

**BETWEEN:-**

**MM (IRAN)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

---

**WRITTEN SUBMISSION ON BEHALF OF THE UNITED NATIONS HIGH  
COMMISSIONER FOR REFUGEES**

---

**1. Introduction**

1. The Office of the United Nations High Commissioner for Refugees ('UNHCR') has a direct interest in this matter, as the agency entrusted by the United Nations General Assembly with responsibility for providing international protection to refugees and other persons of concern, and, together with governments, for seeking permanent solutions for their problems.<sup>1</sup>
2. UNHCR intervenes, with the Court's permission, in light of its supervisory responsibility in respect of the 1951 Convention relating to the Status of Refugees ('the 1951 Convention') and its 1967 Protocol relating to the Status of Refugees ('the 1967 Protocol').<sup>2</sup> According to its Statute, UNHCR fulfils its mandate, *inter alia*, by, '[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto'.<sup>3</sup> UNHCR's supervisory responsibility is also reflected in both the Preamble and Article 35 of the 1951 Convention and Article II of the 1967 Protocol, obliging States Parties to cooperate with UNHCR in the exercise of its functions, including in particular

---

<sup>1</sup> UN General Assembly (GA), Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), at <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

<sup>2</sup> UNTS No. 2545, Vol. 189, p. 137 and UNTS No. 8791, Vol. 606, p. 267.

<sup>3</sup> See above footnote 1, at [8(a)].

to facilitate its duty of supervising the application of these instruments. In domestic United Kingdom law, UNHCR has a statutory right to intervene before the First Tier and Upper Tribunals (Immigration and Asylum Chamber).<sup>4</sup>

3. The United Nations General Assembly, by Resolution 428(V) of 14 December 1950, adopted the Statute of the Office of the UN High Commissioner for Refugees ('the Statute').<sup>5</sup>
4. Paragraph 1 of the Statute provides that UNHCR:

*'... shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.'* (emphasis added)

5. UNHCR submits in the present case that in determining whether a person is a refugee for the purposes of the 1951 Convention, the United Kingdom (UK) decision-maker must give considerable weight to, and seriously take into account, the fact that that person has been previously recognised by UNHCR under its mandate as a refugee (i.e. that he or she has 'mandate refugee status') when determining the risk and assessing the credibility of his or her claim for asylum protection.

## **2. The duties of UNHCR**

6. Paragraphs 6A and 6B of the Statute define the persons to whom the competence of UNHCR shall extend. Paragraph 6B provides that this competence shall extend to:

*'Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because*

---

<sup>4</sup> Amended Tribunal Procedure (Upper Tribunal) Rules 2008, in force since 15 February 2010.

<sup>5</sup> See above footnote 1.

*he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.'*

7. It is this provision that essentially defines whether a person such as the Appellant has mandate refugee status. It is accepted that this definition is slightly different from the refugee definition contained in the 1951 Convention and 1967 Protocol. Article 1 A (2) according to which:

*'...the term "refugee" shall apply to any person who ... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence ... is unable or, owing to such fear, is unwilling to return to it.'*

8. The definition in the Statute is both narrower and wider than the definition contained in the 1951 Convention/1967 Protocol. It is narrower because it does not include reference to membership of a particular social group and it is wider because it includes persons who had a well-founded fear of persecution.
9. When UNHCR determines refugee status under its mandate, it generally applies the eligibility criteria set out in Article 1A(2) of the 1951 Convention and the 1967 Protocol, which constitutes the later and more authoritative expression of the refugee concept. A person whose circumstances meet the 1951 definition is likely to also meet the Statute definition. However, when this is not the case (for instance, because the person had a well-founded fear of persecution), UNHCR will apply the Statute definition. It should be clear that in the determination of refugee status under UNHCR's mandate, the definitions are far from mutually exclusive.
10. In the years following the adoption of UNHCR's Statute, the United Nations General Assembly, with support from the Executive Committee of the High

Commissioner's Programme, and the United Nations Economic and Social Council extended UNHCR's competence *ratione personae*.<sup>6</sup> This was done not by amending the statutory refugee definition contained in the Statute of UNHCR and in the 1951 Convention/1967 Protocol, but by entrusting UNHCR with protecting and assisting particular groups of people whose circumstances may not necessarily have met the definition in the Statute or the 1951 Convention/1967 Protocol.<sup>7</sup> In addition, UNHCR has adopted the usage of a wider refugee definition, based on the definitions in regional instruments such as the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa<sup>8</sup> (the 'OAU Convention') and the 1984 Cartagena Declaration on Refugees.<sup>9</sup> In practical terms, this has extended UNHCR's mandate to a variety of situations of forced displacement resulting from conflict, indiscriminate violence or public disorder. In light of this evolution, UNHCR considers that serious (including indiscriminate) threats to life, physical integrity or freedom resulting from generalised violence or events seriously disturbing public order are valid reasons for international protection under its mandate.<sup>10</sup>

11. It is generally only where States have not yet acceded to the international refugee instruments, or if they have acceded but have not yet established

<sup>6</sup> See UNHCR, *Note on International Protection*, submitted to the 45th session of the Executive Committee of the High Commissioner's Programme, UN Doc. A/AC.96/830, 7 September 1994, at <http://www.unhcr.org/cgi-bin/telex/vtx/refworld/rwmain?docid=3foa935f2>, paras. 31-32 and note 8: With respect to the mandate of UNHCR, successive GA and ECOSOC resolutions have had the effect of extending the High Commissioner's competence to refugees fleeing armed conflict and generalized violence. Using a variety of formulations, the GA has regularly called upon the High Commissioner 'to continue his assistance and protection activities in favour of refugees within his mandate as well as for those to whom he extends his good offices or is called upon to assist in accordance with relevant resolutions of the General Assembly,' see, e.g., GA res. 3143 (XXVIII), 14 Dec. 1973. Other resolutions refer, e.g., to 'refugees for whom [the High Commissioner] lends his good offices', GA Res. 1673 (XVI), 18 Dec. 1961; 'refugees who are of [the High Commissioner's] concern', GA res. 2294 (XXII), 11 Dec. 1967; 'refugees and displaced persons, victims of man-made disasters', ECOSOC Res. 2011(LXI), 2 Aug. 1976, endorsed by GA res. 31/55 of 30 Nov. 1976; 'refugees and displaced persons of concern to the Office of the High Commissioner', GA res. 36/125, 14 Dec. 1981; 'refugees and externally displaced persons', GA res. 44/150, 15 Dec. 1989; 'refugees and other persons to whom the High Commissioner's Office is called upon to provide assistance and protection', GA res. 48/116, 20 Dec. 1993).

<sup>7</sup> In such cases, the institutional competence of UNHCR is based on para. 9 of its Statute: 'The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.'

<sup>8</sup> Convention Governing the Specific Aspects of Refugee Problems in Africa (of the Organisation of African Unity (now African Union)), 10 September 1969, 1001 UNTS 45, at <http://www.unhcr.org/refworld/docid/3ae6b36018.html>.

<sup>9</sup> Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984 at <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>.

<sup>10</sup> UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, Executive Committee of the High Commissioner's Programme, Standing Committee, UN Doc. EC/55/SC/CRP.16, 2 June 2005, para. 26, at <http://www.unhcr.org/refworld/docid/47fdb49d.html>.

national procedures, or these procedures are not fully functioning or fair, that UNHCR may be called upon to undertake individual refugee status determination and recognise refugees under its mandate. This function, therefore, can be exercised either in a State which is, or a State which is not, a signatory to the international refugee instruments, and it may be done with the explicit or implicit consent of the authorities. In these situations, UNHCR conducts refugee status determination for protection purposes (in order to protect refugees from *refoulement*, detention, etc.) and/or to facilitate a durable solution.

12. UNHCR may recognise refugees on a group basis or individually. The need for a group-based determination results from large-scale influxes where individual determination is normally impracticable and where there are often urgent protection and assistance needs which have to be met. Group determination and subsequent *prima facie* recognition is based on an evaluation of the objective situation in the country of origin which gave rise to the exodus.<sup>11</sup> In some situations, it may be possible to take a *prima facie* group approach, if the entire group has been displaced under circumstances indicating that individual members of the group could be considered as refugees. As each member of the group is regarded *prima facie* as a refugee an in-depth detailed individual refugee status determination is not necessary; an interview to determine membership of the group, and where applicable the absence of exclusion grounds, would suffice. Where such individuals subsequently apply for asylum elsewhere, the case may need to be considered anew through an individual assessment, taking into account the objective circumstances giving rise to the displacement and up-to-date country of origin information.

13. As noted above, paragraph 1 of the Statute imposes a duty upon UNHCR to provide protection to refugees. Paragraph 8 of the Statute sets out the other duties of the High Commissioner in relation to ‘the protection of refugees falling under the competence of his Office’. Amongst the other duties of UNHCR, are the following:

- a. Supervising the application of international conventions for the protection of refugees (Article 8(a));

---

<sup>11</sup> It should also be pointed out that in certain situations there is not a formal determination of *prima facie* refugee status for the whole group but its members are, nonetheless, permitted to remain in the country.

- b. Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities (Article 8(c));
- c. Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States (Article 8(d)); and
- d. Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement (Article 8(e)).

### **3. The effect of a prior recognition of mandate refugee status on the determination of a person's claim for international protection ('asylum claim')**

14. It is accepted that a prior recognition of 'mandate refugee status' does not bind a State to recognise as a refugee the person who has benefited from that earlier recognition. However, it is submitted that in determining the asylum claim of a person whose refugee status has been recognised by UNHCR, the UK decision-maker must give that prior recognition considerable weight and must seriously take it into account when determining the risk and assessing credibility. The fact that a person has moved to another country since being granted mandate status, does not mean that this status is forfeited or lost and should therefore be discounted.<sup>12</sup> The definition of refugee status in paragraph 6B of the Statute makes it clear that it is a status that is dependent upon a person's past or present fear of persecution. A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognised because he is a refugee.<sup>13</sup>

15. This submission is consistent with the approach of:

---

<sup>12</sup> In granting permission to the Appellant to appeal to the Court of Appeal, Lord Justice Jackson asked at para. 16 of his judgment, 'what is the effect in this country of a decision by the UNHCR that an individual overseas, qualified for mandate refugee status, in circumstances where the individual arrives here unlawfully, forfeits that status and makes a fresh application for asylum?'. While accepting that the UK decision maker must make its own determination of the individual's asylum claim, UNHCR wishes to make clear that a person who has moved to another State after being granted mandate status, does not thereby forfeit or lose his or her mandate status.

<sup>13</sup> See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992, at <http://www.unhcr.org/refworld/docid/3ae6b3314.html>, para. 28, and UNHCR Statute.

- i) the Immigration Appeal Tribunal ('the IAT'), as it then was, in determining the asylum claim of a person previously recognised as a refugee by another State;
- ii) the European Court of Human Rights to an earlier recognition of mandate refugee status;
- iii) the Committee Against Torture to an earlier recognition by a State of refugee status; and
- iv) other selected national jurisdictions.

16. The submission gives due weight to the extra-territorial effect of the recognition of both refugee status and mandate status.

The extra-territorial effect of the recognition of refugee status

17. It is submitted that recognition of refugee status in one State has 'extraterritorial effect' in another.

18. The UNHCR Executive Committee Conclusion on the 'Extraterritorial Effect of the Determination of Refugee Status' (No. 12 (XXIX) (1978)) states:

*The Executive Committee,*

*(a) Considered that one of the essential aspects of refugee status, as defined by the 1951 Convention and the 1967 Protocol, is its international character;*

*(b) Recognized the desirability for maintenance and continuity of refugee status once it has been determined by a Contracting State;*

*(c) Noted that several provisions of the 1951 Convention enable a refugee residing in one Contracting State to exercise certain rights-as a refugee-in another Contracting State and that the exercise of such rights is not subject to a new determination of his refugee status;*

*(d) Noted that persons considered as refugees under Article 1 A (1) of the Convention maintain their refugee status unless they fall under a cessation or exclusion clause;*

*(e) Noted that refugees, holders of a Convention Travel Document issued by one Contracting State, are enabled to travel as refugees to other Contracting States;*

*(f) Considered that the very purpose of the 1951 Convention and the*

*1967 Protocol implies that refugee status determined by one Contracting State will be recognized also by the other Contracting States;*

*(g) Recognized, therefore, that refugee status as determined in one Contracting State should only be called into question by another Contracting State in exceptional cases when it appears that the person manifestly does not fulfil the requirements of the Convention, e.g. if facts become known indicating that the statements initially made were fraudulent or showing that the person concerned falls within the terms of a cessation or exclusion provision of the 1951 Convention; ...' (emphasis added)*

19. The approach in Conclusion No. 12 is consistent with the principle that the recognition of refugee status is a declaratory act (*Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*<sup>14</sup> and Recital 14 of Council Directive (2004/83/EC).<sup>15</sup> Considering that one of the essential aspects of refugee status is its international character, the recognition of mandate refugee status by UNHCR in one State should be given considerable weight and taken seriously into account in and by another State. This is demonstrated by the fact that Resolution 428(V) expressly requires States to cooperate with UNHCR. It is also demonstrated by the fact that UNHCR decision-makers apply the definition in the 1951 Convention and its 1967 Protocol.

#### The approach of the IAT to an earlier grant of asylum in another State

20. The approach of the IAT to a person previously recognised as a refugee by another State can be found in *Babela v. Secretary of State for the Home Department* [2002] UKIAT06124 and *Secretary of State for the Home Department v. KK* [2005] UKIAT00054. It is broadly consistent with the UNHCR Executive Committee Conclusion summarised above.
21. In *Babela*, the IAT applied the 'extraterritoriality' principle, that refugee

---

<sup>14</sup> See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, para. 28.

<sup>15</sup> Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted, 19 May 2004, 2004/83/EC, at <http://www.unhcr.org/refworld/docid/4157e75e4.html>.



status determined in one contracting State should only be questioned by another contracting State in exceptional circumstances (paras. 28 and 29). *Babela* was then considered in *KK*.

22. It should be noted at the outset that in both *Babela* and *KK*, the IAT accepted that an earlier grant of asylum in another country (under Article 1A(2) of the 1951 Convention in *Babela* and Article 1.1 of the OAU Convention, in *KK*) was the appropriate starting point for the consideration of the claim in the UK, and that the earlier grant should be given great weight.
  
23. In *Babela*, the Appellant had left Congo (Brazzaville) in 1994 and had entered South Africa, where he was granted asylum in 1998. He subsequently entered the UK, where his asylum claim was refused. The adjudicator dismissed his appeal. The IAT stated:
  - a. That the appropriate starting point in looking at the Appellant's asylum application should have been the fact that he already had refugee status. A 'great deal' of weight should be put on this previous grant (para. 28);
  - b. That it noted UNHCR's representations in that case that refugee status determined in one contracting State should only be called into question by another contracting State in exceptional circumstances. Therefore, the Appellant's previous refugee status should not be questioned unless there is a very good reason for doing so. Where there is no such reason, the Appellant has *prima facie* made out his entitlement to refugee status in the UK (paras. 28 and 29);
  - c. However, this *prima facie* case is rebuttable. The burden of proof is on the Respondent (para. 29); and
  - d. To deal with the burden of proof in this way satisfied firstly, considerations under the 1951 Convention as to whether or not a cessation clause applies (Article 1(C) of the Convention), and secondly, the 'very persuasive' UNHCR guidance that refugee status should not be lightly tampered with, but should only be reviewed or annulled on the most substantial and clear grounds (para. 30).
  
24. The IAT rejected the Respondent's argument that it would never be able to satisfy a burden of proof where he did not know the basis upon which the refugee status was granted initially. The IAT stated that there was nothing in the papers to suggest that the Appellant's claim to asylum was on any basis

other than that upon which he had claimed it in the UK. (para. 31).

25. The IAT stated that it was not concerned with changes between 1994 (when the Appellant left Congo (Brazzaville) and the date of determination, but with changes between 1998 and the determination. It held that nothing in the objective material enabled the Respondent to satisfy the burden of proof required to satisfy the IAT that the cessation clauses applied. The Respondent had not satisfied the burden of proving that the circumstances of persecution had ceased to exist. (para. 32)

26. *Babela* was considered in *KK*. In *KK*, the Claimant had been granted refugee status by Zimbabwe under the OAU Convention. The IAT stated at paras. 17 to 20:

*‘17. ... Where the claimant can show, to a reasonable degree of likelihood, that there was a grant of asylum and that the grant of asylum was made on the same grounds as those which engage the Geneva Convention, the position is as follows.*

*18. The earlier grant of asylum is not binding, but it is the appropriate starting point for the consideration of the claim; the grant is a very significant matter. There should be some certainty and stability in the position of refugees. The Adjudicator must consider whether there are the most clear and substantial grounds for coming to a different conclusion. The Adjudicator must be satisfied that the decision was wrong. The language of Babela is that of the burden of proof: their status is prima facie made out but it can be rebutted; the burden of proof in so doing is on the Secretary of State. We do not think that that is entirely satisfactory as a way of expressing it and it leaves uncertain to what standard the burden has to be discharged and what he has to disprove. The same effect without some of the legal difficulties is established by the language which we have used.*

*19. But the important point is that it does not prevent the United Kingdom from challenging the basis of the grant in the first place. It does not require only that there be a significant change in circumstances since the grant was made. Clear and substantial grounds may show that*

*the grant should never have been made by the authorities; it may be relevant to show that the authorities in the country in question lacked relevant information or did not apply the Geneva Convention in the same way. Exclusionary provisions may be relevant. The procedures adopted for examination of the claim may also be relevant. Considerations of international comity may be rather different as between EU member states and those with less honest administrations or effective legal systems.*

*20. Where however the Adjudicator is not satisfied that the foreign grant was wrongly made, if the Claimant is to fail in his claim in the United Kingdom because of a change of circumstances, this is equivalent to the application of a cessation provision and should be considered in a like manner.'*

#### The approach of the European Court of Human Rights to an earlier grant of mandate refugee status

27. The European Court of Human Rights, in determining whether an individual is entitled to protection under Article 3 of the 1950 European Convention on Human Rights, has given 'due weight' to UNHCR's recognition of that person's mandate refugee status.

28. For example, in *Abdolkhani and Karimnia v. Turkey*, Application No. 30471/08, the applicants, originally from Iran, had been recognised as mandate refugees whilst in Iraq and had then entered Turkey. The Court, in determining whether the applicants' removal would expose them to treatment prohibited by Article 3, stated that the Court must give 'due weight' to UNHCR's recognition of mandate status. Thereby, the Court considered that UNHCR interviewed the applicants and so had 'the opportunity to test the credibility of their fears and the veracity of their account' (para. 82).<sup>16</sup>

---

<sup>16</sup> See also UNHCR, Written Submission by the Office of the United Nations High Commissioner for Refugees in the Case *Abdolkhani and Karimnia v. Turkey* (Application No. 30471/08), January 2009, at <http://www.unhcr.org/refworld/docid/4991ad9f2.html>, which includes information on procedural rules and principles governing the UNHCR's refugee status determination, in particular information as to how UNHCR in Turkey proceeds with the asylum applications in Turkey. See also, ECtHR, *Jabari v. Turkey* (Application No. 40035/98), 11 July 2000, para. 41; *Dbouba v. Turkey* (Application No. 15916/09), 13 July 2010, para. 42; *M.B. and Others v. Turkey* (Application No. 36009/08), 15 June 2010, para. 33; and *Ahmadpour v. Turkey*, Application No. 12717/08), 15 June, paras. 39 and 40, at: <http://www.unhcr.org/refworld/docid/4c179ffa2.html>.

## The approach of the Committee Against Torture to prior recognition of refugee status

29. In *Pelit v. Azerbaijan*, CAT/C/38/D/281/2005, the United Nations Committee Against Torture considered the complainant's claim that if forcibly removed to Turkey, she would face torture in violation of Article 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>17</sup> The complainant was a Turkish national, who had fled to Germany, where she had been granted refugee status, before entering Azerbaijan. The Committee held at para. 11 that her refugee status remained valid at the time of her deportation from Azerbaijan to Turkey, relying on the principle of the extraterritorial effect of the determination of refugee status, as set out in UNHCR Executive Committee Conclusion No. 12. It found that Azerbaijan had not shown why this principle was not respected in the complainant's case, in circumstances where the general situation of persons such as the complainant and her own circumstances, raised real issues under Article 3. The Committee considered that the way Azerbaijan had handled the complainant's case amounted to a breach of her rights under Article 3.

### Law and practice in national jurisdictions

30. National practice shows that there is not a common approach among European Union (EU) States or more broadly in relation to the domestic effect of recognition of mandate status by UNHCR. Annex 1 to this submission sets out applicable national legislation (where this exists), as well as decisions and practice in national jurisdictions regarding the situation of persons previously recognised under UNHCR's mandate who seek asylum in another country.

31. States adopt a variety of approaches. Nevertheless, the fact of recognition by UNHCR can generally be seen to carry considerable weight. The situation is clearest in Bulgaria and France, where legislation stipulates that a refugee recognised under UNHCR's mandate is automatically to be recognised as a refugee.<sup>18</sup> Similarly, in the Netherlands, the Aliens Circular<sup>19</sup> provides

---

<sup>17</sup> *Elif Pelit v. Azerbaijan*, CAT/C/38/D/281/2005, UN Committee Against Torture (CAT), 29 May 2007, at: <http://www.unhcr.org/refworld/docid/47975b01c.html>.

<sup>18</sup> See, *Law on Asylum and Refugees (as amended in 2007)* [Bulgaria], 16 May 2002, Article 10, at <http://www.unhcr.org/refworld/docid/47f1faca2.html> and *Code de l'entrée et du séjour des*

protection from removal to the country of origin for individuals whom UNHCR's representation in the Netherlands states are refugees.

32. In terms of national practice as opposed to legislation, quite a number of States transfer mandate refugees seeking asylum in their State to a third State where, for instance, the Dublin II Regulation<sup>20</sup> or safe third country provisions apply. The fact of mandate recognition by UNHCR also serves as a mechanism for ensuring that such cases are not channelled through procedures for applications considered manifestly unfounded. In others, it is regularly used in the context of credibility assessment. States appear most often to assess cases differently from UNHCR where circumstances have changed in the country of origin since UNHCR's original recognition of status or where concerns about credibility and/or exclusion arise. Generally, however, most countries grant UNHCR mandate refugees some form of subsidiary protection if they are not confirmed as refugees as such.

#### **4. Assessing the credibility of a person with mandate refugee status**

33. It is submitted that in assessing the credibility of a person claiming asylum who has previously been recognised as a mandate refugee, the UK decision-maker must first give due weight to that prior recognition. The decision-maker must not make a finding as to the person's credibility and only then consider the effect of the recognition of mandate refugee status.

34. This is so in the same way that an adjudicator determining an asylum claim should not make a finding as to credibility before considering any medical evidence. That is because the fact that a body with particular experience in the assessment of refugee status has assessed the claim as credible suggests that it is in fact credible.

35. In *Virjon B v. Special Adjudicator* [2002] EWHC 1469 (Admin), Mr Justice Forbes held that it 'was putting the cart before the horse' for the Adjudicator to use her adverse findings of credibility with regard to the claimant and his

---

*étrangers et du droit d'asile (as amended in 2005)* [France] 22 February 2005, Livre VII, at <http://www.unhcr.org/refworld/docid/47c6c36c5b9e.html> respectively.

<sup>19</sup> Article C2/2.13. See also the Aliens Act, at <http://www.legislationline.org/documents/id/4680>

<sup>20</sup> Under Council Regulation (EC) No. 343/2003, 18 Feb. 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, at <http://www.unhcr.org/refworld/docid/3e5cfc24.html> (hereafter the 'Dublin II Regulation').

wife as the means to reject the medical evidence. The medical evidence should have been taken into account before the adjudicator came to any conclusion as to the credibility of the claimant and his wife. (para. 21)

36. Similarly, in *Diaby v. Secretary of State for the Home Department* [2005] EWCA Civ 651, the Court of Appeal held that the Adjudicator had erred in law by stating ‘As I do not find [the Appellant] to be a credible witness, I am unable to attach much weight to the contents [of the medical evidence]’. The Court held that the Adjudicator should have given proper consideration to the medical reports before forming a view as to the Claimant’s credibility. (paras. 6 and 34)

37. The approach in the case law described above is consistent with the general approach to credibility described by Sedley LJ in *Karanakaran v. Secretary of State* [2000] 3 All ER 449 in the following terms:

*‘decision-makers, on classic principles of public law, are required to take everything material into account. Their sources of information will frequently go well beyond the testimony of the applicant and include in-country reports, expert testimony and – sometimes – specialised knowledge of their own (which must of course be disclosed). No probabilistic cut-off operates here: everything capable of having a bearing has to be given the weight, great or little, due to it.’*

38. When assessing credibility, UNHCR thus submits that a determination of mandate refugee status is an important source of information, to be taken into account by the UK decision-maker.

## **5. Conclusions**

39. In light of the matters above, it is submitted that in determining whether a person is a refugee for the purposes of the 1951 Convention and/or 1967 Protocol, the UK decision-maker must give considerable weight to, and seriously take into account, the fact that that person has been previously recognised by UNHCR under its mandate as a refugee (i.e. that he or she has ‘mandate refugee status’) when determining the risk and assessing the credibility of his or her claim for asylum.

HUGH SOUTHEY QC  
RICHARD REYNOLDS  
TOOKS CHAMBERS

3 August 2010