

## Alasdair Mackenzie



Call: 2004

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### Profile

Alasdair is regularly instructed as sole or leading counsel in appeals to the Court of Appeal, the Upper Tribunal and the Special Immigration Appeals Commission 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 2024 edition, where he is described as a 'a titan of the Bar for immigration, human rights and public law'; 'a pleasure to work with and a brilliant legal mind'; and as 'meticulous, responsive and unflappable when faced with the need for cutting-edge solutions in urgent and novel circumstances'.

In previous editions of Chambers and Partners he was said to be 'an excellent strategist with first-class attention to detail', a 'superman in the courtroom' who 'works diligently for clients and is always willing to take on more complex cases and find innovative solutions', and as '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 was 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 the Legal 500, he is ranked in **Tier 1** as a leading junior, and it is said that he is ‘a phenomenal advocate’ who ‘is extremely thorough and is able to work to a very high standard under time pressure. His written work is first-class, being persuasive, detailed and accurate’. In past editions it was said that he has ‘unrivalled expertise’ and is ‘a standout of the immigration bar. Forensic in his approach, and a powerhouse of knowledge and a fearless advocate on behalf of his vulnerable clients’.

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 Business and Commercial

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

## 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.

In 2022 and 2023 he was instructed as junior counsel for one of the claimants (RM (Iran)) in the successful **challenges** to the Home Office's plan to remove asylum-seekers to Rwanda (AAA (Syria) and others), appearing at all stages of the proceedings including **in the Supreme Court**.

In 2023 he appeared as junior counsel in a number of cases involving deprivation of citizenship, including **E3, N3 & ZA v SSHD** [2023] EWCA Civ 26, which concerns whether a person who wins their appeal against deprivation has retained their citizenship throughout, and **Shyti v SSHD**[2023] EWCA Civ 770, which raises the question of whether an appellate tribunal should determine questions of fraud for itself or is restricted to a review of the Home Office's decision.

He was also instructed in 2023 in the lead challenge to the refusal of protection to a group of Tamils in Diego Garcia, which led to **adverse decisions being withdrawn** by the Commissioner of the British Indian Ocean Territory.

Alasdair has appeared in numerous Country Guidance cases in the Upper Tribunal. He was leading counsel for both 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), and in the Home Office's subsequent unsuccessful **application for permission to appeal**. He also appeared for one of the appellants in the previous Country Guidance case on Sri Lanka, **GJ (post-civil war: returnees) Sri Lanka** [2013] UKUT 319 (IAC) and in two previous cases on the topic.

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 2022 he was also leading counsel in an appeal raising, for what is thought to be the first time in any asylum case, the question of whether a person can be excluded from refugee status, on the grounds of involvement in war crimes, for providing intelligence to the LTTE during its bombing campaign in Colombo before the end of the Sri Lankan civil war.

He has played a major role in challenging the Home Office's policy of imposing fees for immigration applications. 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. He previously appeared in the original case on the lawfulness of the fees regime, **R (Osman Omar) v SSHD** [2012] EWHC 3448 (Admin). In 2021 he was instructed in a series of challenges which led the Home Office to **change** its policy on fee waivers for those applying from outside the UK.

He appeared in the Supreme Court as junior counsel in **Al-Sirri v SSHD** [2012] UKSC 54 [2013] 1 AC 745, 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 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, and in subsequent applications for permission to appeal to the Court of Appeal.

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 junior counsel for the first claimant in the leading case on the Home Office's legacy programme, **R (Geraldo) 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 **AE (Iraq) v SSHD** [2021] EWCA Civ 948 (Upper Tribunal not entitled to set aside FTT decision on the basis of disagreement over facts); **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); 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).

## 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, and has worked with Migrants Organise to improve the practical arrangements for incapacitous appellants in the Tribunal. 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.

## 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 **E3, N3 & ZA v SSHD** [2022] EWHC 1133 (Admin) (whether citizenship restored between a decision by the Home Office to deprive a person of citizenship and a withdrawal of that decision; junior counsel); a 2021 challenge to the refusal of the DVLA to issue a driving licence to an asylum seeker with current leave to remain, which was settled by the DVLA; **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); **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).