

Alasdair Mackenzie



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Profile

Alasdair is regularly instructed as sole or leading counsel in appeals to the Upper Tribunal and the Court of Appeal and in judicial reviews in both the High Court and Upper Tribunal. He appears frequently before the Upper Tribunal and First-Tier Tribunal in all areas of immigration law, including refugee, human rights, family, EEA, student, points-based system, bail and deportation cases. He also appears in judicial reviews of trafficking decisions and age assessments.

Alasdair is recommended in Band 1 by **Chambers and Partners 2022** edition, where he is described as a *'superman in the courtroom'* who *'works diligently for clients and is always willing to take on more complex cases and find innovative solutions. An overall pleasure to work with'*, and as being *'so knowledgeable about every aspect of immigration and asylum law; superb'*. In Chambers and Partners 2021, he was said to be *'phenomenal; what stands out is his knowledge and experience and his first-class written work. He anticipates what the judge and the other side will be looking at.'* He is also described as *'very responsive and always makes time to discuss strategy and provide his thoughts on the best way to work a case'*. In Chambers and Partners 2020, he was described as *'simply superb: a wonderful advocate who understands the finer points of the law'* and as *'exceptionally level-headed and focused, very good with difficult clients, and has a way of simplifying things that appear*

complicated'. In the **Legal 500**, he is ranked in Tier 1 as a leading junior, and it is said that *'Alasdair's written work is impeccable. It is thorough, articulate, well-presented, on point and persuasive. Alasdair's advocacy is first class. It is measured and compelling and without doubt it flows so well based on detailed preparation and consideration of the facts and law'*.

He contributed chapters on asylum and human rights claims to the Legal Action Group book on Foreign National Prisoners. He is a contributor to Halsbury's Laws and the Administrative Court Digest, and has written for publications including the New Law Journal, the Journal of Immigration, Asylum and Nationality Law and the European Human Rights Law Review.

Before joining Doughty Street from pupillage in 2005, Alasdair spent many years as a campaigner and advice worker on behalf of refugees and asylum seekers in the UK. He was among the founders of the charity Asylum Aid, of which he was Co-ordinator from 1990 to 2002. He spent some years as an executive committee member of the Immigration Law Practitioners' Association, of which he remains an active member, and is a former Chair of the Asylum Rights Campaign and of the Refugee Legal Group. He has acted as an expert consultant to the Immigration Services Commissioner, the regulator of immigration advisers. Alasdair has written or contributed to a number of significant reports and publications on asylum and immigration issues.

Education

BA (Oxon)

PgDL

Bedingfield Scholar, Gray's Inn, 2003

Languages

German

French

Russian

Related practice areas

Immigration

Immigration Detention Group

Anti-Trafficking

Immigration Asylum and Personal

Alasdair specialises in asylum and human rights work, in particular in complex issues such as mental health, rights of appeal and exclusion from refugee status.

Alasdair has appeared in numerous Country Guidance cases in the Upper Tribunal. He was leading counsel for the appellants in the latest judgment on the risks facing Tamil activists from Sri Lanka, **KK and RS (Sur place activities: risk) Sri Lanka CG** [2021] UKUT 0130 (IAC). He also appeared in the previous Country Guidance case on Sri Lanka, **GJ (post-civil war: returnees) Sri Lanka** [2013] UKUT 319 (IAC).

He also appeared as junior counsel for three of the appellants in **EM (Returnees) Zimbabwe CG** [2011] UKUT 98 (IAC), the leading Country Guidance case on Zimbabwe, and for two of the appellants in **RS (Zimbabwe – AIDS) Zimbabwe CG** [2010] UKUT 363 (IAC), on the lawfulness of removing people with HIV/AIDS to Zimbabwe. He represented the appellant in the leading case on the risk of re-prosecution in China to those convicted of offences in the UK, **JC (Double jeopardy: Art 10 CL) China CG** [2008] UKAIT 00036.

In 2020 he appeared in **R (Dzineku-Liggison) v SSHD** [2020] UKUT 00222 (IAC) [2020] All ER (D) 144 (May), in which the Tribunal declared unlawful the Home Office's policy on charging fees to people applying to remain in the UK on human rights grounds. In 2021 he acted in a successful challenge to the Home Office's fee waiver policy in entry clearance cases which resulted in an **undertaking by the government** to change that policy. He previously appeared in the original case on the lawfulness of the fees regime, **R (Osman Omar) v SSHD** [2012] EWHC 3448 (Admin).

He appeared in the Supreme Court as junior counsel in **Al-Sirri v SSHD**, the leading case on the exclusion from refugee status of people accused of acts contrary to the principles and purposes of the United Nations. He was instructed as sole counsel before the Court of Appeal in a case involving attempted exclusion from refugee status on grounds of the misuse of Twitter, **AE (Iraq) v SSHD** [2021] EWCA Civ 948. He also appeared as junior counsel for the first appellant in **Youssef & N2 v SSHD** [2018] EWCA Civ 933 [2018] 3 WLR 1532, relating to exclusion on the grounds of incitement under Article 1F(c) of the Refugee Convention.

Alasdair was junior counsel for the two lead appellants in **EP (Albania) (rule 34 decisions; setting aside)** [2021] UKUT 00233 (IAC), in which the Upper Tribunal was asked to set aside its own earlier decisions to dismiss various appeals, on the grounds that its failure to hold hearings during the pandemic had led to unfairness.

Alasdair acted as junior counsel in **MP (Sri Lanka) v SSHD** C-353/16 [2018] 1 WLR 5585, a reference by the Supreme Court to the Court of Justice of the European Union, which the Court held that subsidiary protection must be granted where an individual is at serious risk of

committing suicide on return, as a result of trauma resulting from past torture by state authorities, and where there is also a real risk of being intentionally deprived of appropriate care for the physical and mental after-effects of the torture.

Alasdair was also junior counsel for the first claimant in the leading case on the Home Office's legacy programme, **R (Geraldo, Aroun and Iqbal) v SSHD** [2013] EWHC 2763 (Admin).

He has also been instructed in numerous appeals before the Court of Appeal and Upper Tribunal relating to the correct construction of rules and legislation on deportation, including **Chege ("is a persistent offender")** [2016] UKUT 00187 (IAC), [2016] ImmAR 833 and **SSHD v MM (Zimbabwe)** [2017] EWCA Civ 797 [2017] 4 WLR 132 (change of situation affecting asylum applicant; test applicable to deportation of mentally disordered offender).

Other significant cases include **SSHD v E3 & N3** [2019] EWCA Civ 2020 [2020] 1 WLR 1098 (burden of proof regarding revocation of British citizenship; status of diplomatic notes) (junior counsel). **PR, SS & TC v SSHD** [2011] EWCA Civ 988, [2012] 1 WLR 73, [2011] ImmAR 904 ('second-tier appeals test' for appeals to Court of Appeal; junior counsel for first applicant); **SSHD v AS (Somalia) and others** [2011] EWCA Civ 1319, Times, January 2, 2012 (appeal rights for those within the 'legacy' of previously unresolved asylum claims); and **Abiyat (Rights of appeal) Iran** [2011] UKUT 00314 (IAC), [2011] ImmAR 822 (rights of appeal under s.83 NIAA 2002; rights of appeal to UT where FTT declines jurisdiction).

Immigration Business and Commercial

Alasdair regularly appears in points-based system appeals before the Upper Tribunal and First-tier Tribunal in related judicial reviews, including **R (Alnuaimi) v SSHD** (challenge to refusal of ILR to spouse of points-based system migrant).

Mental Health and Court of Protection

Alasdair has developed a particular interest in the interrelation between mental health and immigration law and in the treatment of mentally disordered people in the immigration system. His numerous cases in the latter area include **Y & Z (Sri Lanka) v SSHD** [2009] EWCA Civ 362, [2009] HRLR 22, Times, May 5, 2009, believed to be the first reported case in which applicants have succeeded in contesting removal under Article 3 of the ECHR on grounds of a risk of suicide and **R (Y) v SSHD** [2013] EWHC 2127 (Admin), a successful

challenge on ECHR grounds to the refusal of indefinite leave to remain to an applicant with severe PTSD and depression.

He was also involved in the first successful challenge to the refusal of the First-tier Tribunal to appoint a litigation friend to an appellant lacking capacity, which resulted in a declaration that the FTT does have the power to do so. He has also appeared before mental health tribunals.

Community Care and Health

Alasdair is a leading practitioner in asylum support, including judicial reviews of the Home Office and First-tier Tribunal relating to asylum support decisions, and regularly appears before the First Tier Tribunal (Social Entitlement Chamber). Notable cases include a challenge to the Home Secretary's power to provide clothing to those on asylum support (**R (AW Kenya) v SSHD** [2006] EWHC 3147 (Admin), [2006] All ER (D) 392 (Nov), [2007] ACD 33), as well as a successful challenge to the failure of the Home Office to provide travel expenses to those signing on at immigration reporting centres and numerous successful judicial reviews of adverse decisions of the First-tier Tribunal.

Alasdair is also experienced in age assessment judicial reviews for young asylum seekers against local authorities.

Administrative and Public Law

Alasdair is frequently instructed in proceedings in the Administrative Court and Upper Tribunal including in actions against the immigration authorities, challenges to decisions of the Upper Tribunal and First-tier Tribunal, and challenges to decisions of the Legal Aid Agency. Alasdair acts in challenges to age assessments by local authorities in respect of child refugees and in challenges to trafficking decisions by the competent authority.

Cases include **SSHD v AS (Somalia) and others** [2011] EWCA Civ 1319, Times, January 2, 2012 (successful challenge in High Court to Tribunal's refusal of jurisdiction to hear appeal, upheld by Court of Appeal); **R (MM, GY & TY) v SSHD** [2015] EWHC 3513 (Admin) (claim for judicial review involving the unlawful refusal of British citizenship to the family members of a person alleged to be an extremist: junior counsel); and **R (Teluwo) v SSHD** [2009] EWHC 2762 (Admin), [2009] All ER (D) 135 (Nov) (mistakes by Home Office inadvertently misleading tribunal, causing unfairness).