Neutral Citation Number: [2013] EWHC 2415 (Admin)

Case No: CO/8755/2012

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 August 2013

Before: **His Honour Judge Anthony Thornton QC**

Sitting as a deputy High Court Judge

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Between:

(1) C1 **(2) C2** **(3) C3**	**Claimants**
- and -	
Secretary of State for the Home Department	**Defendant**

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Mr Duran Seddon (Instructed by Sookias & Sookias) **appeared for the Claimant**
Ms Deok Joo Rhee (instructed by the Treasury Solicitor) appeared for the **Defendant**

Hearing date: 28 June 2013

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JUDGMENT

HH Judge Anthony Thornton QC:

Introduction

1. This claim for judicial review is concerned with the scope of the Secretary of State for the Home Department's ("SSHD") Mandate Refuge policy and the manner in which she reached her decisions in three related cases decided under that policy.

2. **Anonymity order.** The three claimants have not yet applied for anonymity orders preventing the identification of the three claimants or of their relatives since, if any of their relatives are identified, it is quite possible that one or more of the claimants will also be identified. The case is one of considerable sensitivity for each of the claimants and their family members and their identification may well interfere with their private and family lives. I therefore order that the parties and their family members referred to in this judgment shall be known for all purposes connected with these proceedings by the letter or letters provided for in this judgment. This order is made under CPR 39.2(4).

3. **The challenged decisions.** The first claimant ("C1") and her daughter, the second claimant ("C2") and son, the third claimant ("C3") are challenging the SSHD's decisions dated 15 August 2012 to maintain her two earlier decisions dated 17 May 2012 and 27 July 2012 to refuse applications made on behalf

of C1 and C2's to accept them for resettlement in the United Kingdom as mandate refugees. A third related application made on behalf of C3 for resettlement was permitted in a decision dated 17 May 2012. C3 now challenges the refusal decisions concerning his mother and sister on article 8 grounds. The decision-making process in the case of C1 and C2 involved an initial refusal decision followed by a reconsideration decision maintaining the initial decision followed by a second reconsideration decision that again maintained the initial decision. This decision-making process was in reality a continuum and the parties have treated the decision in each case to have been a composite decision in three parts that was reached on 15 August 2012. In this judgment, I will approach the decisions for C1 and C2 in the same way.

4. The claimants filed this claim on 16 August 2012 and were granted permission to proceed by HH Judge Keyser QC on 5 February 2013. They challenge the two decisions relating to C1 and C2 on three grounds, namely that they:

(1) Unlawfully, irrationally and unreasonably misapplied the SSHD's mandate policy;

(2) Were contrary to the SSHD's obligations imposed by her duty to co-operate with the Office of the United Nations High Commissioner for Refugees ("UNHCR") and

(3) Did not show respect for and interfered with their respective rights to a private and family life.

In his submissions, Mr Duran Seddon, counsel for the claimants, split these grounds into four parts but I have merged all aspects of the decision-making process into a composite ground one.

5. This judgment first sets out the factual background to these three cases, then explains the background to the mandate refugee policy and then addresses each of the three grounds of challenge.

Factual background

6. **C1's early years.** C1 was born in Tehran on 2 September 1963. C1's father ("F") married her mother ("M") in 1944. F died in 2002 and M is now aged 86. Between 1950 and 1964, F and M had three sons and five daughters. Three of their sons and three of their daughters ("S1, S2 and S3") are older than C1 and one of their daughters ("S4") is younger than her. For some years before 1975, F was an army officer in the army of the old regime and frequently spent periods of time in England.

7. **C1's life in England 1975 – 1977**. F and their three sons and S2 and C1 were granted the right to live permanently in England in 1975. The evidence did not explain the background to this but it would seem that F was granted asylum as a result of his high-ranking role in the army of the old regime and M and their five children were granted permanent leave to remain here as his dependents and family members. F, M and their three sons were subsequently granted British nationality. The family lived in the house that F had bought in Basildon, Essex which became C1's family home for the next 2½ years. C1 was enrolled at Millhouse Junior School, Basildon between 1975 and 1977 and completed Years 6 and 7 of the English school curriculum. S4 must also have enrolled at the same school since she is one year younger than C1. Meanwhile, S1, S2 and S3, who were all in their 20s, remained in Iran.

8. In the winter of 1977, M made what she planned to be a short visit to Iran taking C1 and S4 with her. The visit was mainly to visit C1's three sisters including S2 and to obtain an Iranian passport for C1 and S4 since, previously, they had always travelled on F or M's Iranian passports. However, M, C1 and S4 were

stranded in Iran since they were unable to obtain their own passports due to their being caught up in the pre-revolution turmoil in Iran and were unable to leave the country. M remained in Iran with her two young daughters to look after them.

9. **F and M and C1's three brothers**. F lived in England until he died of cancer in 2002. Save for the period between 1977 and 1979, M has lived in England since 1975. C1's three brothers have also lived in England ever since they first arrived here. All became British nationals after being granted asylum. Two of C1's brothers have married and each of those two brothers has had one child, both of whom are British nationals living in England.

10. **C1's return to Iran and marriage**. In 1979, M decided that she had to return to England in order to live with F and look after one of their sons because he had been diagnosed with cancer. She was able to leave Iran because she was a British national. She left C1 and S4 in the care of S2 who became a mother-figure to both of them. It was possible for C1 to keep in regular touch with her family in England and she spoke to them by telephone on an almost daily basis.

11. In September 1982, when she was 19, C1 married H who is five years older than her. C1 gave birth to her son C3 on 20 August 1983. H owned and managed a small textile factory in Iran. C1 visited all her family in England with C3 for about three months in 1986 in order that her second child with whom she was pregnant could be born in England and she stayed with her parents for about six months and visited all her other family members. Her daughter C2 was born on 22 August 1986 in a London maternity hospital and her birth is registered in London.

12. **S2's emigration to England in 1984.** S2 left Iran in 1984 and joined F and M in England. She has lived in England ever since. This also appears to have been a politically-induced asylum-seeking move. She became a British national and married but is now widowed. She had three children, two of whom are British and are living in England and the third has emigrated to the United States. S2's middle child has, in turn, had two children and both of these are British nationals and are also living in England.

13. **C1's life in Iran 1983 – 2005.** C1, H, C2 and C3 lived as a family of four in Tehran. C1 throughout her married life in Iran kept in regular touch with her father whilst he was alive, her mother and her other family members living in England. These family members rarely visited Iran given her father's prominent role in the army of the old regime, their subsequent adoption of British nationality and the many former colleagues of F who had been executed by the new regime after the Revolution. However, her mother and one of her brothers visited her in 1991 for about 3 months and one of her sisters-in-law visited her and her family once every two years.

14. In 1998, she opened a beauty salon in West Tehran with the lease being in H's name since no landlord would have accepted a woman as a tenant of a business premises. The salon turned into a successful business and, by 2001, she was employing five workers. Her clientele was largely drawn from the liberal, westernised professional Muslim middle class and C1's evidence during her subsequent asylum appeal was to the effect that the authorities targeted her salon and kept it under surveillance because of their disapproval of salons of that kind. She claimed to have been accused and severely treated on a number of occasions between 1999 and 2004 with, in particular, false allegations that males had been permitted to enter the salon. C1 had been born

but had only nominally practiced as a Muslim and was not particularly interested in religion until her first contact with Christianity in 2004.

15. C1 visited her family members living in England in 2000. This was her first visit to her family in England since 1986. She visited England again in 2002 and 2003. On each of these visits, she was accompanied by one or both of her children. C2 had also visited England in 2004 to stay with her maternal grandmother.

16. **H's family's emigration to England.** H's mother, C1's mother-in-law, ("ML"), is now widowed and aged 82. She had seven children including H who is her eldest child. She and her late husband moved permanently to England in about 1993 and two of her sons moved here in, respectively, 1979 and 2000. The reasons for these moves were not to be found in the evidence but the timing of the moves in the period following the revolution in Iran suggests that the family members, and in particular H's deceased father, claimed asylum in England for fear of persecution and for political reasons. All four family members acquired British nationality and two of her other children are now permanently resident outside Iran, one of these being a British national. Five of ML's children, including H, have had children and ML now has nine grandchildren including C2 and C3. All of her nine grandchildren except S2 are living in England. Seven of these are British nationals and C3 has applied for British nationality since his being granted indefinite leave to enter as a refugee in 2012. Thus, only C2 of ML's grandchildren is currently not living in England and she cannot apply for British nationality unless and until she is permitted to settle in England.

17. **C1, C2 and C3's Christian conversion and claim for asylum**. All three claimants were born and brought up as Muslims but none of them were ever active adherents of that religion. In November 2004, C1 was introduced to Christianity by one of her customers at a time when she was depressed and attempting to give up smoking. She started to attend a weekly clandestine prayer group held in private homes by adherents of Jama-at-Rabane or, in English, "The Assembly of God". All members of this group were converts. During each meeting, the group studied the Bible, had group discussions of their experiences and prayed and sang hymns together. The group leader was a teacher or preacher within the Assembly of God and travelled to Turkey for this purpose but the other members neither proselytised nor practised their religious beliefs publicly. In December 2004, C1 "confessed her sin"[1] and in January 2005 she had an "out of body experience"[2]. She was given a Bible in Farsi by her group and also acquired DVDs concerned with her newly acquired Christian faith. She was not, however, baptised whilst a member of this group.

18. According to C1's unchallenged evidence given at her asylum appeal, H had discovered her interest in Christianity when he found her books and literature in the house and caught her praying. He was not happy about this but regarded her choice of religion as being a matter for her to decide upon. The same went for C2's interest in Christianity. C2, who was then aged 18 and had just started a university BA course, learnt of her mother's initial attendance with this group and volunteered to attend the second and subsequent meetings attended by her mother. She also started to study the Bible privately. C3, who was reaching the end of his university degree course, did not become involved with any aspect of Christian belief or following until he arrived in England in 2005. He was, however, arrested in February 2005 for holding hands with his then

[1] As it was described in the UNHCR Resettlement Registration Form.

[2] As it was described in paragraph 19(x) of the AIT decision..

fiancée in the street and the couple were made to sign statements confirming that they would not commit this offence again. C1 soon after this episode started to talk to C3's fiancée and her paternal cousin about Christianity but neither had started to attend her group's weekly sessions by the time the claimants left for England on 13 July 2005.

19. C1, C2 and C3 travelled to London from Iran on visitors' visas in order to visit M and their other maternal and paternal family members. C1 and C2 intended to visit England for two months and C3 for one month since he needed to return to work with his father. However, he extended his visit when in England in order to return to Iran with C1 and C2. On 14 September 2005, C1 received a telephone call from one of her two brothers-in-law still living in Iran and then a call from S3 telling her that it would be better for all three claimants to stay where they were in England. It seems that H had been arrested earlier that day after the salon had been raided and the authorities had made accusations that it had been run as a brothel. The family home had also been searched and C1 and C2's Bibles, Christian-related DVDs, notes and other indications of Christian conversion had been found and seized. Also seized were some political leaflets in C3's possession that he had come by during his brief involvement in student political activities whilst an undergraduate. H was said to have been detained for one week and to have acquired his release by bribing the authorities. C1 was told that when her brother-in-law visited H in custody, he was shown papers which appeared to be arrest warrants for C1, C2 and C3 who the authorities were accusing of being Christian converts and of preaching and converting others to Christianity.

20. The three claimants then took legal advice and each claimed asylum on 20 September 2005 on the basis of their well-found fear of persecution in Iran for Christian activities. They also had additional fears of persecution arising from the authorities' perception that they had committed moral crimes associated with C1's salon that they had been wrongly accused of and additionally, in C3's case, crimes associated with his student political activities.

21. **The claimants' asylum claims.** The claimants' asylum applications involved a long and ultimately unsuccessful series of applications, hearings and decisions. They each had separate screening interviews on 27 September 2005 and substantive asylum interviews on 4 October 2005. The SSHD refused their respective asylum applications in decisions dated 12 October 2005 which also contained proposals for their removal to Iran. The applications had been based on claims that each was a refugee entitled to protection, to humanitarian protection and to protection under articles 2 and 3 of the European Convention for the Protection of Human Rights. Each claimant appealed and, following a joint hearing, each appeal was dismissed on asylum and human rights grounds on 10 January 2006. Each claimant applied for a reconsideration of those dismissal decisions which was granted on 31 January 2007. On 19 February 2007, at the first stage of the reconsideration, it was ordered that the Immigration Judge had failed to make sufficiently clear and adequate findings of fact in each case and that each appeal should be reconsidered. The joint reconsideration hearing took place on 24 July 2007 and each claimant's appeal was again dismissed by the Asylum and Immigration Tribunal ("AIT") in a lengthy decision[3] dated 13 September 2007. The claimants applied for permission to appeal to the Court of Appeal and that application was dismissed by the Court of Appeal on 4 June 2008. The Claimants applied under Rule 39 of the Rules of the European Court of Human Rights for orders preventing

[3] 106 paragraphs in 54 pages.

their removal to Iran and these applications were dismissed on 17 December 2008. On 23 December 2008, each claimant through their solicitors made a fresh claim for asylum to the SSHD in reliance on the Apostasy Law that had been passed in Iran on 19 September 2008 which was said to have the effect that each would be charged with apostasy on their return. These claims were refused by the SSHD in a decision dated 28 December 2008 and the claimants were removed to Iran on the same date[4].

22. **The claimants' time in England: July – September 2005.** Between July 2005 and September 2005, the claimants lived with M in her small flat in London. The claimants were in the UK as visitors and they fulfilled the object of their visit which was to visit their many relatives here. Their visit was nearing its close when the claimants received news by telephone on 14 September 2005 from one of H's brother's still resident in Iran that H had been arrested in connection with a moral offence committed in C1's salon whose lease was in H's name and their house had been searched and Bibles, other tracts and documents showing C1 and C2's Christian conversion and adherence to the Christian faith were discovered and seized. The claimants each claimed asylum on 20 September 2005 and from that date until their removal remained in the UK as asylum seekers.

23. **ICF Church Chiswick: September 2005 – April 2006.** C1 and C2 sought out the Iranian Christian Fellowship ("ICF") Church in Chiswick soon after they had claimed asylum on 20 September 2005. There was a possible conflict of evidence as to when the claimants first made contact with the ICF Church which was their place of worship whilst they lived with M in her flat in Kilburn, London. C1had stated in her asylum interview that the first contact was in October 2005 whereas the Pastor of the Church who gave evidence at the claimants' asylum appeal hearing stated that his recollection they had first started to attend that Church soon after that had first arrived in the UK in August or September 2005. The Pastor's recollection was that the claimants had sought the Church out soon after they had first arrived in the UK. The totality of the evidence summarised in the AIT decision suggests that the claimants first approached the ICF soon after claiming asylum on 20 September 2005 when their status changed from visitors to asylum-seekers. Given that they had originally visited the UK for a two-month extended holiday to visit their many relatives, it was not surprising that they had not searched out the ICF Church prior to their claiming asylum despite C1 and C2's recent conversion to Christianity. Corroboration that C1 and C2 were genuine recent converts to Christianity who had sought out the ICF because of their commitment to that conversion was provided by the evidence that the Senior Pastor had had a chance meeting with the leader of C1's Tehran Christian group when both were attending an ICF meeting in Turkey who had confirmed to him that C1 had been a member of the clandestine Assembly of God group in Tehran that she organised.

24. The ICF was, according to the Pastor's evidence[5], formed in 1983 and officially constituted in 1987 in a building in Chiswick, West London. It seems that, by 2009, it also had a church building in Barnet[6]. It was a small church whose membership consisted mostly of Iranians. In 2007 it had about 150 Iranian members and 50 Armenian and Assyrians who had been members of Protestant Churches in Iran. It was funded entirely by its membership and it had contacts with the Assembly of God in Iran and with ICF Churches in Birmingham

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[4] The basis of the AIT's and the Court of Appeal's respective decisions are summarised in paragraphs 36 - 40 below.

[5] Paragraph 80 of the AIT decision.

[6] "To whom it may concern" letter from the ICF Senior Pastor dated 17 July 2009.

and Glasgow but was a separate and distinct Church on its own with a Senior Pastor and with himself as the Pastor. The services were usually conducted in Farsi. It is an Evangelical Church formed of two groups, those who came to the UK from Iran as either Christians or converts and those with Muslim backgrounds who had been converted since their arrival in the UK. As with other Evangelical Churches, the ICF was actively involved in seeking to introduce others into the Christian faith. The Church practised baptism, Holy Communion, marriage ceremonies and the other features of the Christian faith.

25. When the claimants started to attend the Church, C3 was not a believer. C1 and C2 were welcomed from the start as genuine Christians and C3 as a genuine convert and they regularly attended Sunday services and mid-week activities and discipleship training courses. C3 was baptised at the same time as C1 on 12 May 2006 and C2 was baptised at the Church's annual conference on 28 August 2006. The Pastor's evidence was confirmed by the written evidence of the Senior Pastor in a letter dated 17 July 2009 written for use in the claimants' mandate refugee application to the UNHCR. The Senior Pastor confirmed that the claimants began attending meetings at the ICF in 2005, that they had been baptised on the same dates that the Pastor had given in his evidence in the claimants' asylum appeal and that they had participated in all the ICF's Sunday services and the other mid-week ICF activities and discipleship training until they were moved to Liverpool. The Senior Pastor stated that he and the elders of the ICF all regarded all three claimants as genuine Christians who had converted to the Christian Faith.

26. C1 explained in her evidence in the asylum appeal that she had converted to Christianity whilst in Iran but she had only become a true Christian in the UK when she was baptised and had felt an obligation to evangelise and had had training for that purpose from the ICF Church. As a result, she would be regarded as an apostate in Iranian who would be persecuted and forbidden to attend a Christian church. C2 explained in her evidence in the asylum appeal that she had had a New Birth by the Holy Spirit when she had arrived in the UK and had been attending the ICF Church. She had been trained as an evangeliser and to instruct others in the Christian Faith. C3 explained in his evidence in the asylum appeal that his mother and sister had converted to Christianity whilst living in Tehran but had not then been baptised. He had remained a Muslim and had not talked to them about their conversion. In England, having started to attend the ICF Church with his mother and sister, he made his peace with Jesus in December 2005. This was a personal acceptance since the policy of the Senior Pastor was that one had to be in the church for six months before being baptised. He regarded himself as a born again Christian who had dedicated his life and heart to his faith and to evangelising.

27. **Frontline Church Liverpool: April – June 2006**. In April 2006, the claimants were waiting for their reconsideration application to be heard and were dispersed by NASS to Liverpool and provided with NASS accommodation there. The claimants returned to the ICF Church on 12 May 2006 soon after their arrival in Liverpool to enable C1 and C3 to be baptised. C2 had fasted for ten days before that proposed baptism for her on the same day but this was postponed for her since she considered that she was not yet ready for her baptism. The accommodation provided by NASS was filthy and uninhabitable and C1 developed a severe allergic reaction to the living conditions and had to be taken to hospital. The claimants made contact with the Frontline Church in Liverpool which was a Protestant rather than a Pentecostal Church with about 2,000 members.

28. The claimants became part of the worship team at the Church. They joined the Iranian Group within the Church and participated in the two cell groups within that Group, one for men and the other for women. When they returned to London in early May for their arranged baptisms at the ICF Church, they were given lots of Christian CDs, books and leaflets which they took back to Liverpool to distribute. They also organised the printing of a leaflet in English and Farsi inviting people to join them. C3 started his evangelism by preaching to an Iranian man who decided to become a Christian and who subsequently became one of the main members of the cell group he was involved in.

29. The claimants' activities in the Frontline Church were described in a joint letter written by the two Senior Pastors and the Co-leader of the Iranian Christian Group at that Church in these terms[7]:

> "Since January 2001 I have been actively involved with the Iranian Christian community. I have run weekly Bible studies, Alpha courses; monthly Farsi services (Farsi Worship and Biblical teaching) and translate the weekly Sunday services from English in to Farsi. Additionally I have been involved with scores of Iranians, who have expressed an interest in Christianity. As a native Farsi speaker, I have been in the privileged position of helping other Iranians apply biblical theology and practice in a culturally relevant and sensitive way to their daily lives. My aim has been to impart an understanding of the tenants of the Christian faith, and the cost of becoming a Christian believer.
>
> I would therefore like to take this opportunity to highly commend the above three individuals, who are a mother and her two children, to you as a family who have accepted Jesus Christ as their personal saviour and who have evidently and demonstrably chosen to put Him first in their lives. I first met C1, C2 and C3 when they were sent to Liverpool by the Home Office in the spring of 2006. I visited them at their rooms at Greenbank and quickly concluded that they were earnest Christians, who regarded their enforced move to Liverpool as a "God given opportunity" to trust God, and see Him glorified through their personal witness to the Iranian community. Though they only stayed in Liverpool for a few weeks, they attended every church service, prayer meetings and mid-week small group meetings, and took every opportunity to invite their neighbours and contacts to these events. My co-leaders and I were quickly impressed by their integrity, gritty determination and their initiative in organising opportunities for Iranians and others to hear the Christian Gospel. As a group we were very disappointed that they were dispersed to Blackburn. However within a few days, they had established themselves at a local evangelical church and began to facilitate other Iranians with poor English at these church gatherings.
>
> The family continued to be in touch with us in Liverpool. C1 in particular would always be in phone contact with various ones, keeping abreast of prayer needs. Recently, C1 and several other Iranian Christians set up a prayer network and organised 24/7 prayer cover for those in need.
>
> C2 and C3 became an integral part of the worship team at our monthly services held at Frontline church on the first Wednesday of every month. These services overseen by myself and my co-leader Will Sopwith, have the express purpose of providing Iranians in Liverpool with an opportunity to participate in Christian worship in their own tongue (Farsi) and to hear biblical teaching directly aimed at the Iranian community. C2 and C3 are both very gifted and effective in this ministry. In addition to leading worship, C2 has often assisted me in translating the message. Furthermore both C2 and C3 have been key people in attracting young Iranians to the group. C2 would travel weekly from Blackburn to lead and teach a group of Iranian teenagers in Bible study, Christian ethics and

[7] A "To whom it may concern" letter dated 21 December 2008 and written in support of the claimants' fresh claim application submitted to the SSHD on 23 December 2008. The letter was written by the Co-leader and signed by way of approval by the two Senior Pastors.

> evangelism. Together C2 and C3 have twice organised retreat weekends for Iranian teenagers aimed at biblical teaching in Farsi.
>
> The family also have firm personal links with many Iranian Christian groupings across the UK. C1 has coordinated a number of visits from Iranian Christian Pastors from London and Glasgow to speak to our group in Liverpool.
>
> In conclusion, I believe that all three members of this family continue to demonstrate their Christian commitment through their personal integrity, many acts of service to the community and clear understanding and practice of sharing the gospel with others (evangelism). They are a real example and inspiration to others."

30. **Grace Community Church Blackburn: July 2006 – December 2008.** The conditions of the flat in Liverpool that the claimants were living in were so bad that they managed to persuade NASS to relocate them to a flat in Darwen near Blackburn in early July 2006 and they remained in that accommodation until they were removed back to Iran in December 2008.

31. Whilst living in Darwen, the claimants were active in educating themselves, in local charitable activities and particularly in Church affairs including active evangelical work. The claimants' English was poor when they arrived and, indeed, they gave their evidence to the AIT through a Farsi interpreter. However, the three claimants studied English language at Blackburn College, C1 and C3 completed ESOL courses and C2 obtained an IETS certificate. All three had attained the minimum level of English required of any person wishing to settle in the UK whose first language is not English. C1 also completed a Level 1 Adult Literacy course and C2 passed Levels 1 and 2 English Literature courses.

32. The claimants took active steps to advance their education. C1 completed a two-year accountancy and a one-year IT course at Blackburn College. C2 took and completed A-level courses in Biology, Chemistry and Maths at Blackburn Sixth Form College and enrolled on a degree course in Physiology at Preston University and completed the first 4 months of that course before being removed. C3 completed the first year of an Electrical Engineering course at Blackburn College and had started the second year when he was removed.

33. The claimants rapidly became active and accepted members of the Grace Community Church. That involvement was summarised in a letter written in support of their application to the UNHCR to be accepted as Mandate Refugees in these terms[8]:

> "My wife and I met this lovely family at one of Sunday morning services on my arrival in Blackburn in September 2007. We struck up a great friendship from the beginning. C1, C2 & C3 taking an active part in church services and home bible study groups. I could confidently rely on each member of the family to participate in our multicultural church services, from time to time, by leading the congregation in worship with a Christian song or bible reading. On one occasion C2 and C3 acted in a short Christian play which was videoed. I showed the video at Grace Community Church one Sunday morning. The play movingly described the loving nature of Jesus Christ and incredibly received an ovation from the congregation, the like of which, I have never heard or seen in a church service in over 34 years of 'ministry'. Such was the power behind this passionate drama, based on the work of Jesus Christ and His plan of Salvation. Many in my congregation were moved to tears after seeing this 10 minute video. I will never forget this incredible morning in our church.

[8] The "To whom it may concern" letter was written by Pastor Ian Ferguson, the Senior Minister of the Grace Community Church and was dated 5 October 2011.

> C1, C2 and C3 along with other Iranian Christian families would regularly take turns to open up their homes for Christian worship, prayer and bible study. C1, C2 or C3 would lead the meeting. They both acted as Farsi interpreters for me, as I taught from the bible. Afterwards we enjoyed wonderful Iranian hospitality and refreshments and our time together brought us very close. Between 8 – 20 would attend theses Home bible study groups.
>
> C1, C2 and C3 contributed a great deal to these meetings and I was able to see their Christian faith in action through spoken prayers, sincerity of worship and discussions on the bible, which showed they were competent in bible teaching and had a good level of knowledge and understanding of the bible.
>
> C3 was so committed to the Christian Faith, that he regularly travelled to the city of Liverpool, almost an hour's drive away from his home, to organise and lead a Christian youth group of 10 to 14 young people. The youth meeting took place each week on a Wednesday between 5pm and 7pm. Afterwards, there was an Iranian meeting for all Christians. C2 also regularly travelled to Manchester to lead a youth group each week. Both C2 and C3 were active in these Christian meetings preaching from the Bible and communication the Christian Faith over a three year period! All this took place whilst C2 was studying at college.
>
> The three of them together have organised annual Iranian Christian Conferences. One conference for 150 Iranians was held a Grace Community Church."

34. During their time in Darwen, the claimants came into contact with the Elam Ministries based in Croydon. This is a registered charity, based in Godalming, Surrey which provides support to persecuted Iranian Christians in the UK and is also active in Turkey. This contact, with several of those connected with Elam, was established at a number of Iranian Christian conferences that they attended including one that they organised at the Grace Community Church.

35. C3 met at one of these conferences held in Wales in August 2008 at an evening prayer group that he led an Iranian refugee who had been living in England for 12 years and had been granted indefinite leave to remain. This person ("C3W") was working and living in Leeds. As C3 described it, "she gave her heart to Jesus in one of those prayer times" and they started a telephone dialogue that led to a relationship developing. The claimants were not permitted to work but, within the terms of their immigration bail, C1 and C2 undertook charity work with the British Heart Foundation every Friday. C1 visited her mother M in London once a month and C2 and C3 accompanied her during their college and other holidays and half-terms and, during these visits, the claimants would see or visit their paternal grandmother, uncles, aunts and cousins.

36. **AIT hearing and decision.** The claimants full appeal rehearing took place on 25 July 2007 and the decision was promulgated on 13 September 2007. The basis of the AIT's dismissal of the claimants' appeals is set out in this passage of that decision:

> "97. Looking at their general knowledge of Christianity in the round, it therefore surprised us when Mr Malcolm Steer suggested these were exceptional people who would go about proselytising. Nevertheless, we are prepared to accept that they have been baptised into Christianity. The whole evidence before us showed that these were people who were highly concerned to be perceived to be Christians. The only purpose for which was, we find, in order to succeed in an asylum claim. Nevertheless, looking at the evidence in the round, given the fact that none of them had ever proselytised in Iran in any open way, and indeed given that the first and second appellant have allegedly gone about it in such a secretive manner that they were never spotted in Iran, we do not find that they are likely to change their method of exercising their 'faith' now if returned to Iran. The reason for this is that they are most certainly not likely

> to put themselves at risk or their friends. Given their activities to date, we noted that the first appellant would not even distribute or be a party to the distribution of leaflets in the United Kingdom because she was concerned that she might end up the victim of some Muslim assault.
>
> 98. We have also considered the evidence of Mr Malcolm Steer in the round. Given the evidence that we have heard from the others, we found him to have been either excessively naïve or totally lacking in credibility. He claimed that this family had come to his church on their initial arrival in the United Kingdom when they had been introduced by parties from Iran. Clearly that was simply not true. We note that Mr Steer has a mostly Iranian following, and has been a witness in similar cases on at least 30 previous occasions. Of course, being mostly an Iranian Church, it is not surprising that he might form time to time be called upon to testify on behalf of some member of his church before these Tribunals. Nevertheless, given the lack of any in-depth knowledge shown by these appellants regarding Christianity, we were surprised to learn from Dr Steer that these were remarkable people who would then go and proselytise in Iran. We have noted with surprise that the third appellant, who had always claimed that he did not have any strong religious beliefs in Iran, has told us in his oral evidence that he was a seriously practicing Muslim there, and has now converted to Christianity at a speed which can best be described as incredible, and was remarked upon even by Mr Malcolm Steer. Even if they have converted to Christianity, we do not find that these appellants are likely to return to Iran and proselytise in a manner which is likely to bring them to the attention of the authorities and endanger them, if not for their own sake, for that of their followers, as they are too conscious of the result of there (*sic*) being caught.
>
> 99. If they are serious future proselytisers as they claim to be, they are not likely to do so in a manner that would lead nowhere except to their arrest or that of their followers once in Iran as they would be fully aware that that would defeat the whole purpose of the exercise. Indeed we note that they did not distribute as initially planned ant leaflets to Iranian supermarkets because they feared that they may be assaulted as the first appellant said. We find that whatever they may do here, in the safety of the United Kingdom, is not reasonably likely to be replicated by any of them on return to Iran.
>
> 100. We do not find that it is reasonably likely that upon return any of them will be detained for the reasons that we have already stated above in this determination and we do not find that they are at risk of persecution for any of the reasons that they have given in this case."

37. In summary, the Tribunal accepted the factual evidence of the claimants, that they had been converted to and baptised in the Christian religion and had undertaken the activities related to the Christian Faith summarised above. However, it considered that the claimants' activities in the Churches they had attended in England had been solely for the purpose of succeeding in their asylum claims. C1 and C2 had only been involved in Christianity in a secret manner in Iran and all three claimants would return to that level and manner of Christian participation if they returned to Iran and in a manner which would not bring them to the attention of the authorities. The evidence of the Pastor of the ICF Church that the claimants were exceptional people who would go about proselytising was either excessively naïve or totally lacking in credibility. The claimants did not have, in consequence, a reasonable fear of persecution if they were returned to Iran.

38. The principle basis for the AIT's conclusions was that when the two Immigration Judges, both of whom were practising Christians, questioned each claimant at length about the basic tenets of the Christian faith. Their answers were considered to be so inadequate as to put into question their commitment to that faith or their intention and ability to evangelise or openly practise Christianity if they were returned to Iran.

39. In reaching these findings, the AIT did not have the benefit of the evidence subsequently obtained from the Senior Pastor of the ICF Church, the Senior Minister of the Grace Community Church or of the two Bible students who had studied under C2 and C3 nor of the evidence of the claimants' activities in and subsequent departure from Iran after they had been returned there nor of their activities since they have been in exile

following that departure. Moreover, although the AIT had been provided with evidence of their activities from the Pastors of the Frontline Church in Liverpool and from three other Iranian Churches in Croydon, Brighton and Liverpool, that evidence was not referred to or commented upon.

40. **ECHR and Court of Appeal decisions.** Both the Court of Appeal in dismissing their application for permission to appeal the AIT decision and the ECHR in refusing the claimants' Rule 43 application to stay their return to Iran relied entirely on the AIT's conclusions summarised above. The SSHD subsequently refused the claimants' fresh claims that were based on the recent enactment of the Iranian Apostasy Law providing for the persecution of Iranian Christian converts and on letters of support from the Pastors of the Frontline and Elim Churches in Liverpool. The basis of dismissal was that, in the light of the AIT's findings, there was no risk of the claimants coming to the attention of the authorities in Iran given their lack of conviction in evangelising or practising their Christian beliefs openly.

41. **The claimants' return to and time in Iran: 28 December 2008 – 1 April 2009.** The claimants were not stopped or questioned on arrival at Tehran airport when they were returned to Iran on 28 December 2008. This was because they were met by an acquaintance of H who received C1 as her sister and C2 and C3 as her children. They returned to their home and resumed co-habitation with H. All three engaged in Christian activities with the Group that C1 and C2 had been members of and they continued to evangelise and teach others about Christianity. They were frequently warned that if they continued to undertake these activities they would be in great danger but they persisted. Furthermore, C2 maintained email exchanges with her contacts in the Iranian Church community that she had established whilst living in England. C3 also maintained contact with his fiancée by telephone and email. C2's emails came to the attention of the Iranian authorities.

42. In mid-March 2009, the claimants attended a private home Church meeting at the house of C1's friend who had introduced C1 to Christianity in 2004. On their return home, H told C1 that the acquaintance who had met the claimants at Tehran airport when they arrived back in Iran had told him that the authorities had had the claimants under surveillance and had found out about the emails that C2 was sending to her Christian contacts in England. As described by C3 in a letter written in support of his UNHCR mandate refugee application[9], H's attitude and behaviour had previously became increasingly hostile towards the claimants following their return. They and he were aware that their Christian activities and emails were being monitored. On receiving the news of the discovery by the authorities of C2's emails, H gave all three an ultimatum: "deny Jesus and stop practising Christianity or leave the house altogether". The claimants left their home permanently two days later. They stayed clandestinely with friends before moving to Orumiyeh and, with the help of C1's friend in refuge and protection from Elam Ministries representatives in Turkey.

43. The claimants took these steps because they were not prepared to desist from their participation in Christian activities, evangelism and teaching and they feared that they would face arbitrary arrest or detention and excessive punishment and the use of the Apostasy Law if they remained in Iran, particularly given the authorities' knowledge of their activities and the hostile response of H as to what would happen to them if they did not leave their home. It is noteworthy that H contacted C1 by telephone on 5 January 2011. He stated that he had just been visited by two men in plain clothes and questioned in detail about the claimants. This visit

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[9] "To whom it may concern" letter dated 5 October 2011.

followed news of the claimants' Christian activities in Turkey had been screened on Iranian TV. H told C1 in an uncomfortable telephone conversation that the authorities had come in civilian clothes to their former home in Tehran to ask for the claimants. C1's friends in Tehran were arrested at about that time and H warned C1 and his two children not to expose their activities in Turkey. The claimants considered that this phone call confirmed that their identities had been revealed to the Iranian authorities and that they would be in grave danger if and when they returned to Iran.

44. **The claimants time in Turkey: 1 April 2009 – present (C1 and C2), May 2012 (C3).** The claimants arrived in Van in Turkey with absolutely nothing by way of money or possessions. A pastor of the Iranian Church in Van took them in. Through that Church, they met two senior members of the Elam Ministries, Mr Sam Yeghnazar and Mr Reza Roshanzamir who provided them with support and advice. This led to the claimants, with the assistance of the Elam Ministries, travelling to Istanbul where they spent their first three months in Turkey accommodated by Elam and attending a 3-month theology course run by Elam. In May 2009, C2 met a man ("C2H") at a theology conference in Istanbul. He returned to Istanbul in January 2010 before spending a 12-month period between June 2010 and May 2011 in the UK as a Tier 5 Charity Worker working for Elam Ministries UK. They started a relationship, became engaged and married with a civil ceremony on 25 July 2011. Their wedding celebrations on 9 September 2011 were attended by C1 and C3 and the others who attended included S2 and C2's paternal aunt living in the UK.

45. After C3 had been returned to Iran and then leaving Iran and taking refuge in Turkey, C3W visited C3 in Turkey and they were reunited after a 20-month break during which their contact had been by telephone. They became engaged and C3W visited C3 on a number of occasions during which she got to know C1 and C2. C3W was granted indefinite leave to remain on 8 September 2010. They married in a civil ceremony in the Registry Office in Kayseri, Turkey on 27 September 2011 attended by C1, C2 and C2H. C3W returned to England and, in February 2012, was employed by Elam as an Online Training Administrator, employment that included the administration of various on-line Elam theological training courses taken by students around the world.

46. Following the completion of the theology course in Istanbul, the claimants volunteered to work in the Elam Church in Kayseri and they moved there. They are accommodated and provided for by the Elam Church and they have served the Church and members of the community through their church work – in C1 and C2's cases ever since and in C3's case until he left Turkey and came to the UK after his asylum claim was accepted in May 2012.

47. C1 has been leading Women's sessions at the Elam Church in Kayseri, has been a member of the worshipping group and is in charge of one of its five cell groups. She also is involved in accounting activities for the Church. Since June 2011, C1 has acted with others as the replacement to the function of Pastor and C2 has been the official interpreter of the Church in Kayseri and has led a cell group and has been an active member of the worshipping group. C3 taught the Alpha course and led the adolescents and youth groups of the Church and he sometimes preached on Sundays.

48. Their work and their on-going relationship with the Elam Ministries is summarised in this letter of support that is dated 10 October 2011 and was written on their behalf by Mr Roshanamir in his capacity as a Trustee of Elam from its Headquarters in Godalming:

> "We became aware of this family's situation when they came to the UK and learned of their conversion to Christianity and the unfortunate consequences it had for them, particularly the alienation from C1's husband and C3 and C2;s father as well as the constant fear for their lives in Iran as they watched many converts around them being imprisoned or disappearing in Iran.
>
> Elam Ministries is a registered UK charity which has been in operation since 1988. One of our primary aims is to support persecuted Christians globally, particularly in the Middle East where there is a greater need for support.
>
> One of the countries in which Elam Ministries operates is Turkey. We run theology and leadership programmes in Istanbul where we also organised conferences which are attended by people globally. Our outreach work had extended to the Iranian church in Kayseri, its congregation and community, which has a large Iranian presence.
>
> C1 and her children C3 and C2 all successfully completed our Theology Course in Istanbul in July 2009. From July 2009, we provided them with housing in Kayseri and supported and maintained them as asylum seekers.
>
> C1, C3 and C2 have greatly contributed to the work of Elam in Turkey by voluntarily giving their time to the Iranian church. Since 2009, they have been involved in leading worship groups, Sunday services and teaching members of the congregation. As a family they have proved inspirational in their capacity to work hard and serve the community despite their personal struggles. They came to Turkey not even being able to speak the language but have nevertheless persevered as committed Christians to love and serve others.
>
> Due to the voluntary contribution the family has made to the work of Elam Ministries in which time we have come to know the family, their plight and commitment to serve the community, and also our commitment to assist those in poverty or requiring aid where persecuted, we confirm that we would be happy to support this family in the UK until they are able to settle and manage independently. Further, we are prepared to provide accommodation to the family at our headquarters in Godalming, Surrey.
>
> Having known the family for a number of years, we have no doubt that their wish to be in the UK and be reunited with their family and friends is a genuine intention and that their Christian faith holds true."

49. The claimants' position in Turkey was from the start and remains precarious. The claimants have suffered continuous hostility and discrimination from the local Turkish Muslim community in Kayseri. This antagonistic behaviour includes shopkeepers and market stallholders refusing to sell them basic foodstuffs, suspicious telephone calls, being followed and being unable to look to the local police for protection particularly in relation to their evangelising activities.

50. C1 and C2 are living in a particularly vulnerable and hostile environment. Each lives on their own albeit that their flats are now located about 10 minutes walk from each other. They are Christian refugees who are undertaking evangelising activities and ministering to fellow Christian converts in a relatively remote area of Turkey whose inhabitants are predominantly Muslim. The population is generally hostile to refugees, Christians and women living on their own and C1 and C2 fit into all three targeted groups. They are both desperately short of money and are both suffering from stress-related illness. The authorities, particularly the local police, provide unreliable, indifferent and sullen protection and both C1 and C2 are afraid to go out alone particularly in the dark.

51. C1 now suffers from a stress-related illness which includes her getting spots on her forehead which have spread to other parts of her body. She also has severe back pains. C2 was forced to be separated from her

husband C2H when his temporary visa expired and he left Turkey in October 2012 and now works for Elam in Godalming on a temporary Tier 5 charity workers' visa. C2H's parents live in Canada. C2 also suffers from a stress related disease which has caused her to have severe spots and patches on her skin. C1 and C2 were also left much more vulnerable when C3 was granted resettlement in the UK and left Kayseri for Elam in Godalming in June 2012.

52. C1 and C2 lost the flat they were sharing in November 2012 when the lease expired. They are currently living in two separate one-bedroom flats about 10 minutes' walk away from each other. They are entirely supported by the Elam Ministries.

53. C1 and C2's status in Turkey is also very precarious. Turkey will not grant asylum to those who are refugees from outside Europe and it has only permitted them to remain in Turkey whilst their asylum applications through the UNHCR are being processed by the UK. If and when they are refused asylum in the UK, they will be removed from Turkey and if they are refouled to Iran will, in the light of their history and what is known of them by the authorities, they face persecution from the authorities for their practice of Christianity, their conversion to Christianity and their Christian activities, evangelism and perceived apostasy.

54. The claimants applied to the UNHCR organisation in Turkey for recognition as Mandate refugees in 2010 and these applications were initially rejected. They applied again in 2011 and submitted further evidence in support of their claims for asylum including details of their friends who had been arrested in Iran in late 2010 and early 2011, one of those having had their laptop seized containing details of the claimants' Christian activities as well as website material relating to these activities. They were interviewed again on 16 May 2011 and were then recognised by the UNHCR as mandate refugees with a recommendation that they should be relocated to the UK. These recommendations were then forwarded by the UNHCR in Turkey to the SSHD in London in June 2011. In May 2012, C3's application was accepted on the basis of his wife's status in the UK as one who had permanent rights of residence. C1 and C2's applications were refused.

55. **Summary – C1's family members who are British nationals living in England.** C1, who is 49, has been living with her daughter C2, who is 26, since 1 April 2009 in Turkey and both have been living as refugees. They are unable to remain in Turkey and will be expelled if and when their asylum applications to reside in the UK are finally refused and both would then be in imminent danger of refoulement to Iran if they are not permitted to resettle in England. If refouled, they are in imminent danger of being arrested, imprisoned, ill-treated and persecuted by the Iranian authorities for their Christian beliefs, conversion, activities and evangelising and perceived apostasy. There is at present no other country in the world where they have any realistic prospect of being granted asylum.

56. C1's son C3, who is 29, has recently been granted indefinite leave to enter England having been living in Turkey with C1 and C2 as a refugee. He is living with his wife, C3W who has indefinite leave to remain in the UK. C1's other relatives who have British nationality and are living in England are C1's 86-year old widowed mother M and four of C1's seven siblings including S2. These relatives have been living in England for differing periods of between 20 and 40 years. She has had no contact for many years with another sibling who is an Iranian living in Iran. Four of her five nephews and nieces live in England, are British nationals and have been living in England for differing periods of between 20 and 40 years and the fifth, a nephew, lives in

the United States. Both of her great-nieces are British nationals and were born and are living in England and she has no great-nephews at present.

57. CI is now permanently estranged from her Iranian husband H who lives in Iran. He is not prepared to renounce his Muslim faith and leave Iran permanently. In any event, he has no permission to leave Iran or to live in any other country in the world even if he was inclined to do so. C1's 82-year old widowed mother-in-law ML and two of her siblings-in-law are British nationals and have been living in England for differing periods of between 20 and 40 years, anther brother-in-law is a British national living in Dubai and another sister-in-law is living in Denmark. All seven of her nephews-in-law and nieces-in-law are British nationals who were born and are living in England. The only direct members of her husband's family who are not British nationals resident in England are her two other siblings-in-law with who are Iranian nationals living in Iran.

58. C2's husband, C2H, is living in England on a Tier 5 visa covering charity workers. She has both a paternal and maternal grandmother, a brother, six uncles and aunts, 11 first cousins, 2 first cousins once removed and a brother-in-law living in England, most of whom are also British nationals.

59. Until 2009, C1, C2 and C3 lived together in Iran as a family group of four save for the period between 2005 and 2008 when they were a family group of three living and seeking asylum in the UK. All three moved to Turkey in 2009 as a family group of refugees fleeing from religious persecution in Iran and, since C3 was granted the right to resettle in the UK in 2012, C1 and C2 have continued to live in mutual support of each other in Turkey.

UNHCR Mandate Refugees

60. This case arises out of the 1951 Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967 which together have created one of the cornerstones of both domestic and international law concerned with the protection of refugees. There are now some 140 states who are parties to this Convention[10] and, as with so much of UK Immigration Law, it has been incorporated into domestic law in an unconventional albeit effective manner described by Lord Bingham and Lord Steyn in *R (European Roma Rights) v Prague Immigration Officer*[11]. For present purposes, the relevance of these instruments is that they impose on the SSHD an obligation:

> "… to co-operate with the Office of the United Nations High Commissioner for Refugees … in the exercise of its functions, and shall, in particular facilitate its duty of supervising the application of the provisions of this Convention.[12]"

61. The Protocol also has relevance to this case in another significant way. The Convention itself was limited to the provision of protection to those refugees who were at risk as a result of events occurring before 1 January 1951 and, if a state party so opted on accession, to those at risk as a result of events occurring in Europe. The Protocol dis-applied both these limitations save that it preserved States' pre-existing declarations as to the geographic limitation of the 1951 Convention. The UK accepted both dis-applications provided for by

10 This is the number stated by Lord Bingham in paragraph 6 of his opinion in the *Roma rights* case decided in December 2004. Annex IV of the UNHCR Handbook suggests a lower figure for States parties to either one or both of these instruments but that figure is based on the position at an earlier but unspecified date.

11 [2005] 2AC 1, HL(E) at paragraphs 7 – 8 and 40 – 42.

12 Article 35 of the Convention.

the Protocol but Turkey, on becoming a party to the Protocol, maintained its pre-existing declaration as to its restriction of its obligations to refugees who were at risk as a result of events occurring in Europe. It is for that reason that C1 and C2 have no right to remain in Turkey and who therefore are at risk of being refouled to Iran if no other permanent solution to their refugee solution can be found.

62. International protection of refugees is a huge and largely insoluble problem. The United Nations attempted, in 1951 at the time when the Convention was agreed, to provide the means of giving effect to this problem which the Convention was attempting to address. The General Assembly established the United Nations High Commissioner for Refugees ("UNHCR") and provided that Official with an Office in the Statute of the Office of the UNHCR in resolutions of 14 December 1950. For present purposes, the relevant core functions of the UNHCR are to provide international protection to refugees falling within the scope of the Statute and a permanent solution for the problem of refugees by their voluntary repatriation or their assimilation by local integration or by repatriation within new national communities[13]. A refugee in this context is one who:

> "…who owing to 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."[14]

A refugee as so-defined includes those satisfying the criteria for protection under the Convention regardless of temporal or geographic limitation[15].

63. The UNHCR operates in most of the states where there are refugees within their borders through local offices. One of the ways that it seeks to provide protection is by its formal determination in individual cases that that person is a refugee or, in the language of the UNHCR, is a "mandate refugee". This status is created in individual cases as a means of facilitating the UNHCR's core function of promoting a permanent solution to the problem that that refugee is displaced, cannot return to his or her country of origin, cannot be assimilated into his or her home country and cannot readily find another country willing to provide that person with a permanent home. If the UNHCR recognises someone as a mandate refugee, it will attempt to broker or facilitate his or her assimilation in another third party state by a direct approach to and request of that state to accept the mandate refugee.

64. A state is not required to accept a refugee and only a limited number of states do so. The UK is one such state and it has a declared policy with regard to the numbers and types of mandate refugee it will accept. This policy is published in the Country Chapter of the Resettlement Handbook and the UNHCR. It states there that, in seeking to facilitate the relocation of a mandate refugee into the UK, the UNHCR will give careful consideration to the UK policy and its possible application to the case in question. Likewise, the UK in publishing its policy can reasonably be assumed to have taken into account the UNHCR's stated requirements

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[13] Chapters 1(1) and 11(8)(d), 11(8)(e) and (9) of the Statute as explained in the Resettlement Handbook.

[14] Quoted on page 11 of the UNHCR Resettlement Handbook.

[15] Statute, Chapter 11A(ii) and B.

in reaching a resettlement decision in relation to the proposed resettlement of a mandate refugee into the UK. The relevant requirements are[16]:

(1) The decision to submit a refugee's case to a resettlement country for resettlement consideration must be made in a transparent way and according to objective criteria.

(2) The applicant must have been recognised as a mandate refugee.

(3) The prospects of other durable solutions must have been given full consideration and resettlement identified as the most appropriate solution.

(4) There must be a resettlement need. Such a need includes:

(i) A need for legal and physical protection;

(ii) The immediate or long-term threat of refoulement;

(iii) Risks in the existing country of residence (including risks specific to women and girls);

(iv) A lack of foreseeable alternative durable solutions;

(v) Inability to return home; and

(vi) Inability to establish themselves in the existing country of refuge due to lack of legal, economic or social rights.

(5) "All efforts must be made to preserve or restore family unity in the course of resettlement operations. UNHCR staff should promote the admission of refugees to a country to where they have relatives or other personal ties."[17]

65. The SSHD operates a policy with regard to the resettlement of mandate refugees within the UK. First and foremost is the provision for applications for asylum by refugees made within the Immigration Rules. However, the IRs do not provide for applications by refugees from outside the UK, only for those who are legally or illegally located within the UK. For refugees outside the UK, there are two strands, the Gateway Protection Programme and the Mandate Refugee Resettlement Scheme.

66. The Gateway Protection Programme is the primary policy for acceptance of refugees whose long-term future the UNHCR is concerned to assist. This Programme is intended to enable a small number of refugees in camps and urban areas who are referred as a group by the UNHCR to resettle in the UK. The SSHD fixes a quota each year, currently 750, and the individuals put forward are selected by a selection mission comprised of officials who travel to the location of the group in question or by a dossier selection process. Within the relevant quota, there was no provision for refugees from Turkey in 2011 or since.

67. The Mandate Refugee Resettlement Scheme or Policy is the second way that the UK seeks to assist in the resettlement of mandate refugees. It is intended to allow a limited number of mandate refugees who have been able to show close ties to the UK to resettle in the UK. The operation of the policy is stated within the published policy to be underscored by these general considerations:

(1) Applications. There is no provisions in the IRs for a person who is oversees to be granted entry clearance to come to the UK as a refugee, but the UKBA exceptionally looks at individual applications made by mandate refugees to see whether there is a case for admitting such a refugee to the UK outside the IRs.

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16 Resettlement Handbook, pages 3, 247 – 250, 261 - 262, 287 – 289, 353 and 355.

17 A quote from page 355 of the Resettlement Handbook.

(2) Priority. These cases normally involve refugees facing some threat to their safety or well-being in their present country of refuge, the general presumption should be that they attract some priority and should not be placed at the back of a queue of applications.

(3) Compassionate circumstances. Where it is thought that there are compassionate circumstances sufficient enough to warrant consideration of the exercise of the Secretary of State's discretion, such cases should be referred to the Refugee Team in order to maintain consistency of approach.

(4) These applications are submitted directly to the Refugee Team by the UNHCR.[18]

68. The SSHD's Mandate Refugee Resettlement Policy is published in the UK's Country Chapter of the Resettlement Handbook and as a separate document by the UKBA entitled Mandate Refugees. The version in the Resettlement Handbook was drafted and submitted by the SSHD and is the version published to the world and used by the UNHCR in considering whether to put a particular mandate refugee forward for resettlement in the UK. The published arrangements and the UNHCR's consideration of their applicability in any case forms part of what the UK Country Chapter describes as the operation of the Mandate scheme "in partnership with the UNHCR"[19] and their publication forms a major part of the UK's obligation under the Convention and the UNHCR Statute of co-operation with the Office of the UNHCR. It is therefore unfortunate that the text of the criteria applied by the UK in deciding whether to admit for resettlement a mandate refugee as set out in the UK Country Chapter is in some parts marginally different and is laid out differently from the corresponding text in the UKBA's published Mandate Policy.[20]

The UNHCR's applications and SSHD's Refusal Decisions for C1 and C2 and the resettlement acceptance decision for C3

69. **UNHCR's applications.** The UNHCR submitted three separate resettlement application forms, one for each of the claimants. Each application was set out in a standard template containing 7 sections but, regrettably, sections 1 – 3 of C1 and C2's application form and the entirety of C3's application form were not included in the hearing bundle. However, it was possible to see what appeared to be the material parts of C1 and C2's applications and, given their similarity, to divine what the material parts of C3's application were.

70. The applications were based on a detailed interview undertaken of C1 and C2 separately coupled with a detailed dossier and submissions that had been sent from England by solicitors who had been retained and briefed by their family members. The applications summarise C1 and C2's conversion to Christianity, the development of their Christian activities in England whilst making their asylum applications, their return to Iran and the discovery by the authorities of C1 and C2's Christian activities, their being instructed by H either to quit their Christian activities or leave home and their flight to Turkey, their activities in Turkey and their learning in January 2011 from H that the authorities were aware of their evangelising activities. The applications then refer to C1 and C2's fear of being arrested, detained and imprisoned if they returned to Iran. The applications concluded that C1 and C2 were credible and that there was a reasonable possibility that each would experience arbitrary arrest, physical assault and death from the State authorities.

71. There is then a detailed passage in each application which summarises current Country of Origin Information about the treatment of apostates in Iran and concludes on the basis of that COI that the fears of a

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[18] These criteria are taken from the UK Mandate Refugee Policy.

[19] Paragraph 1.1 of the UK Country Chapter.

[20] The material differences are discussed at paragraphs 77 - 78 below.

reasonable possibility of ill-treatment on their return were well-founded. That treatment would be a fundamental and serious breach of their human rights. There is a specific reference to Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the effect that no state should expel, return or refoule a person to another state if there were substantial grounds for believing that they would be in danger of being subjected to torture. The overall conclusion was that each applicant was recognised as a refugee on the grounds of religion.

72. The applications then set out the basis for the need for resettlement. It stated:

> "… resettlement is linked to legal and/or physical protection i.e. where a refugee faces immediate or long-term threat of refoulement to the country of origin.
>
> Turkey is a signatory to the 1951 Convention on the Status of Refugees but maintains the geographical reservation. This means that only Europeans are granted refugee status by Turkey. Non-Europeans who are recognised as refugees under the UNHCR's mandate are provided temporary protection by Turkey, but pending resettlement by UNHCR. Resettlement is therefore the only durable solution available and the only protection tool for the non-European refugees in Turkey. All non-European refugees must therefore be resettled from Turkey."

73. **The refusal and resettlement decisions.** The SSHD's refusal of C1 and C2's application to be accepted for resettlement under the Mandate scheme was on the following grounds:

(1) Decision letter of 17 May 2012

(a) Neither qualify as a spouse, minor or parent or grandparent over 65 of any family relatives in the UK. In particular, C1's spouse is living in Iran and not the UK whereas to qualify, he would have to be settled in the UK. Furthermore, C1 is not a parent of a person settled in the UK.

(b) There are no exceptional circumstances on which to accept them as they do not meet the close family ties as neither of them are a parent or grandparent under the age of 65 to any family members in the UK.

(c) C1 lives with and is able to receive emotional support from C2 who is her daughter and C3 her son since both are adults and are married.

(d) C2 is married to her husband C2H who also lives in Turkey.

(2) Decision letter of 27 July 2012

(e) C1's periods of 2 years at school in the 1970s and the 3 years as an asylum seeker in the 2000s did not fulfil the requirement that they had to show historic links with the UK.

(f) C1 and C2's circumstances were not exceptional when compared with other refugees in Turkey in the same situation whose only durable solution was resettlement.

(3) Decision letter of 15 August 2012

(g) The three resettlement applications of C1, C2 and C3 were separate applications and were considered as such. The UNHCR did not indicate that the applications were interdependent and

did not request that they should be resettled together. Thus, the fact that C3's application succeeded had no bearing on the applications of C1 or C2.

(h) C2 and C3 were both over 18 and could not be considered as forming a family unit with C1 as they both had formed their own family unit.

(4) Internal SSHD Recommendation Minute dated 7 December 2011 and Refugee Team Recommendation dated 4 May 2012

These additional reasons were put forward in addition to those summarised in (a) – (g) above:

(i) Although C2 is under the age of 65 she does not qualify for the exceptional category of being a parent under 65 because she is not "singular" – that is divorced or widowed and is residing with her husband C2H as well as with C1 and C3;

(j) C2 is not a daughter or aunt and is not dependent on her relatives but would be expected to depend on her husband for emotional support as his wife.

(k) The historical factors and the new evidence of new converted faith in Christianity for C1 and C2's case have been looked at and considered in the round (no explanation was provided of what the decision-maker's conclusions were about these factors or what the reasons were as to why they were rejected as showing historic links with the UK or exceptional circumstances).

(l) Although some of C2's siblings live in the UK, there is no suggestion that she is dependent on them.

74. The internal documents did accept that C1 (and by inference C2) undoubtedly could not stay in Turkey as the authorities there would not allow it and that resettlement was the only durable solution since C1 (and by inference C2) were not criticised for their view that they were not able voluntarily to return to Iran. However, these documents concluded that there was no good reason why the UK should accept either of them.

75. C3 met the mandate policy and was accepted for resettlement. No explanation was given as to how and why C3 met the mandate policy but it is to be inferred it was because his wife was resident in the UK.

Terms and construction of the Mandate Policy

76. **The terms of the policy.** It is a matter of regret that the SSHD has chosen to publish the Mandate policy in the Resettlement Handbook with some differences in wording with the published Mandate policy published by UKBA. The subtle differences of wording mask differences in how the policy is to be applied in several respects. This problem is compounded by the UKBA choosing to withdraw the Mandate policy it has published from its website on 1 June 2012 with immediate effect so that the only accessible version of the policy currently is that contained in the Resettlement handbook. No explanation has been provided for this withdrawal but I was informed during the hearing that the withdrawal was made because of a pending review of the wording of the Policy and that the UKBA version was still the wording to be followed even though it is no longer accessible to the public.

77. The terms of the Mandate Policy as set out in the UK Country Chapter of the Resettlement Handbook and in the Policy document published by the UKBA are set out with the relevant differences highlighted in bold italics.

(1) ***UK Country Chapter***

"**Mandate** – … those applying for resettlement under the MRS must have been recognised as refugees within the 1951 Refugee Convention and its 1967 Protocol. ***They must also have close ties with the UK through family*** or possibly also historical links to the UK (e.g. periods spent here as a student). ***Close ties are usually taken to mean spouse, minor child or parents/grandparents over the age of 65. In exceptional circumstances other relationships will be considered***; parent/grandparent (in the singular) under 65, family members aged 18 or over: son daughter, sister, brother, uncle, aunt. ***No other categories of family relationship will meet the close ties requirement.*** The family members in the UK do not need to have been accepted as refugees but must be settled here or have limited leave in a category leading to settlement and this includes family members here under the Humanitarian Protection or Discretionary Leave provisions. Those who are here in a temporary capacity (e.g. visitors, students, for medical treatment etc.) would not normally provide the mandate refugee with a close tie with the UK. The relative in the UK must confirm that they are willing to provide initial accommodation and help with the integration of the resettled refugee(s)."

(2) ***UKBA Published Policy***

"Assessing the Claim of Those Mandate Refugees Referred by the BRC[21]

Caseworkers should not need to assess the refugee status of a mandate refugee whose application is made abroad via UNHCR/BRC … .

Consideration of the case should usually be limited to an assessment of:

- the applicant's circumstances in the present country of refuge;

and

- whether the UK is the most appropriate country of resettlement.

It may be that there is a case to be made for applicants to remain where they are or, alternatively, that there is a case for resettlements outside the present country of refuge to another safe third country.

The applicant must have close ties with the UK – ***usually close family***, but also possible history (e.g. periods spent here as a student). The family members in the United Kingdom do not need to have been accepted as refuges but must be settled here or have limited leave in a category tending to settlement and this includes family members here under the Humanitarian Protection of Discretionary Leave provisions. Those who are here in a temporary capacity (e.g. visitors, students, for medical treatment etc.) would not normally provide the mandate refugee with a close tie with the UK.

For the purpose of clarifying what ***constitutes close family the categories are:***

- Spouse
- Children (minor's)
- Parents/grandparents over 65

[21] The British Red Cross who undertake the administration of those nominated for resettlement by the UNHCR.

Exceptional Circumstances

The following family members will only meet the close ties requirement in exceptional circumstance:

- Parent/grandparent (in the singular) under 65
- Family members ages 18 or over: son, daughter, sister, brother, uncle, aunt

No other categories of family relationship **will meet the close ties requirement**"

78. **The correct approach to construction.** It is important for the decision-maker to bear in mind when ascertaining the meaning to be given to the Mandate Policy that it is the objective meaning that is to be ascertained. Moreover, the policy is not enshrined in legislation so that any ambiguity or lack of clarity should be resolved by adopting a meaning which best gives effect to the overall UNHCR policy that seeks to find a durable solution to a mandate refugee's problems by the use of resettlement in a way that unites families but subject to the UK's implementation policy that only those who can demonstrate close ties with the UK should be permitted to resettle in the UK. Thus, the interpretative method adopted should be purposive and flexible rather than being strict and rigid. This approach is particularly apposite to the construction of the UKBA's version of the Mandate Policy which is drafted in an unsatisfactorily unclear manner.

79. **The duty to co-operate.** The UKBA has a duty to co-operate with the UNHCR when assisting and working with it in its attempts to find durable solutions to the problems incurred by mandate refugees. This duty was helpfully interpolated in this obiter dictum of Sullivan LJ in *MM (Iran) v SSHD*[22] as follows:

> "In reality, a decision by the UNHCR as to refugee status will, given the UNHCR's particular expertise and responsibilities under the Refugee Convention, be given considerable weight by the Secretary of State and the tribunal unless in any particular case the decision taker concludes that there are cogent reasons not to do so on the facts of that individual case. It would be just as unrealistic to contend that a decision by the UNHCR as to refugee status must always be given considerable weight regardless of any indications to the contrary as it would be to contend that it could be given less than considerable weight for no good reason."

80. **Use of the Mandate Policy.** Regrettably, I was not provided with any evidence from the Mandate Refugee Team as to the number of referrals it receives per annum, from which countries these are received from and the number of those referrals that are accepted and rejected for resettlement. The only material I was provided with had arisen from a Freedom of Information Act Request submitted to the UKBA by the claimants' solicitors which revealed that 60 refugees had been resettled from Turkey under the Mandate Resettlement Scheme since 2001 of which only 2 had been resettled since 2004 of which 1 was resettled in 2011. The answer also indicated that publicly available statistics for mandate refugees commenced in 2008 and that data is not routinely collected about country of origin. It would also have been helpful to have been provided with an explanation of why the policy was formulated in the way that it was. The overall impression that I formed from the materials that were provided was that only a very limited number of mandate refugees apply for resettlement in any given year and that the majority of those who applied are resettled.

[22] [2011] INLR 206 at paragraph 27.

81. **The application of the Mandate Policy.** The policy is clearly intended to be applied by means of a structured decision-making process notwithstanding the unstructured language used to identify it. It is possible to identify that structure as containing the following discrete and sequential stages:

(1) Is the applicant an UNHCR mandate refugee?

(2) What are the applicant's circumstances in the present country of origin?

(3) Is the UK the most appropriate country for resettlement?

(4) Does the applicant have close family ties with the UK? This involves considering:

(i) Are the applicant's family members settled in the UK or have limited leave in a category leading to settlement?

(ii) If not, are they here in a temporary capacity and is the case an exceptional one whereby such family members allow the applicant to qualify for resettlement?

(iii) Do any of the following close family categories arise:

(a) Spouse;

(b) Children (minors);

(c) Parents/grandparents over 65?

(5) Does the applicant have a possible history (e.g. periods spent here as a student) such as to give rise to close ties with the UK?

(6) Are there exceptional circumstances?

(7) If so, do any of the following family members meet the close ties requirement:

(i) Parent/grandparent (in the singular) under 65;

(ii) Family members aged 18 or over: son, daughter, sister, brother, uncle, aunt?

(8) If none of these steps leads to the applicant being resettled in the UK, are there cogent reasons for not giving effect to the UNHCR's recommendation?

82. **The close family categories or relationship.** Neither the UK Country Chapter document nor the UKBA Policy document defines what is meant by a family category or relationship. The SSHD asserts, without any explanation as to why this is asserted, that the categories or relationships described in the documents are referring to the applicant in question. Thus, by way of example, the SSHD contends that C1 does not fall into the category of a parent in (4)(iii)(c) above since she is not seeking to be reunited with her children nor is she over 65. The difficulty is that in the UK Country Chapter, it states that the applicant must also have close ties through family and it describes those close ties as being a relationship whereas the Policy document states that the applicant must have a close family category. The Country Chapter therefore appears to be describing a family relationship in the abstract whereas the Policy document is describing the individual applicant's side of the relationship. C1's relationship with her mother can readily be described as a parental relationship even though C1 is not, in that relationship, a parent or a grandparent. There is therefore an

ambiguity in this policy which is best approached by asking which meaning better gives effect to the need to provide for family reunion. Clearly, that is best provided for by adopting a relationship rather than a category definition.

83. It follows that the meaning that should be applied must be ascertained on a case by case basis. The decision maker should ascertain what best describes the relationship between the applicant seeking resettlement and the family member who the applicant would be joining if permitted to resettle. C1 is seeking to create or recreate many different relationships: with her mother over 65, with her son, with her sister and brothers, with her nephews and nieces and with her great-nieces. C1, in joining her mother, is seeking to reconstitute a close family relationship of "mother" in the policy as set out in the UK County Guidance section of the Resettlement handbook but is not constituting herself as falling into the "parents/grandparents" category as set out in the UKBA published policy. The policy as expressed in the UK Country guidance should prevail since that is the document which was drafted and submitted by the SSHD which the UNHCR is committed to attempt to give effect to and, moreover, the UKBA policy document has now been withdrawn and has not yet replaced.

Grounds 1 and 2 – Did the SSHD misapply the mandate policy and fail to co-operate with the UNHCR?

84. It is possible to see that the SSHD has misapplied the mandate policy by taking each of the structured steps in turn and seeing whether the SSHD applied that step and, if it was applied, whether it was applied correctly.

Stage (1): Are C1 and C2 UNHCR mandate refugees?

85. **Findings not open to challenge.** The SSHD correctly accepted that C1 and C2 are both UNHCR mandate refugees. The SSHD also accepted that they could not stay in Turkey because the Turkish authorities would not allow it, that resettlement was the only durable solution and that they were not able voluntarily to return to Iran.

86. **Findings open to challenge.** The SSHD in ground (g) above[23] found that each claimant submitted separate applications which were not interdependent and there was no request to consider them together. They should therefore be considered separately and in isolation. This is a remarkable finding. All three applications were submitted together, each relied on the same grounds relating to the Christian affairs of C1, C2 and C3 who were and always had been a family group and all three claimants had lived together and had openly practised as Christian converts and evangelists as a family group for many years in the UK, in Iran and in Turkey. All three were at risk of refoulement to Iran and all three had the same basis for claiming the benefit of the UK's mandate policy permitting resettlement to mandate refugees with close ties with the UK.

87. It follows that the applications were composite applications from three mandate refugees which the UNHCR was putting forward with the intention that they should be considered at the same time and that the decision in each could and should be taken into account when finalising the decisions in the other two.

88. The SSHD's failure to adopt this approach was highly significant in this case since the decision-maker found that C3 was entitled to be resettled in the UK because his wife was already permanently settled in

[23] See paragraph 73 above for the list of the SSHD's grounds for refusing resettlement.

England. Having reached that conclusion, the decision-maker should then have reconsidered the refusal decisions in the cases of both C1 and C2 on the basis that C3 was entitled to resettle in the UK and could be expected to take advantage of that decision as soon as he reasonably could. This was a material change in circumstances and the mandate policy provided for a reconsideration of a refusal or potential refusal decision if the circumstances of a mandate refuge had materially altered.

Stage (2): What are C1 and C2's circumstances in the present country of origin?

89. **Findings not open to challenge.** It was accepted that the claimants could not remain in Turkey and could not be expected to returned to Iran. It was, by inference, accepted that if they returned to Iran they would be, or would be likely to be, persecuted as Christian converts and apostates.

90. **Findings open to challenge.** The SSHD in ground (f) above concluded that C1 and C2's circumstances were not exceptional when compared with other refugees in Turkey in the same situation whose only durable solution was resettlement.

91. This finding was not based on any evidence that was identified. Indeed, the supporting evidence does not appear to have been available and the finding appears to have been based on speculation rather than being fact-based. Moreover, the circumstances and situation of C1 and C2 that are referred to and the number and type of refugees in Turkey sharing these characteristics are not identified. Finally, it is not a requirement of the Mandate Policy that a mandate refugee must be shown to be exceptional compared with similar refugees in the country where that refugee is currently located. The stated relevance in the published versions of the Policy of this stage of the inquiry is to see whether a case can be made for C1 and C2 to remain where they are and it had already been accepted that they would be required to leave Turkey if they were not resettled.

92. It follows that this finding cannot stand and is in any case both irrational and irrelevant.

Stage (3): Is the UK the most appropriate country for resettlement?

93. **Findings open to challenge.** The SSHD did not consider this step at all. The policy envisages that the decision-maker will consider whether the UK is the most appropriate country for resettlement at the outset as one of the two considerations, along with stage (2), that will usually be the only two considerations that will be assessed. It is therefore highly material for the decision-maker to take account of the fact that the UK is, or is not, the most appropriate country for resettlement. In the case of C1 and C2, there is no evidence that any other country was appropriate for their resettlement so that the decision-maker should have taken that into account when considering the remaining steps in the decision-making process.

Stage (4): Does the applicant have close family ties with the UK?

94. **Findings open to challenge – C1.** The following findings are open to challenge in the case of C1:

(1) C1 does not qualify as a parent or grandparent over 65 (ground (a));

(2) C1 lives with and is able to receive emotional support from C2 (ground (c));

95. C1, in being resettled in England, would be reunited with her mother who is over 65 in age and with whom she has a very strong family tie. There is therefore a very close family tie based on the relationship of

"parents over 65" and it is apparently accepted by the SSHD that in that context "parents" can mean "parent". Even if that is not accepted, it is the natural meaning of the word in its context in the policy, particularly as the policy expressly provides, by way of difference, for "parent (in the singular)" in stage (7) of the decision-making process. Therefore, C1 can be shown to come within the close ties requirement and the decision as to ground (a) is erroneous. Ground (c) is an irrelevant consideration so far as stage (4) is concerned since C1 and C2 both need to be resettled and their mutual dependency as mother and daughter strengthens rather than weakens their close family ties.

96. **Findings open to challenge – C2.** The following findings are open to challenge in the case of C2:

(1) C2 is married to C2H who also lives in Turkey (ground (d));

(2) C2 could not be considered as forming a family unit with C as both have formed their own family unit (ground (h));

97. If, as appears to be the case, C1 qualifies for resettlement as the daughter of M, that fact should have been taken into account when considering whether C2 qualified without having to show exceptional circumstances. Grounds (d) and (h) are irrelevant for that purpose. However, C2 does not qualify at stage (4) since the relationship of parent over 65 is not present in her case. However, her husband, C2H, has now moved to England and is here in a temporary capacity as a Tier 5 charity worker. The SSHD would, if reaching its decision now, have to consider whether exceptionally C2 could qualify as the spouse of C2H at this stage of the decision-making process. No such consideration was given.

Stage (5): Do C1 and C2 have a possible history (e.g. periods spent here as a student) such as to give rise to close ties with the UK?

98. **Findings open to challenge.** The only consideration of this stage was as follows:

(1) C1's periods of 2 school years in the 1970s and 3 years as an asylum seeker in the 2000s did not fulfil this criterion (ground (e));

(2) The historical factors and new evidence of new converted faith in Christianity have been looked at and considered (ground (k));

99. The decision-makers appear to have made a fundamental error in considering stage (5). This was that the "possible history" was limited to "periods spent here as a student". However, stage (5) envisages a consideration of an applicant's entire history of actual and potential close ties of all kinds, the periods spent in the UK as a student are merely put forward as one example of the many that could qualify as close ties. Such ties could include members of an extended family and might include many if not all of the factors giving rise to exceptional circumstances considered at Stage (6) of the inquiry.

100. The entire history of both C1 and C2 that is set out in this judgment can give rise, both in each of its several parts and in its whole, to establishing that C1 and C2 can each show, under this stage (5) that their historic links with the UK give rise to the kind of exceptionally close ties that bring them within the resettlement provisions of the mandate policy.

Stage (6): Are there exceptional circumstances?

101. **Findings open to challenge.** Grounds (b) and (k) are open to challenge since they do not amount to a full or sufficient reasoned consideration of the large number of circumstances set out in this judgment which, taken individually or in the round, could amount to exceptional circumstances.

Stage (7): Do any of the following family members meet the close ties requirement: Parent/grandparent (in the singular) under 65 or family members aged 18 or over: son, daughter, sister, brother, uncle, aunt?

102. **Findings open to challenge.** Grounds (c), (d), (h), (i), (j) and (l) are all open to challenge since they import irrelevant considerations into the decision as to whether C1 and C2 qualify as a parent under 65, sister and aunt (in the case of C1) and sister and aunt (in the case of C2 – in addition to being a spouse). C1 and C2 do appear to qualify on each of these relationship grounds. Furthermore, the decision appears to misapply the policy in these respects: (1) it construes "singular" to mean widowed or divorced as opposed to being on one's own in permanent separation from one's spouse or partner; (2) it does not take into account that C1 is permanently separated from her husband and is therefore a parent "in the singular" and (3) it limits a family unit to one formed by husband and wife rather than being capable of including all or any of the 19 wider family members of C1 and C2 resident in the UK.

Stage 8: Are there cogent reasons for not giving effect to the UNHCR's recommendation?

103. **Findings open to challenge.** This stage was not given any consideration despite the SSHD's obligation to co-operate with the UNHCR. Cogent reasons, particularly the urgent need to prevent the dangers of refoulement and the precarious situation of C1 and C2 in Turkey and the lack of any other state for them to relocate to taken in conjunction with their apparently close ties with the UK and their apparently exceptional circumstances all called for a careful consideration at this stage.

Ground 3

104. I have dealt with ground 2 in paragraph 79 above. I have not dealt with the article 8 ground 4. It is clearly a ground that arises for consideration but I have not needed to deal with it since C1 and C2 have succeeded on grounds 1 and 2.

105. I will give permission to C1, C2 and C3 to argue grounds 3 and 4 in their grounds document – they were refused permission to argue those particular grounds and their application for a reconsideration of that refusal was ordered to be heard as part of a rolled-up hearing of those grounds to be heard at the same time as the hearing on the grounds that permission was granted for. However, I make no order on ground 4, the article 8 ground.

Conclusion

106. The decisions of the SSHD cannot stand and must be quashed. They are unlawful since they are erroneous in law and they take into account factors that should not be taken into account and they fail to take into account factors they should have taken into account. There is no reasoned decision that explains the findings that were made and their relevance to the policy. The decision was neither structured nor compliant with the policy. Its conclusions were, given the extent of its failings, perverse.

107. It is to be hoped that the SSHD will retake the decisions in the case of C1 and C2 rapidly and in accordance with, and having taken account of, all the facts and considerations outlined in this judgment.

HH Judge Anthony Thornton QC