Neutral Citation Number: [2022] EWHC 3012 (Admin)

Case No: CO/1502/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/11/2022

Before :

JUDGE O'CONNOR
(sitting as a Judge of the High Court)

- -

Between :

The King **On the application of**	**Claimant**
(1) Najlaa Rushdy Mohammed Alaian **(2) Abdulsalam Jummah Mohammed Al-Jumaili**	
- and –	
Secretary of State for the Home Department	**Defendant**

- -
- -

Michael West & Mansoor Fazli (instructed by **Gulbenkian Andonian Solicitors**) for the **Claimants**
Julie Anderson (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 16 November 2022

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Approved Judgment

This judgment was handed down remotely at 10am on 30 November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Judge O'Connor:

Introduction

1. This is an application for judicial review of the Secretary of State's decisions of 24 January 2022 ("the Decision"), contained in a single document, to refuse the claimants' applications for naturalisation on the ground that the Secretary of State was not satisfied that either claimant is of good character.

Factual Background – A Summary

2. The claimants are wife and husband. The first claimant is a stateless person born in Iraq on 15 August 1972, of an Egyptian mother and Palestinian father. The second claimant is a national of Iraq, born on 23 December 1961. The claimants were married in 2001, and there are three children of the marriage. Both claimants have indefinite leave to remain in the United Kingdom.

3. In her 'asylum appeal' before the Asylum and Immigration Tribunal ("AIT") in 2008, the first claimant stated that she joined the Ba'ath party in Iraq in 1989 as a sympathiser, was later promoted to 'Supporter', and in 1992 to 'Advanced Supporter'. In 1998, she took an intensive course on Ba'ath party principles and objectives lasting three months and was then promoted to the rank of 'Udo'. The first claimant states that she was employed as a university lecturer in Baghdad. She described how, during the reign of Saddam Hussein's regime, her family had comfortable lives with privileges and concessions.

4. In her asylum interview, the first claimant explained that the main reason she joined the Ba'ath party in 1989 was the desire of the party to liberate Palestine. The branch of the party to which she was recruited was primarily for Arabs (the national branch). They were not part of and did not meet with the Iraqi branch (the political branch), which comprised of Iraqi nationals, like her husband. The first claimant also described her rise in status and responsibility from mere attendance at meetings to the giving of lectures to members. She was made a 'Friend of the President' upon attaining the rank of Active Udo in 1998. It was not well known that she was a high-ranking member of the Ba'ath Party as all of her activities were carried out away from Iraqi Ba'ath Party members and related only with the Palestinian people. The first claimant's presence in Iraq became illegal after the fall of Saddam Hussein. In February 2006, threats against Palestinians significantly increased, and the first claimant and her children were subjected to these threats. The AIT found, to the lower standard of reasonable likelihood, that the first claimant had provided credible evidence.

5. During the asylum application process the first claimant also stated that the second claimant had reached the higher rank of Udw Firqa, that he would give lectures to low-ranking Ba'ath party members about the party's aims and objectives, and that he was in charge of recruitment of new members within their local headquarters.

6. In her Nationality Interview of 25 January 2017, the first claimant confirmed that she joined the Ba'ath party as a supporter at around the time that she started university. Persons were required to be a supporter of the Ba'ath party in order to attend university and were also required to be a Ba'ath party member to work at a university, as the first claimant subsequently did. A person would move up a rank in the party after a certain

number of years. The first claimant further stated that she received accommodation based on the fact that she was a lecturer at the university. The aim of the section of the Ba'ath party of which the first claimant joined, was to free Palestine and all Arab countries. The first claimant stated that she had never met the Iraqi President and that being a 'Friend of the President' was a card you could apply for once reaching the rank of Udw.

7. In September 2006, the first claimant left Iraq with the children of the marriage and sought international protection in the United Kingdom, a status she was granted following appeal proceedings which ended in May 2008.

8. Moving on to the second claimant, the relevant factual matrix is largely found in his Nationality Interview of 25 January 2017, although the AIT also made findings in relation to the second claimant when considering the first claimant's asylum appeal.

9. The second claimant joined the Ba'ath party in the mid 1980's, as it was necessary to do so in order to become approved as a teacher, his chosen career. When he joined the party, he held the rank of Mu'ayyid, and attended weekly Ba'ath party meetings. After three years he was entitled to, and was, promoted to the rank of Nasir. He continued to attend weekly meetings. Three years later he was promoted to the rank of Advanced Nasir, and then to the rank Candidate Member. His only role was to 'guide students to serve their country'. The privileges he and the first claimant received were as a consequence of the first claimant's work as a lecturer.

10. The second claimant entered the United Kingdom on 12 May 2009.

11. The claimants point to the following features of their time in the UK, as positive evidence of their good character (set out in more detail at paragraph 26 of the grounds supporting the application for permission). The first claimant worked as a volunteer Maths lecturer teaching adults in 2010, and subsequently obtained a post-graduate teaching qualification in the UK. She has taught Maths, Science, and physics to a variety of age groups since, including at secondary school level, which is her current employment. The first claimant is now a STEM teacher, which brings with it additional responsibilities such as running school trips. Additionally, she is a trained as a Mental Health Champion and is, also, qualified to train teachers on how to teach physics.

12. The second claimant has, since 2013, worked as an Arabic language teacher, and is currently working at a primary school. The claimants' three children are British Citizens of impeccable character, two of whom are currently engaged in higher studies, with the youngest child currently studying for her GCSEs.

History of the naturalisation applications

13. On 22 July 2014, the claimants applied for naturalisation. The claimants' applications were refused on 31 January 2019. In the case of both claimants, an application was made for reconsideration by letter dated 1 August 2019. The applications were refused again on 23 March 2020.

14. The claimants brought judicial review proceedings (CO/3558/2020) against the decisions of 23 March 2020. Permission was granted on 4 February 2021 at an oral hearing before Clive Sheldon QC, sitting as a Deputy Judge of the High Court ([2021] EWHC 744 (Admin)). Those proceedings were settled by way of a Consent Order dated 27

September 2021, with the Secretary of State agreeing to reconsider the claimants' applications.

15. That reconsideration process culminated in the decisions now under challenge. Permission to challenge the decisions of 24 January 2022 was granted by His Honour Judge Dight CBE, sitting as a Judge of the High Court, in a decision dated 4 July 2022. I observe that although the decision letter of 24 January 2022 expressly states on its face that it did not constitute a re-opening of the claimants' applications and instead just sought to answer the question of whether the correct procedures were followed and correct decisions were taken in the earlier decisions, Mr West indicated that he did not seek to take issue with this.

Decision under challenge

16. It is necessary to set out the Decision in some detail. As identified above, the document of 24 January 2022, which is the decision under challenge, provides a response to both claimants' applications for naturalisation.

17. Prior to summarising aspects of the claimants' Nationality Interviews and the first claimant's evidence as provided during the asylum application and appeal process, the Secretary of State directed herself as follows:

> "Serious doubts will also be cast if applicants have supported the commission of war crimes, crimes against humanity or genocide or have supported groups whose main purpose or mode of operation consisted of the commission of these crimes even if that support did not make any direct contribution to the commission of the international crimes in question.
>
> A precautionary approach is applied given the importance attached to the grant of nationality and given that it is very difficult to revoke nationality once granted. In making a decision on an application, all relevant information already held by the Home Office relating to the applicant will be taken into account when determining the application in question along with that provided by an applicant. Also, consideration is given to the relevant jurisprudence in nationality cases, which includes that set out below."

18. The Decision thereafter identifies that *"research shows"* that membership of the Ba'ath party was essential for career advancement within branches of government, and that students who refused to join the party were expelled from colleges and universities. The membership structure of the party is subsequently set out, which is broadly consistent with the evidence provided by the claimants. Udw Firqa (Division Leader) is identified as the third most senior membership role. Amongst other things, reference is thereafter made to the power wielded by the higher echelons of the Ba'ath party, with Ba'ath party divisions, as led by an Udw Firqa, being described as having the *"eyes and ears of the party"*. Recognition as one of the *"Friends of Saddam"* is said to have been reserved for long-term committed members who had served for ten years. High ranking members were afforded privileges not accessible to the general population. It is further stated that research shows that between 1980 and 2003, military, security and intelligence personnel, public servants, officials and Ba'ath party members etc perpetrated on a widespread and systematic basis, crimes against humanity, war crimes and the crime of genocide.

19. The decision letter concludes in the following terms:

> "In Thamby [2011] EWHC 1763 (Admin), the High Court found that the Secretary of State was entitled to refuse a citizenship application on the grounds of an individual's "support" for an organisation that commits international crimes. In DA (Iran) [2014] EWCA Civ 654 the Court of Appeal upheld a decision to refuse an application for nationality by an individual who had been involved in crimes against humanity through his work as a conscript to a state body (the Iranian prison service). Therefore, there (sic) support and membership of the Baath Party who were involved with crimes against humanity is a relevant consideration in determining your client's (sic) applications for naturalisation.
>
> Consideration has been given to all information available regarding your client's (sic) active involvement in the Ba'ath Party, an organisation known to have committed human rights abuses alongside any mitigation provided. The fact they were full members of the Baath party at a higher rank who made no attempt to leave, raises concerns about your client's character. It is concluded that they served as loyal and trusted members of the Ba'ath Party until they entered the United Kingdom.
>
> I have assessed all the information available to me in relation to your client's applications and current circumstances. I was unable to find any compelling evidence to suggest their actions and support of the Baath party prior to leaving Iraq could be outweighed by countervailing factors in their personal circumstances and conduct since entering the UK.
>
> I have fully reviewed your client's (sic) cases and the decisions previously made and I am satisfied that the correct procedures were followed, and the correct decisions were taken to refuse. I could find no grounds to reopen your client's (sic) applications"

Legal Framework

20. Section 6(1) of the British Nationality Act 1981 (BNA) provides:

> "If, on an application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen."

21. Paragraph 1(1) of schedule 1 to the BNA provides:

> "Subject to paragraph 2, the requirements for naturalisation as a British citizen under section 6(1) are, in the case of any person who applies for it —
> …
> (b) that he is of good character…"

22. The Secretary of State is required to make an evaluation of an applicant's character on the basis of the material before her, having proper regard to the relevant guidance to decision makers. The Secretary of State is entitled to apply a high standard in judging whether she is satisfied that someone is of good character; R (Al-Fayed) v SSHD (No 2) [2000] EWCA Civ 523, at [41], Nourse LJ.

23. The onus is on an applicant to satisfy the Secretary of State of their good character. Although the Secretary of State must exercise her powers reasonably, essentially the test for disqualification is subjective. See Secretary of State for the Home Department v SK (Sri Lanka) [2012] EWCA Civ 16, per Stanley Burnton LJ at [31].

24. In SK, the Court of Appeal ultimately concluded that the High Court had fallen into error in its considerations:

> "It is for the applicant to satisfy the Secretary of State that he is of good character. It is not for the Secretary of State to establish that the applicant personally committed a war crime such that he could be tried before the International Criminal Court" [37]
>
> "[t]he judge asked himself whether the Secretary of State had established that the respondent was not of good character, rather than whether she was entitled not to be satisfied that he was of good character. In this respect too he erred" [38]

25. In *DA (Iran)* [2014] EWCA Civ 654, the applicant (who had been granted Refugee Status) was refused naturalisation on the basis of section 1(1)(b) BNA. The claimant had been a member of the Iranian prison regime between 1998 and 2001. His role involved guarding prisoners held in inhumane conditions, taking prisoners to be executed and removing bodies after execution. The applicant contended that his service had been compulsory, that he did not actively participate in human rights abuses, that he suffered mental illness in consequence of his exposure to those abuses and that he tried to dissociate himself from them on two separate occasions for which he was punished. The Secretary of State rejected the claims finding that the applicant had undergone three years' service before he went absent without leave and that his final escape was not an attempt to disassociate himself from his former conduct but to evade the possibility of serious harm or death.

26. Lord Justice Pitchford, giving the judgment of the Court, stated at [19]:

> "In my judgment, neither the Secretary of State nor Lang J made any error of law. The onus was upon the appellant to establish his good character for the purpose of section 6(1) of and schedule 1 to the 1981 Act. I accept that it would be unreasonable to demand of the applicant a "heroic" standard of conduct (compare Sivakumar v Canada (Minister of Employment and Immigration) (A-1043-91, 4 November 1993, Canadian Court of Appeals, and Ramirez v Canada (Minister of Employment and Immigration) [1992] 2 FC 306 (McGuigan J)). However, it was for the appellant to place before the Secretary of State all the material on which he relied to establish his good character. The appellant provided no personal explanation to the Secretary of State at any stage as to why his first act of disassociation from his military service within the prison estate took place three years after his conscription. I recognise that the appellant was a citizen of a country whose government did not brook opposition and that he must have known there were likely to be serious consequences for disobedience. However, the appellant provided no evidence about the training he was given as to the nature of and his role in the prison regime and the duties that would be expected of him. He made no attempt to disassociate himself from the duties he was performing until a year after his training had ceased and only then because he was sickened and depressed by his experience. When the appellant's own life was at stake, he

> did make a bid to escape and his attempt was successful. It may have been a hard decision to express serious doubt about the appellant's opposition to the regime for which he had been labouring but, on the evidence submitted, such a decision by the Secretary of State cannot be described as irrational or unreasonable."

Nationality Guidance

27. There is no definition of good character in the British Nationality Act 1981. However, the Secretary of State has issued guidance to decision makers, entitled 'Nationality: good character requirement – version 2', published on 30 September 2020 ("the Guidance").

28. Page 8 of the Guidance includes a heading, *"Approach"*, beneath which the following is said:

> "The BNA 1981 does not define good character. However, this guidance sets out the types of conduct which must be taken into account when assessing whether a person has satisfied the requirement to be of good character.
>
> Consideration must be given to all aspects of a person's character, including both negative factors, for example criminality, immigration law breaches and deception, and positive factors, for example contributions a person has made to society. The list of factors is not exhaustive."

29. Page 30 of the Guidance loomed large in Mr West's submissions, and is headed *"War crimes, crimes against peace or humanity, genocide and serious human rights violations"*. It materially reads:

> "If there is information to suggest that the person has been involved in international crimes or serious human rights violations, they will not normally be considered to be of good character and the application will fall to be refused.
>
> You must refuse an application if the person's activities cast 'serious doubts' on their character. Examples of such activity include:
>
> • involvement in or association with war crimes, crimes against humanity or genocide
> • supporting the commission of those crimes
> • supporting groups whose main purpose or mode of operation consists of the committing of such crimes, even if that support did not make any direct contribution to the groups' war crimes, crimes against humanity or genocide
>
> In establishing whether there are grounds to refuse an application, you must consider evidence directly linking the applicant to such activities, such as the likelihood of their membership of and activities for groups responsible for committing such crimes. The individual role of the applicant, the length of their membership and level of seniority in the group are also relevant.
>
> **Evidencing activity**
>
> Information about an applicant must be considered against information from reputable sources on war crimes and crimes against humanity in the country

> concerned and, where relevant, on the groups in which the applicant has been involved.
>
> Where these sources provide sufficient evidence to support the view that the applicant's activities or involvement constitute responsibility for or close association with such crimes, the application must be refused.
>
> When assessing evidence, you must consider one or more of the following factors:
>
> • an admission or allegation of involvement in such crimes
> • an admission or allegation of involvement in groups known to have committed such crimes
>
> Information may range from a brief claim to have been a member of a particular group or profession to a detailed, time framed account.
>
> Where an applicant has denied or not mentioned involvement in such crimes the likelihood of them having done so will often depend on factors such as the nature of the group, the degree to which the group was involved in such crimes and the nature of the involvement of the applicant.
>
> Involvement includes activities where an applicant may not have had direct involvement in such crimes but where their activity has contributed to such crimes.
>
> Membership of a particular group may be sufficient to determine that an applicant has been supportive of or complicit in such crimes committed by that group; consideration should be given to the length of membership and the degree to which the group employed such crimes to achieve its ends (see association with individuals involved in war crimes for further guidance)

The relevant paragraphs under the heading *"Association with individuals involved in war crimes"*, found on page 32 of the Guidance, read:

> Those who associate or have associated with persons involved in terrorism, extremism and/ or war crimes may also be liable to refusal of citizenship.
>
> The association link will need careful consideration, particularly where it concerns a family member. Family association with war criminals must be disregarded in the case of minors.
>
> The following questions will be relevant when considering an application from someone known to associate, or to have associated, with an individual (or individuals) involved in terrorism, extremism and/ or war crimes:
>
> • Is there evidence to suggest the applicant's association with the individual was not of their own free will? This is particularly relevant for family associations.
> • Is there evidence to suggest the applicant associated with the individual whilst unaware of their background and activities?
> • If so, what action did the applicant take once the background and nature of the individual came to light?
> • Are there any suggestions that the applicant's association signals their implicit approval of the views and nature of the individual's illegal

activities?
- How long has this association lasted? The longer the association, the more likely it may be that the applicant is aware of or accepts the activities and views. How long ago did such association take place?
- How long ago was the individual's involvement in the war crime and is there evidence that the individual has rehabilitated since?

If there is evidence that an associate or family member does not accept, tolerate or support the views or activities of a person involved in war crimes, or where they have clearly distanced themselves from those activities, their association alone will not be a reason to refuse an application for British citizenship. It may be necessary for an applicant to be interviewed to resolve the question of association and to help establish whether they are of good character."

Grounds of Challenge

30. The claimants seek to challenge the lawfulness of the Decision on the following grounds:

i) The Secretary of State failed to properly, or at all, apply her own policy.

ii) The Secretary of State misdirected herself in law by applying a 'scale system' or 'credit' system' contrary to the test embodied in the British Nationality Act 1981.

iii) The Secretary of State failed to take account of the following material matters:

(a) Mitigating circumstances as to the claimants' involvement in the Ba'ath party.

(b) Evidence of the claimants' good character in the United Kingdom.

iv) The Secretary of State's decision is irrational

Discussion

Ground (i)

31. Mr West submits that on a proper reading, and application, of the Guidance, which I have set out in its relevant part at paragraph 29 above, it does not permit of a conclusion that there reasons to have serious doubts of the claimants' character. Whilst this submission to some extent overlaps with the contention that the Secretary of State's decision is irrational, it primarily focuses on the route to the Secretary of State's conclusion, rather than the conclusion itself.

32. It is asserted by Mr West that, on a proper interpretation of the Guidance, in order to reach a lawful conclusion that there are serious doubts about an individual's character, the Secretary of State must consider whether the claimants' activities or involvement constitute *"responsibility for or close association with"* war crimes, crimes against humanity or other human rights violations. It is not sufficient that an applicant is merely a member of a group or organisation known to have committed such crimes.

33. In response to the Court's exploration of the Guidance at the hearing, Mr West drew attention to the following passages under the heading, "*Association with individuals involved in terrorism, extremism and/or war crimes",* submitting that the Guidance therein demonstrates that in order to found a rational conclusion that there are serious doubts about an individual's character, there need to be established a nexus, in addition to mere membership of a group, between the individual seeking naturalisation and the abhorrent acts carried out by the group in question.

34. I reject this submission. In my conclusion, Mr West's contention does not accord with a natural and ordinary reading of the Guidance. Whilst the Guidance provides that if, *"the applicant's activities or involvement constitute responsibility for or close association with* [crimes against humanity etc], *the application must be refused"*, it does not provide that this is the only circumstance in which an application may be refused. Indeed, this section of the Guidance provides for a whole range of scenarios in which an application is liable to fall for refusal, including where an applicant, "[supports a group] *whose main purpose or mode of operation consists of committing such crimes"* (see page 30 of the Guidance*)*. The Guidance specifically identifies that, *"Membership of a particular group may be sufficient"* to cast serious doubts on an applicant's character, and thereafter directs consideration to other relevant features, such as the individual role of the applicant, the length of their membership and level of seniority within the group. The bullet points on page 32 of the Guidance, referred to by Mr West, serve no greater purpose than to draw a decision-maker's attention to the sort of evidence that is likely to be relevant in a consideration of this nature. They do not, as Mr West submits, import a requirement for something more than membership of such a group, neither does any other section of the Guidance.

35. The Guidance does not, and is not intended to, provide for an exhaustive list of circumstances relevant to the consideration of an applicant's character. This is precisely what the Guidance states to be the case as an overarching principle (see paragraph 28 above), and this is also made clear in the section of the Guidance specifically relating to war crimes and crimes against peace and humanity etc. Each application must be individually considered, and all material matters must be taken into account.

36. The Secretary of State retains a wide discretion in this area, and the Guidance provides examples of how the Secretary of State will exercise that discretion. In SK (Sri Lanka), Stanley Burnton LJ described the Nationality Instructions as, *"in the main practical instructions to decision makers as to how they are to go about deciding whether to be satisfied that an Applicant for naturalisation has shown that he is of good character"*. The Guidance considered in the instant application can be similarly described.

37. For these reasons, I reject the claimants' contention that the Secretary of State was required to consider whether there was *"a responsibility for or close association with"* war crimes or crimes against humanity and that membership of a group or organisation known to have committed such crimes cannot, of itself, be sufficient.

38. Although the Guidance to caseworkers has been updated since the decision of this Court in R (Thamby) v Secretary of State for the Home Department [2011] EWHC 1763 (Admin), my conclusions above are entirely consistent the rationale therein. In Thamby, Sales J (as he then was) considered a challenge to a decision to refuse to naturalise a claimant who had been a member of the LTTE from its inception in 1983. The claimant in that case had fought willingly with the LTTE and had helped and supported them,

including by making financial contributions and supplying them with food from his shop. His application for naturalisation was refused by the Secretary of State.

39. The decision letter in Thamby set out in some detail the large number of war crimes and crimes against humanity that had been committed by the LTTE during the course of the Sri Lankan civil war. These included widespread suicide bombings, battlefield crimes, execution of prisoners, abuse of prisoners of war, routine use of torture, a campaign of political assassinations, use of extreme violence against non-Tamils, recruitment of child soldiers and arbitrary arrests detentions and extrajudicial killings and other abuses in those areas where the LTTE had been in control. The decision maker concluded that the claimant, as a supporter of the LTTE, must have known that it was responsible for widespread and systematic war crimes and crimes against humanity. The claimant had contributed to its overall aims and activities. The Secretary of State in those circumstances had not been satisfied that the claimant was of good character.

40. At paragraph 42 of his judgment, Sales J concluded that for serious doubts to exist about a person's character there was no need for personal involvement in the commission of war crimes or that support given to an organisation should have contributed to such crimes. He said this:

> "It may be sufficient that the applicant has, by his support for the organisation, and with an appreciation of its willingness to use barbaric methods, gone so far as to show that he is prepared to ally himself with it in a way which reveals a marked lack of commitment to the values underpinning British society."

Ground (ii)

41. The grounds drafted in support of the application for judicial review separately plead the submission that the Secretary of State misdirected herself in law by applying a 'scale system', contrary to the statutory test embodied in the BNA. However, in the claimants' skeleton argument for the hearing of 16 November, this ground was subsumed within the submission that the Secretary of State had erred by failing to take account of material matters.

42. The contention put forward by Mr West in the original grounds argued that it was impermissible of the Secretary of State to approach the task of considering whether the claimants are of good character by *"balancing the negative factors of the past in the country of origin with the positive factors of the present in the UK to determine if one has accumulated enough credit to cancel out the past (i.e. the deficit)"* (which Mr West so defines as the 'credit system' or 'scale system'). At paragraph 35 of his grounds, Mr West posits that the correct approach should be *"whether one is presently of good character which, in a non-criminal conviction case and non-exclusion case based on political affiliation, requires examination of whether one has genuinely changed and distanced themselves from that political affiliation."* [emphasis in original]

43. The correct approach is that set out at page 8 of the Guidance, identified at paragraph 28 above. The Secretary of State must undertake an evaluative assessment of all matters relevant to the consideration of whether it has been demonstrated by an applicant, to the high standard required, that they are of good character. This takes account of an applicant's conduct over time.

44. In my conclusion, if one were to hypothetically assume that the Secretary of State took account of all material matters in her assessment of the claimants' character, the approach she took to the assessment of the claimants' character would be unimpeachable. After some exploration of this ground at the hearing, Mr West accepted that this was so, but averred, as he had done in the grounds, that it could not be said, in the instant claimants' case, that the Secretary of State had taken account of all material matters. It is this contention that forms the substance of ground (iii), to which I will now turn.

Ground (iii)

45. The claimants' written case contends that the Secretary of State failed to take account both of the relevant mitigating circumstances relating to their membership, and activities on behalf, of the Ba'ath party, and of the positive evidence of their good character in the United Kingdom.

46. As to the former, it is submitted that, amongst other things, the Secretary of State failed to have regard to the fact that: *"the claimants scaled the hierarchy* [of the Ba'ath party*] by means of natural progression that occurred in part as a result of prolonged membership"*; the first claimant belonged to the pan-Arab side of the party and not to the political side; membership of the party was obligatory in order to attend university; all teachers had to first attend university; teaching was in the public sector only, which was controlled by the Ba'ath party; the claimants merely attended meetings and solidarity sessions, and; the claimants were not privy to, or aware of, any atrocities committed by the Ba'ath party.

47. In my judgment, it is clear that the decision maker had regard to the evidence provided by the claimants in their Nationality interviews, as well as information provided by the first claimant in her asylum statement, asylum interview and asylum appeal hearing. These documents are extensively referenced in the Decision. It is in these documents that the matters of fact referred to as 'mitigating circumstances' in Mr West's grounds and submissions are to be found, including the very limited, and equivocal, evidence regarding the first claimant's knowledge of the human rights violations committed by the Ba'ath party. The latter evidence is to be found on page 13 of the first claimant's Nationality interview record, where in responding to the interviewers request for an explanation of her claimed lack of knowledge of such activities, the first claimant stated as follows: *"My understanding, if some people wanted to hurt Saddam Hussein or something or someone related to him, regardless of their nationality, regardless of Shia, Sunni whatever, they would be hurt yes, but anyone living peacefully, I been there in Iraq all my life, nothing happen honestly."*

48. The Secretary of State was not required to separately identify in her Decision each and every factual matter she took account of when considering the issue of the claimants' character. It is clear that she took account of the documents referred to above, which contained the evidence of the 'mitigating circumstances' and, in my conclusion, that is sufficient to meet the claimants' ground.

49. In any event, the Secretary of State specifically references the fact that students who refused to join the Ba'ath party were expelled from colleges and universities, and that membership of the party was essential for career advancement within branches of the government. The Secretary of State also carefully sets out the hierarchy of the Ba'ath

party, each claimant's progression through that hierarchy, and the activities undertaken in those roles, as identified by the claimants. The Secretary of State further noted that the first claimant was found to be credible in the evidence she gave to the AIT in 2008, which included evidence relating to her involvement in the pan-Arab side of the Ba'ath party, and not the political side.

50. During his oral submissions, as an extension to this ground, Mr West further contended that the Decision did not contain sufficient reasons to enable the claimants to understand what the Secretary of State had made of such mitigating circumstances. I do not accept that the Secretary of State erred in this regard. The Secretary of State was required to provide sufficient reasons to enable the claimants to understand why she was not satisfied that they were of good character. In my conclusion, the Decision fulfils this requirement. The Secretary of State was not required to provide reasons for reasons.

51. Turning to the submission that the Secretary of State erred in failing to take account of the claimants' good character in the United Kingdom, Mr West draws attention to the decision of this Court in R (Hiri) v Secretary of State for the Home Department [2014] EWHC 254, in support, if any were needed, for the contention that the test of good character involves looking at the whole of an applicant's character. In Hiri, the Secretary of State founded a decision that the claimant had not demonstrated good character, on a conviction for exceeding the speed limit on a motorway. Lang J quashed the Secretary of State's decision because there had not been an adequate and lawful assessment of the applicant's character, the Secretary of State not having weighed in the balance the mitigating circumstances of the offence, or the "*powerful countervailing evidence of good character",* including a reference from the claimant's Army Commanding Officer.

52. Mr West also drew attention to the more recent decision in R (DC) v Secretary of State for the Home Department [2018] EWHC 399 (Admin) in which Charles Bourne QC (as he then was) quashed the Secretary of State's decision to refuse the claimant registration as a British Citizen, for failure to meet the good character requirement as a consequence of a criminal reprimand. In reaching its decision, the Court identified potential mitigating factors which the Secretary of State ought to have taken into account, such as evidence from social services of the claimant's difficult start in life and coercion by gang members which may have caused the circumstances leading to the reprimand, and then concluded as follows:

> "Neither letter identifies any potential mitigating factor or any information which might have led to a different conclusion as to the claimant's character. [52] …
>
> The overall impression left by the decision letters is of an over-rigid reading of the policy. It is possible that this is no more than an impression and that the decision makers did ask themselves whether the claimant's youth and other extenuating circumstances made this case the exception to the rule. In my judgment, however, although not much more was required by way of reasons, the absence of anything more means that the letters do not fulfil the need, identified in ***Hiri,*** to show that regard has been had to all relevant facts and not just to a criminal record." [57]

53. I draw little assistance from these decisions, or a third decision referred to by Mr West, R (SA) v Secretary of State for the Home Department [2015] EWHC 1611, save that

they confirm the trite proposition that the test of good character involves looking at the whole of an applicant's character. In my conclusion, that is precisely the approach adopted by the Secretary of State in the instant case.

54. I do not accept, reading the decision letter as a whole, that the Secretary of State disregarded evidence of the claimants' character since their arrival in the United Kingdom; indeed, the penultimate paragraph specifically identifies that the Secretary of State had regard to the claimants, *"personal circumstances and conduct since entering the United Kingdom"*. It might have been helpful if the Secretary of State had summarised the information she had been provided in this regard, as I have at paragraph 12 above, but, in my conclusion, it was not necessary for her to do so in order to render her decision lawful. The claimants' circumstances since their arrival in the UK were not in any sense contentious. What the claimants are really seeking by this ground, are further reasons as to why their applications were rejected. However, in my conclusion, the reasons given by the Secretary of State are, when taken as a whole, sufficient.

55. For these reasons, I reject the claimants' submissions on Ground (iii)

Ground (iv)

56. I turn lastly to the submission that the Secretary of State's decision is irrational. In Amirifard v Secretary of State for the Home Department [2013] EWHC 279, Lang J explained, at [59], the foundation required to establish such a ground in the naturalisation context. I adopt that approach:

> "The test for irrationality is set high, namely, that no rational decision-maker could have reached this conclusion. This test is especially difficult to satisfy in an area where Parliament has conferred a broad discretion on the Secretary of State and the Court of Appeal has declared that "it is no part of the function of the courts to discourage ministers of the Crown from adopting a high standard in matters which have been assigned to their judgment by Parliament, provided only that it is one which can reasonably be adopted in the circumstances" (per Nourse LJ in *ex p. AL Fayed (No. 2)*)."

57. In my conclusion, shorn of the support for the contended errors that the claimants sought to draw from the other grounds, this ground is hopeless. It is for the Secretary of State and not for the court to decide in the first instance whether the claimant's links to the Ba'ath party were such as to cast serious doubt on the claimants' character. Any consideration of whether the Secretary of State's conclusion on the issue of good character was irrational, must be considered in the context that it is open to the Secretary of State in her approach to good character to set a high standard, as long as that standard is one which could reasonably be adopted in the circumstances. As I have previously observed, it is for the claimant to demonstrate to the Secretary of State that they are of good character and in my conclusion the Secretary of State's decision that the claimants did not demonstrate this, was well within the bounds of a decision that could be reached by a reasonable decision maker. That is not to say that all reasonable decision makers would have reached the same conclusion, but that is not the question that this court must ask itself. For these reasons, this ground is not made out.

Decision

58. This claim for Judicial Review is dismissed.