submissions, Ms Cunha applied to be permitted time to file and serve written submissions, so that she could consider Professor Gilbert's oral evidence. The application was granted, and the panel issued directions permitting both parties to file and serve written submissions, in accordance with a prescribed

timetable: the respondent to file by 29 April 2022, the appellant by 13 May 2022, with a further week for responses.

28. In the meantime, at the oral direction of the panel, the appellant filed and served a further supplementary opinion from Professor Gilbert addressing the status of headings in the 1951 Convention, dated 1 May 2022.

29. Following an approved amendment of the timetable, the appellant complied with directions. In the meantime, an Upper Tribunal lawyer was required on several occasions to communicate with the respondent seeking the filing of her written submissions. The respondent informed the Upper Tribunal in January 2023 that she was aware as to the delay, and subsequently indicated that instructions were awaited from "the policy team", but she was not spurred to act until 2 August 2023.

30. The Upper Tribunal enjoys a wide range of case management powers to address recalcitrant parties. However, this is a matter where the panel, and the appellant, were required to await the respondent's position in respect of the interpretation of the 1951 Convention, a multilateral treaty to which the United Kingdom is a Contracting State.

31. The delay in complying with a direction that was issued at the request of the respondent is compounded by there being no application for an extension of time to revise the timetable and the failure to engage with Upper Tribunal lawyers. The sole explanation we have received, save for Ms Cunha informing us that she shouldered responsibility, was that the respondent wished to address a core issue arising in this appeal by legislation. As observed above, the referenced statutory provision commenced on 28 June 2022 and the written submissions were filed and served on 2 August 2023. We conclude that the wholesale failure to engage with the Upper Tribunal in respect of a direction is more than unfortunate. It is of significant concern, evidencing very poor behaviour on the part of the respondent. If a party finds it impossible to comply with an order or a direction they must forthwith apply for an extension, with a full explanation of why it is necessary.

32. The Upper Tribunal expects the respondent to understand that lessons must properly be learned from this sorry episode where her conduct has been significantly and concerningly unsatisfactory. At the very least it has delayed the appellant securing a decision on his appeal, which he could have expected soon after the hearing on 12 April 2022, over two years ago, if the respondent had not sought an adjournment to file written submission.

33. We note the observation of Lord Justice Underhill in Laci v Secretary of State for the Home Department [2021] EWCA Civ 769; [2021] Imm AR 1410, at [85], and confirm that it is important, both in her own interests and in order to assist, that the respondent has a robust system for ensuring that her Presenting Officers appropriately aid the tribunals and courts before whom she appears as a party. We consider that if the respondent presently has such system, it entirely failed in this matter.

34. In any event, the respondent's muddled written submissions required the Upper Tribunal to list the hearing for a third time in November 2023.

The 1951 Convention

35. Refugee status under the 1951 Convention is declaratory, not constitutive. It is also declaratory under domestic law. G v G [2021] UKSC 9; [2022] AC 544, at [82].

36. Article 1 of the 1951 Convention is concerned with the definition of the term "refugee".

37. Article 1F is in mandatory terms:

> 'F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.'

38. Two purposes are achieved through article 1F: that serious transgressions prior to entry/admission should bar an applicant from refugee status, and that no one who has committed such crimes should escape prosecution through obtaining refugee status.

39. Whilst article 1F is concerned with exclusion from being a refugee, article 33 deals with expulsion of refugees. The latter establishes that non-refoulement under the 1951 Convention is not guaranteed:

> ‘**Prohibition of expulsion or return (“refoulement”)**
>
> 1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
>
> 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.’

40. Article 33 applies to refugees whether they are lawfully present in the territory or not. It applies to any refugee to whom the 1951 Convention applies. The obligation not to refoule an individual under article 33 arises by virtue of the fact that their circumstances meet the definition of “refugee”, not by reason of a Contracting State recognising that the definition is met: G v G, at [82].

41. Consequently, a refugee is protected from refoulement from the moment they enter the territory of a Contracting State whilst the state considers whether they should be granted refugee status: R (ST (Eritrea)) v Secretary of State for the Home Department [2012] UKSC 12; [2012] 2 AC 135, at [61].

42. Article 32 establishes that a Contracting State shall not expel a refugee lawfully in their territory save on grounds of national security and public order:

> ‘**Expulsion**
>
> 1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
>
> 2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
>
> 3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.’

43. The protection of article 32 only applies once a person has been granted refugee status: ST (Eritrea), at [61].

44. For completeness, article 31 is concerned with unauthorised entry and presence:

> ***'Refugees unlawfully in the country of refuge***
>
> 1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
>
> 2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.'

45. Article 31(1) places an obligation upon Contracting States not to penalise unauthorised entry and stay of refugees under certain conditions.

Issues in this appeal

46. The primary question before this panel is whether the appellant committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee.

47. As the parties accept the appellant's crime was non-political, we are required to consider whether the appellant committed 'a serious ... crime' and where it was committed.

48. We are to determine whether the appellant's last entry into the United Kingdom was as a refugee. If it was, neither the seriousness of the offence or where precisely it was committed matter because the exclusion clause cannot bite.

49. We are to consider domestic law as it stood at the date of the respondent's decision to exclude.

50. Relevant to our consideration:

    i. The appellant last entered the United Kingdom lawfully on 15 August 2014, with leave to remain as a spouse;

ii. If he committed an offence outside of the United Kingdom, it was before his last entry on 15 August 2014; and

iii. The respondent's decision is dated 14 March 2019.

Discussion and Conclusion

i. Expert opinion

51. At the outset we are required to consider whether Professor Gilbert can properly be considered an expert when assessing the weight that we can place upon his evidence. The Upper Tribunal confirmed in MH (review; slip rule; church witnesses) [2020] UKUT 125; [2020] Imm AR 983, at [39], that whilst no question of admissibility arises in the Immigration and Asylum Chamber the criteria identified by the Supreme Court in Kennedy v Cordia (Services) LLP (Scotland) [2016] UKSC 6; [2016] 1 WLR 597, at [43]-[44], are relevant in deciding whether evidence is properly described as "expert evidence".

52. Professor Gilbert is a Professor of Law in the School of Law and Human Rights Centre at the University of Essex. Since 2019, he has been the Co-Editor-in-Chief, and from 2002 to 2015 the sole Editor-in-Chief, of the *International Journal of Refugee Law*. At the request of the UNHCR he wrote the background paper on exclusion for the UNHCR Global Consultations on International Protection as part of the 50th Anniversary of the 1951 Convention. He was seconded to the UNHCR from 2017 to 2018. He is a non-practising Barrister and a Bencher of the Middle Temple. We observe that he has published extensively on matters concerned with exclusion and the 1951 Convention.

53. On behalf of the respondent, Ms Cunha took no issue with Professor Gilbert's expertise. We are satisfied that Professor Gilbert has the necessary knowledge and experience to assist the Upper Tribunal in its task, that he is impartial and there is a reliable body of knowledge and experience to underpin his evidence. We conclude that he has provided expert opinion to this Tribunal. However, we are to make our own decisions on domestic law, and European Union law as far as applicable at the date of the respondent's decision, but we take into account his evidence on international law.

54. We confirm our gratitude to Professor Gilbert for the appreciable aid he provided to this panel, both by his oral evidence and his several written opinions, all of which were of the expected high standard.

ii. Interpretation of the 1951 Convention

55. The absence of an international refugee court results in there being no uniform international practice or single interpretation of the 1951 Convention. The task of interpreting the Convention and its 1967 Protocol is placed upon the domestic courts of the Signatories, of whom there are presently 149.

56. The rules governing the interpretation of international treaties are established by articles 31 and 32 of the Vienna Convention on the Law of Treaties (1969). An essential rule contained in article 31(1) of the 1969 Convention is that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

57. Lord Steyn addressed the approach to be adopted to treaty interpretation in R v Secretary of State for the Home Department, ex parte Adan [2001] 2 AC 477, at 516H - 517B:

> "It follows that, as in the case of other multilateral treaties, the Refugee Convention must be given an independent meaning derivable from the sources mentioned in articles 31 and 32 and without taking colour from distinctive features of the legal system of any individual contracting state. In principle therefore there can only be one true interpretation of a treaty … In practice it is left to national courts, faced with a material disagreement on an issue of interpretation, to resolve it. But in doing so it must search, untrammelled by notions of its national legal culture, for the true autonomous and international meaning of the treaty. And there can only be one true meaning."

58. In Sepet and Bulbul v Secretary of State for the Home Department [2003] UKHL 15; [2003] 1 WLR 856, at [6], Lord Bingham considered it plain that the 1951 Convention "has a single autonomous meaning, to which effect should be given in and by all member states, regardless of where a decision falls to be made" and the "Convention must be seen as a living instrument in the sense that while its meaning does not change over time its application will."

59. Lord Bingham returned to the 1951 Convention in R (European Roma Rights Centre) v Immigration Officer, Prague Airport [2004] UKHL 55; [2005] 2 AC 1, at [18]:

> '18. … However generous and purposive its approach to interpretation, the court's task remains one of interpreting the written document to which the contracting states have committed themselves. It must interpret what they have agreed. It has no warrant to give effect to what they might, or in an ideal world would, have agreed. This would violate the rule, also expressed in article 31(1) of the Vienna Convention,

> that a treaty should be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context. ...'

60. Our starting point to the construction exercise must be the text of the 1951 Convention itself, because it expresses what the parties to it have agreed.

61. Before us, the respondent contended that the guiding instrument to the interpretation of article 1F(b) is article 21 of the Rome Statute of the International Criminal Court (1998), concerned with the Court's applicable law. We do not agree.

62. Article 21 of the Rome Statute introduces a differentiated hierarchy in relation to sources of law to be applied by the International Criminal Court which is concerned by the constraints of its jurisdiction with four core international crimes. Article 1F(a) references that the definition of the identified crimes will be "as defined in international instruments drawn up to make provision in respect of such crimes", and the Rome Statute is such instrument. In JS (Sri Lanka) v Secretary of State for the Home Department [2010] UKSC 15; [2011] AC 184, at [8]-[9], the Supreme Court held that Rome Statute should be the starting point when considering whether a person is excluded with reference to article 1F(a): see also KM (exclusion; Article 1F(a); Article 1F(b)) Democratic Republic of Congo [2022] UKUT 00125 (IAC); [2022] Imm AR 934.

63. Although articles 1F(a) and 1F(b) both mention crimes, the reference in article 1F(a) is to "a crime against peace, a war crime, or a crime against humanity, as defined". These are matters of international criminal law. There is no suggestion that the general word "crime" in article 1F(b) is to be construed in this way and we do not accept it is confined to – or perhaps even includes – crimes under the Rome Statute.

iii. Article 1F

64. Article 1F regulates the legal status of a person whose conduct is considered to exclude them from the scope of the 1951 Convention's protection. It is a limitation on a humanitarian provision. As an exclusion clause it must be restrictively interpreted and cautiously applied: Al-Sirri and DD (Afghanistan) v Secretary of State for the Home Department [2012] UKSC 54; [2013] 1 AC 745, at [75].

iv. Article 1F(b)

65. In the aftermath of World War II, the drafters of the 1951 Convention were concerned that if persons who had persecuted others or perpetrated serious crimes could receive refugee protection alongside their victims, public confidence in the protection regime would be short-lived. The objective of article 1F(b) from the outset was to build upon the term "refugee" by recognising *bona fide* refugees, who deserve international protection, and to exclude those who do not deserve refugee protection. The Convention is not intended to help those who commit crimes, then flee abroad and claim asylum.

66. The operation of the exemption is not punitive and does not give rise to double jeopardy. It is protective of the interests of the receiving state and should not be construed so narrowly as to undercut its evident policy.

a) Burden and standard of proof

67. The respondent accepts that the burden rests upon her to prove whether "there are serious reasons for considering" that the appellant has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee and that the standard of proof is the balance of probabilities.

b) '... committed a serious non-political crime …'

i) 'non-political'

68. To trigger the application of article 1F(b), the act in question must constitute a non-political crime. The parties accept that the appellant's crime was non-political.

ii) 'serious … crime'

69. The requirement that there be a "crime", also referenced in article 33(2) of the 1951 Convention, is properly to be considered a non-technical term and so a Contracting State is not bound by another country's classification of a "crime", as the term used in the Convention, an international treaty, must properly have an autonomous meaning.

70. Paragraph 155 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status acknowledges that what constitutes a "serious" non-political crime for the purposes of the exclusion clause is difficult to define, especially since the term "crime" has different connotations in different legal systems.

71. The Grand Chamber of the CJEU held in Joined Cases C-57/09 and 109/09 Germany v B and D [2012] 1 WLR 1076, at [93], that an assessment of seriousness "presuppose a full investigation into all the circumstances of each individual case."

72. The act committed by a person seeking legal protection must be individually considered, since exclusion is a narrowly defined exception to the rule of conferring protection to anyone qualifying for refugee status. Regard is to be had to the nature of the act at issue, the consequences of that act, the form of procedure used to prosecute the crime, the nature of the penalty provided. We are required to consider the entire context, legal and factual, assessed in the light of both objective and subjective criteria.

73. Ms Cunha submitted that the focus in assessing seriousness must be on the substance of the relevant conduct which led to the conviction to prevent engagement in a forward-thinking proportionality assessment which was rejected by the Court of Appeal in AH (Algeria) v Secretary of State for the Home Department [2015] EWCA Civ 1003; [2016] 1 WLR 2071, at [19].

74. She submitted that the threshold of "serious" is the severity of the penalty provided for in applicable domestic law. The respondent's decision-making is guided by the statutory provisions of section 72(3) of the Nationality, Immigration and Asylum Act 2002 and section 32(2) of the UK Borders Act 2007, which identify the level of custodial sentence that Parliament considered to be a serious crime to warrant exclusion in respect of article 33 of the 1951 Convention. We were informed that the respondent was not rigid in adopting this approach, as she acknowledged that those provisions only define a particularly serious crime by sentencing. Rather, they were said to be a useful guide.

75. Mr Hodson contended that both the minimal role played by the appellant, and his entrapment being founded upon there having ultimately been no military parts to export to Iran, should properly go to the assessment of seriousness. Additionally, the appellant's pre-indictment co-operation with the United States authorities should properly be considered as reducing seriousness, such act being distinguishable from the impermissible forms of expiating events occurring after the commission of the offence: AH (Algeria) approving, at [30], the majority decision in Febles v Canada [2014] 3 SCR 431. McLachlin CJ held in the latter:

> "60 Article 1F(b) excludes anyone who has ever committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee. Its application is not

> limited to fugitives, and neither is the seriousness of the crime to be balanced against factors extraneous to the crime such as present or future danger to the host society or post-crime rehabilitation or expiation."

76. We find the role played by the appellant was not minimal. He engaged in the essential role of transferring the purchase money. In telephone conversations with a – then unknown to him - undercover agent he sought to enhance his role, requesting that the agent work directly with him, and not with a named co-conspirator. He advised as to the terms of financial offers to be given for securing orders. He directed an undercover agent to have the military parts exported from the trans-shipment point legally and once the parts were outside United States territory the agent should repackage the shipment with large quantities of non-licensable items to conceal those parts which required an export licence in respect of Iran. At a meeting held in Prague with two undercover agents, the appellant discussed the ongoing scheme to supply United States manufactured military aircraft parts to Iran, possibly through Malaysia. That there was no likelihood of the parts being received in Iran because of the involvement of United States agents does not limit the seriousness of the offence. The applicant was not aware of the futility of his acts when he undertook them. His intention was to engage in breaching the embargo.

77. As to the pre-conviction, but post-offence, assistance he provided to the United States' authorities we observe his denial of events during his initial interview in Prague. The assistance that he subsequently provided followed his becoming aware of the strength of evidence against him, including recordings of conversations with undercover agents. We find the act to be an expiating event, not a mitigating circumstance underlying the act for which he was convicted, and so not properly to be considered in assessing seriousness. To do so would require us to undertake an unlawful proportionality assessment.

78. We proceed to consider the individual case. Whilst the nature of the custodial penalty imposed forms part of the overall context, we additionally observe the nature of the act, the harm the appellant understood would be inflicted if the conspiracy was successful, the depth of the evidence compiled by the United States authorities when prosecuting the appellant and that the relevant embargo of Iran was initiated by the United Nations Security Council in its role of addressing threats to international security.

79. Conspiracy to export weapons without requisite licence is against the law of the United States and considered a serious crime by the authorities as evidenced by the imposition of a sentence of imprisonment. That the United States considers the crime to be serious

does not establish that it is a “serious crime” for the purposes of article 1F(b), though the approach of a country that abides by the rule of law and whose justice system does not act arbitrarily is informative.

80. Domestically, section 68 of the Customs and Excise Management Act 1979, taken with section 20(2) of the Export Control Order 2008, establishes offences in relation to exportation of prohibited or restricted goods and provides for a maximum custodial sentence on indictment of seven years. The 2008 Order controls the exports of military and dual-use goods. Section 20 of the Order is concerned with embargoed destinations. Part 1, Schedule 4 of the Order confirms that Iran, along with North Korea, is an embargoed country and there is no exception for transit.

81. Mr Hodson adopted a forensic examination to the established criminal offence regimes in the United Kingdom and the United States of America, observing that unlike the 2008 Order, the International Emergency Economic Powers Act under which the appellant was convicted is unrelated to the imposition of an international (United Nations and European Union) arms embargo imposed on Iran in 2007. It was contended that the offence corresponding to the 2008 Order is the Arms Export Control Act (1976), in relation to which the appellant was originally charged but the count was dropped by the prosecution.

82. Reliance was also placed by Mr Hodson upon the sentence imposed upon the main defendant in R v George and Others, (2018) Southwark Crown Court, the only related section 68 prosecution identified to us by the parties. Mr George received a custodial sentence of two-and-a-half years for shipping military items to Iran, including Russian MiG and US F4 Phantom parts sent through various companies and countries. Mr Hodson placed weight upon the conspiracy in which the appellant was involved being a fiction, because consequent to the actions of the undercover agents there never were aircraft parts to be transported to Iran. It was submitted that the appellant would expect to receive a lesser sentence than Mr George if convicted in this country.

83. We consider that mitigation secured in respect of sentencing does not necessarily lessen the role undertaken nor the nature of the act. It may explain the act, or provide an underlying rationale, but often it does no more. As Professor Gilbert accepted in answer to a question from the panel, returning items from a theft does not diminish the nature of the crime.

84. Professor Gilbert acknowledged in his oral evidence that there was no requirement that the United Kingdom have an exact replica of the United States charge. The respondent was required to find that the behaviour underpinning the United States offence would constitute a

crime in the United Kingdom. Nor was there a requirement that the respondent undertake a comparison of the sentence regime. Whilst accepting that export of weapons could be serious, Professor Gilbert observed the requirement when assessing seriousness that everything be looked at together. We agree.

85. We find that the unlicensed export of military parts to an embargoed country, when considering the facts in the round, is properly to be considered a serious crime. The appellant relies upon the United States' International Emergency Economic Powers Act having been enacted in 1977, before the present United Nations Security Council resolutions. However, the Act authorises the President to declare the existence of an "unusual and extraordinary threat... to the national security, foreign policy, or economy of the United States" that originates "in whole or substantial part outside the United States", and at the present time the criminal offences established operate in conformity with the relevant United Nations Security Council resolutions. Resolution 1737 was unanimously passed by the Security Council and requires Iran to suspend certain "proliferation-sensitive nuclear activities". Resolution 1929 followed from Iran's failure to fully suspended uranium enrichment activities, to resume co-operation with the International Atomic Energy Agency or clarify issues relating to a possible military dimension to its nuclear program. Efforts by Iran to secure non-domestic weaponry despite the embargo is part of its efforts not to suspend proliferation-sensitive nuclear activities, which is of significant concern to the United Nations Security Council and to Member States generally. The appellant was centrally engaged in a calculated attempt to undermine strict trade embargoes and internationally agreed controls, with no concern as what the military parts may be used for. Such act can only be, on the facts in this matter, a serious crime for the purpose of article 1F(b).

c) '... outside the country of refuge prior to his admission to that country as a refugee'

86. Article 1F(b) has geographical and temporal elements depicted in separate clauses: "outside the country of refuge" and "prior to his admission to that country as a refugee".

i) '... outside the country of refuge ...'

87. Given its explicit wording, this geographical limitation restricts exclusion to acts committed in the country of origin or a Third State. Consequently, crimes committed within the country of refuge can only be considered under the second alternative of Article 33(2).

88. Article 1A(2) is the 1951 Convention's inclusion clause, defining who is a refugee. Article 1F identifies those who are excluded from the Convention's protection. To adopt a literal approach to "outside" may enable those who commit transnational crimes to avoid exclusion, even where they commit their crimes in the country of origin or a Third State, and continue across and into the host country, or commit crimes in the host country that may at the same time, or very soon after, be committed elsewhere. As observed above, article 1F is essential to the maintenance of the integrity of the refugee protection system, ensuring that those who persecute others or perpetrate serious crimes cannot receive refugee protection by the act of crossing the border of a Contracting State.

89. "Country of refuge" appears twice in the English text of the Convention: in the text of article 1F(b) and in the title of article 31. It appears three times in the French text, additionally in the text of article 31. There is a clear implication in the use of the phrase in article 31 and the ambit of that article, that the phrase means (only) the first safe country, to which the person comes "directly". But there is a difficulty in applying that meaning in article 1F(b), because of the link there to the "admission to that country [the country of refuge] as a refugee". In these circumstances it seems clear to us that the phrase in article 1F(b) must be intended to refer to any country in which the persons' claim is being considered and is to be construed by reference to that country and not to any other country in which he may have (in fact) been safe.

90. Mr Hodson contends that the appellant was a refugee in the Czech Republic following his arrest as he possessed a well-founded fear of persecution if returned to Iran. This was first exhibited when he rejected the offer made by the Czech authorities to contact the Iranian consulate on his behalf. Thus, though he did not claim asylum, he met the criteria of a *de jure* refugee under article 1A(2) of the 1951 Convention and the Czech Republic is a signatory State.

91. On the appellant's case, all that is required to satisfy "country of refuge" is a passive feeling of being safe in a country. However, seeking refuge is a positive step, conveyed by making a claim for international protection. It is an active state of affairs; seeking to stay and secure protection from a well-founded fear of persecution in a home country. This was not satisfied by the appellant's failure to make a claim for refuge in either the Czech Republic or the United States. The one country where he has sought refuge is the United Kingdom, and so this is the relevant country for the purpose of article 1F(b).

92. As to the requirement "outside", Professor Gilbert acknowledged jurisdictional complexity but opined that when abiding by the requirement to interpret article 1F(b) narrowly, it was sufficient that the appellant engaged in unlawful conspiracy in the United Kingdom "as well" to enable him to fall outside the scope of the article.

93. Mr Hodson relied upon the appellant primarily engaging in telephone and Skype calls and sending emails whilst mostly based in the United Kingdom. Though he accepts that at relevant times the appellant actively engaged in the conspiracy when in Italy and in Prague, he submitted that the substantial elements of the appellant's participation occurred whilst in the United Kingdom. Therefore, in line with the usual rule of jurisdictional competence in criminal crimes in England and Wales, inchoate offences are conduct crimes and, in this matter, occurred in the United Kingdom, not outside.

94. In domestic criminal law, the essence of conspiracy is the agreement. When two or more agree to carry out their criminal scheme into effect, the very plot is the criminal act itself: Mulcahy v The Queen (1868) L.R. 3 H.L. 306, at 317. Nothing need be done in pursuit of the agreement: O'Connell v R (1844) 5 St. Tr. (N.S.) 1; repentance, lack of opportunity and failure are all immaterial: Aspinall (1876) 2 Q.B.D. 48. As evidenced by the terms of his guilty plea agreement, the appellant possessed the requisite mens rea; he intended to be a party to an agreement to do an unlawful act.

95. So, did the appellant commit a crime outside of the United Kingdom? There is no doubt that, whatever the appellant did when in the United Kingdom, he also engaged in conspiratorial agreement with others at times when he was outside the United Kingdom. It follows that there is potential, for his exclusion, in the phrase "outside the United Kingdom".

96. We turn to the question of whether the serious non-political crime was committed prior to the appellant's admission to the United Kingdom as a refugee.

ii) '... prior to his admission to that country as a refugee'

97. The temporal scope of article 1F(b) establishes that only serious non-political crimes committed "prior" to admission fall within its exclusionary scope.

98. Professor Gilbert stated that the 1951 Convention does not prescribe the procedure for a Contracting State to carry out status determination, although states must carry out their obligations in good faith in line with article 26 of the 1969 Convention. He opined that

starting an application or the determination of status cannot provide the temporal marker for article 1F(b) because different countries will have different processes and there must be consistency in the application of the 1951 Convention across various State parties. The requirement is initially that there be consideration of inclusion under article 1A(2) of the 1951 Convention before consideration can be given to exclusion. A Contracting State cannot refoule, and so is required to consider whether an applicant is a refugee at the outset. There is no difference between a *de jure* and *de facto* refugee because an applicant is a refugee from the moment they leave their country of nationality although article 32(1) may not apply until recognition, as explained by Lord Dyson in ST (Eritrea), at [61].

99. Further to questions posed by the panel at the initial hearing, Professor Gilbert helpfully addressed the requirement of "admission" as a refugee in a further expert opinion, dated 14 November 2021.

100. Professor Gilbert observed that "entry" and "admission" denote distinct concepts under the 1951 Convention as can be inferred from the fact that within article 31, paragraph 1 refers to entry while paragraph 2 talks of admission.

101. The term "admission" and its inflections (e.g., "admitted"), with respect to gaining entry to the territory of a state, appear in only a few places within the 1951 Convention: Articles 11, 30, 31(2) and 32(3). The terms "entry" and "entered" appear in articles 17(3) and 31(1). Article 11 is concerned with refugee seamen and article 30 with the transfer of assets for resettling refugees. Turning to the *travaux préparatoires*, comment by the French representative indicates that "admission" in article 11 connotes a formal and knowing process by a State where refugee seamen are at sea and where they need to be admitted to the territory of the flag state in a different manner. Article 30 also requires a formal process involving the receiving state and, in Professor Gilbert's opinion, provides even stronger evidence that "admission to that country as a refugee" in article 1F(b) is required to be read in a comparable fashion.

102. Whilst there is no direct discussion of "admission" and "entry" with respect of articles 17, 31 and 32 in the *travaux préparatoires* their separate use in article 31 is instructive. Article 31(1) concerns penalties for refugees who cross a frontier illegally and clandestinely enter the territory of a neighbouring country. The idea is that the vicissitudes of flight from persecution may require a refugee to enter another state without abiding by proper processes, but that the refugee escapes penalties by reporting to the authorities to rectify the unauthorised incursion as soon as possible. Professor Gilbert opinion

was that clandestine character is the context in which “enter" and “entry” should be understood, which in no way reflects the facts of this appeal. The appellant flew into the United Kingdom having served his sentence in the United States and passed through immigration control on the basis of his existing leave to remain.

103. Articles 31(2) and 32(3) talk of admission into another country. The idea in both cases is that the process involved the state who will receive the refugee. In other words, admission refers to being granted permission because they were a refugee.

104. Professor Gilbert acknowledged that the language of article 1F(b) in both authentic languages, English and French, is complex. However, reading the 1951 Convention as a whole, as demanded by the 1969 Convention to understand the ‘ordinary meaning’, he opined that admission as a refugee under article 1F(b) is the act of the country of asylum and a prerequisite for exclusion under that provision. Admission under any other reason, even if the person would have qualified at that time as a refugee, too, cannot permit exclusion.

105. Unhelpfully, by means of her August 2023 written submissions Ms Cunha advanced two contradictory positions. On behalf of the respondent, she identified the respondent’s position to be that the appellant was “admitted as a refugee” for the purpose of article 1F(b) when he applied for asylum, thereby varying his extant leave. However, she also identified the respondent’s position to be that “admitted as a refugee” cannot be recognised outside the formal recognition of refugee status and so admission as a refugee takes place the day on which the respondent issues a relevant biometric immigration document. Having endeavoured to rely upon both propositions of law at the hearing in November 2023, we understand Ms Cunha to have identified the respondent’s position at the conclusion of her oral submission to be that admission outside of the scope of formal recognition of refugee status constitutes an absurdity, placing *sur place* asylum seekers at an advantage to others in respect of the application of the exclusion.

106. We have considered whether the respondent was in error in concluding that admission as a refugee cannot be recognised outside the formal recognition of refugee status because, as held by the Supreme Court in G v G, at [81]:

> ‘81. Under the 1951 Geneva Convention recognition that an individual is a refugee is a declaratory act. The obligation not to refoule an individual arises by virtue of the fact that their circumstances meet the definition of "refugee", not by reason of the recognition by a Contracting State that the definition is

> met. For this reason a refugee is protected from refoulement from the moment they enter the territory of a Contracting State whilst the State considers whether they should be granted refugee status.'

107. We consider that there are three possible concepts that may apply to the requirement of "prior to ... admission": firstly, entry which entails the purely physical act of crossing a border; secondly, recognition which is the state's act in positively assessing a refugee's status; and finally, admission which could combine the two previous concepts.

108. The first concept is the purely physical act of crossing a border. The relevant point of time is the physical entrance into the state of refuge because refuge recognition is merely a declaratory, not a constitutive act. However, the 1951 Convention differentiates between "entry" and "admission", the latter being associated with a state's prerogative to control admission beyond its borders, exercised by a formal process. We conclude that simple travel across a border, even by a person who intends to claim, or in the future may claim, refuge is insufficient to establish the required "admission". Admission as a refugee does not mean that a person can only be recognised on entry, for example by carrying a document recognising them as having been recognised as a refugee by another state. It must be sufficiently wide to cover travel in order to be a refugee, either to claim as a border, or to claim later.

109. As to recognition, the second concept, the 1951 Convention is silent on admission procedures which vary among Contracting States. Again, it cannot be that recognition alone is what is intended by the phrase.

110. As to the third concept, once a person arrives on the territory of a Contracting State, and makes a claim to refugee status, a consequence of the claim is that they are lawfully present in the country and entitled to incremental rights in accordance with their immigration status. It is the recognition of some rights under the 1951 Convention that establishes a distinction as to "admitted". In truth, the very nature of "admission" requires more than travel by the person being "admitted": it requires the act or consent of another – here, the state authorities. In this sense, "admission ... as a refugee" could not be constituted, for example, by unlawfully or clandestinely crossing an international border, even by a person who fell squarely within article 1A(2). But given that in the usual case recognition as a refugee (the recognition of the right to refugee status) must temporally follow entry, it appears that "admission ... as a refugee" must be interpreted as meaning the acceptance of the claim of status by the state authority, and so, as it were, the confirmation of the legality, or condonability, of the crossing of the frontier.

111. Turning to our consideration of the domestic landscape at the time of the respondent's decision in 2019 we commence by observing article 3 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 ("the Qualification Directive"), concerned with "more favourable standards":

> 'Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.'

112. Article 12(2)(b) of the Qualification Directive is concerned with exclusion:

> '12.
>
> 2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:
>
> ...
>
> (b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes.'

113. The Refugee of Person in Need of International Protection (Qualification) Regulations 2006 together with amendments to the Immigration Rules in part transposed the Qualification Directive.

114. Regulation 7 of the 2006 Regulations sets out which persons are excluded from the 1951 Convention:

> '(1) A person is not a refugee, if he falls within the scope of Article 1D, 1E or 1F of the Geneva Convention.
>
> (2) In the construction and application of Article 1F(b) of the Geneva Convention:
>
> (a) the reference to serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective;
>
> (b) the reference to the crime being committed outside the country of refuge prior to his admission as a refugee shall

be taken to mean the time up to and including the day on which a **residence permit** is issued.

(3) Article 1F(a) and (b) of the Geneva Convention shall apply to a person who instigates or otherwise participates in the commission of the crimes or acts specified in those provisions.'

[Emphasis added]

115. Observing that the 2006 Regulations is a transposition, in part, of the Qualification Directive, we note the definition of "residence permit" at regulation 2:

> ''residence permit' means a document confirming that a person has leave to enter or remain in the United Kingdom whether limited or indefinite.'

116. Article 2 of the Immigration (Leave to Enter and Remain) Order 2000 is of aid in our consideration:

> '2. Subject to article 6(3), an entry clearance which complies with the requirements of article 3 shall have effect as leave to enter the United Kingdom to the extent specified in article 4, but subject to the conditions referred to in article 5.'

117. Consequently, at the date of the respondent's decision, the United Kingdom adopted a generous, or more favourable standards, approach to the requirement, with relevant admission being secured as early as a grant of entry clearance before entering this country. Such generosity was open to the United Kingdom in accordance with article 3 of the Qualification Directive. This was Parliament's intention at the relevant time in this matter.

118. Applying those provisions to the facts of this case, the appellant, who entered the United Kingdom in January 2010 with entry clearance, had a "residence permit" from that date. All the matters said to constitute his crimes took place after that date. They do not fall within the ambit of article 1F(b) as applied by the Qualification Directive. In these circumstances, the autonomous international meaning of the Refugee Convention, if more restrictive, does not assist the respondent.

119. In her delayed written submissions, the respondent relies upon section 36(3) and (4) of the Nationality and Borders Act 2022, which has come into force and is concerned with article 1F and disapplication of the 1951 Convention in case of serious crime. We detail the section in its entirety:

> (1) A person has committed a crime for the purposes of Article 1(F) (a) or (b) of the Refugee Convention if they have instigated or

otherwise participated in the commission of the crimes specified in those provisions.

(2) In Article 1(F)(b), the reference to a serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective.

(3) In that Article, the reference to a crime being committed by a person outside the country of refuge prior to their admission to that country as a refugee includes a crime committed by that person at any time up to and including the day on which they are issued with a relevant biometric immigration document by the Secretary of State.

(4) For the purposes of subsection (3), a relevant biometric immigration document is a document that—

(a) records biometric information (as defined in section 15(1A) of the UK Borders Act 2007), and

(b) is evidence of leave to remain in the United Kingdom granted to a person as a result of their refugee status.

120. Parliament has therefore adjusted its position as to article 1F(b) and the "prior to his admission to that country as a refugee" requirement.

121. However, the appellant benefits from the 2006 Regulations as they continue to apply to any asylum claim made in this country prior to 28 June 2022: section 30(4) Nationality and Borders Act 2022 and The Nationality and Borders Act 2022 (Commencement No. 1, Transitional and Saving Provisions) Regulations 2022 (2022 No. 590).

122. Consequently, the respondent's decision that the appellant was excluded from protection under the 1951 Convention by application of article 1F(b) was unlawful, as was the attendant issuing of a certificate under section 55(1)(a) of the 2006 Act.

123. The respondent accepts that the appellant will be subject to breach of his protected rights under articles 2 and 3 of the ECHR if returned to Iran. On the established facts we are satisfied to the requisite standard that the appellant possesses a well-founded fear of persecution at the hands of the Iranian authorities on imputed political opinion grounds.

124. In the circumstances, we allow the appellant's asylum appeal.

Anonymity Order

125. At the error of law stage, Judge O'Callaghan issued an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules

2008. Judge O'Callaghan observed paragraph 13 of Guidance Note 2013 No 1 concerned with anonymity orders, which was then applicable, and noted the practice of both the First-tier Tribunal and this Tribunal that an anonymity order is made in all appeals raising asylum or other international protection claims.

126. Mr Hodson requested before us that the order be set aside. Ms Cunha was neutral as to the request.

127. We observe that ordering anonymity flows from an acceptance by a tribunal or court that rights protected by article 8 ECHR outweigh the public interest in details of proceedings being disseminated with the right of freedom of expression being protected by article 10 ECHR.

128. When considering anonymity, and noting that its decisions are publicised, the Upper Tribunal is required to be alert to the public interest in ensuring that its procedures are not abused. The simple recording by a tribunal of the very fact of an asylum application having been made may itself create the possibility of persecution by the authorities for a Convention reason. Alternatively, such publication may be used by an unsuccessful appellant to advance a fresh claim based upon the mere fact of having claimed asylum placing them at risk of persecution: R v Immigration Appeal Tribunal, ex parte Senga (9 March 1994) (QBD).

129. In this matter, we are satisfied that having been required to address the particular facts in detail, the facts are capable of only applying to one person, namely the appellant. To the Iranian authorities, his having claimed asylum is discoverable from reference to the facts alone. Consequently, there is no public interest in the anonymity order continuing, nor do the appellant's article 8 rights continue to outweigh the public interest in his identity as a party to these proceedings being disseminated.

130. The anonymity order issued on 6 December 2019 is set aside.

Notice of Decision

131. The decision of the First-tier Tribunal sent to the parties on 2 July 2019 was set aside for material error of law.

132. The decision is remade. The appellant's asylum appeal is allowed.

D O'Callaghan
Judge of the Upper Tribunal

Immigration and Asylum Chamber

11 October 2024