Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05527/2019

THE IMMIGRATION ACTS

Heard at Field House via Skype for Business	**Decision & Reasons Promulgated**
On 3 March 2021 and 18 May 2021	**On 22 July 2021**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

ASA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Jacobs, instructed by Duncan Lewis & Co Solicitors (Sackville House London)
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal against the respondent's decision of 21 May 2019 deciding that he fell to be excluded from the protection of the Refugee Convention under the Article 1F(a) on the basis that there were serious reasons for considering that he was responsible for committing a crime against peace, a war crime or a crime against

humanity as defined in the international instruments drawn up to make provision in respect of such crimes, during the time he was resident in Iraq.

2. In the decision letter the respondent summarised the appellant's history as set out in his three asylum interviews and in the earlier screening interview, two written statements and further submissions and medical evidence. He claimed to be at risk on return to Iraq on account of fear of mistreatment due to his Sunni Muslim faith and his perceived connection with and support for the Ba'ath Party as an academic.

3. It was recorded that he joined the army in 1970 and ultimately reached the rank of Brigadier General in around 1994. He had also joined the Ba'ath Party at this time as it was a condition of employment and also gave him access to student funding. There were no special duties as a Ba'ath Party member and he did not reach a high level, remaining at the second level of ferka for twenty years.

4. With army funding he studied in the Soviet Union between 1973 and 1978, gaining a PhD in analytical chemistry and a High Diploma in chemical engineering, attending the Military Academy of Chemical Protection based in Moscow. It was said that alternatively it was believed that he had attended the Chemical Warfare Academy in Moscow and completed a PhD as a weapons design expert. (The appellant disputed that name and referred to it as the Chemical Defence Protection Academy in Moscow and had a certificate to prove this). The Russian academy had about eighteen faculties which specialised in such things as protection, reduction, analysis and biological fields and there was only one faculty for Arab students of which he was a member, called Faculty 3. There were five other Iraqis in this faculty with him, two from intelligence and three from the army. The other two members of the chemical section with him were Mohammed Shaker Al Rawy and Imad Hussein Al Ani. In total they were the only five Iraqis in the academy at that time. Iraq at this time ran a programme regarding chemical wars and he was part of a group which was sent to the USSR for this purpose and his specialism was in chemical analysis. (He did not, however, accept that there was a link in his work with protecting the armed forces to the Chemical Corps who was founded under the Iraqi Intelligence Service that was created in the 1960s which focussed initially on defensive measures against chemical attacks. He said that he had nothing to do with the Intelligence Services).

5. The Iraqi government started to consider the development of chemical weapons in the mid-1970s and the Ministry of Defence became involved by the end of the 1970s.

6. On his return to Iraq in 1978 the appellant became a chemistry teacher at the Ministry of Defence, teaching army students of different ranks and from 1981 to 1988, during the Iran-Iraq War, he said he was forced to work at the Al Muthana Establishment as head of research in the Department of

Protection, Limitation and Detection of Pollution with Chemical Agents. He said he was not involved in any fighting during the war. Alternatively, he had been moved to work in a laboratory called Baghdad Jadiva, which were the original laboratories of the Mukhabarat and was producing small amounts of chemical agents. This facility was moved to Al Muthana in 1983 when production became larger in scale.

7. He agreed that the overarching purpose of Al Muthana was the production and storage of chemical munitions. At Al Muthana he reported to the State Establishment of Technical Industry and his direct superior was Nazar Abdel Salam, who was the head of the State Establishment of Technical Industry (SOTI) and the director of Al Muthana. Nazar came and visited his department regularly and he would see him perhaps once or twice a week but he only had a professional relationship with him. Most of his time was spent on practical matters and he was focussing more on the measurement of the concentration of chemical agents in the soil and testing this. The department's research involved developing new methods of protection against a chemical attack on the Iraqi Army, staff and civilians. He also identified polluted lands from chemical weapons and could determine where and when they were used. Whilst he was aware of how to decontaminate ground where chemical weapons had been deployed, he was never involved in the decontamination of land within Iraq after any chemical attacks. His work was preventative rather than reactionary.

8. He was aware that alongside his unit there was another department in Al Muthana that researched and produced chemical agents at laboratory level and when it was produced in larger volumes for army purposes at what was called a pilot plant. He was aware that Al Muthana was the only producer of chemical weapons in Iraq when he joined. Al Muthana produced mustard gas, sarin, tabun, CS and VX gas, using the original German, American and Soviet literature as a guide. Each unit did not work with the other. At the pilot plant they were able to check the conditions of the reactions of the agents and eventually reach the level of mass-production but he did not work in or have involvement in the production of chemical agents himself. He specialised in analysing the effects of environmental pollution of these agents and also in protecting people from the effects of chemical agents. He was responsible for stockpiling and protecting agents in addition to detection and exposure to agents. He would take a sample of each gas and test their concentration and stability and he would also measure how far these gases would travel if they were put into a bomb and how the volume of gas affected the size of the explosion. He would measure the distance by analysing the soil. He would feed this type of information to Nazar. There was a team of eight to ten civilians working under his control, a mixture of graduate engineers and chemists but no other military figures. He would gather the results of his team's analysis and forward this on to his bosses.

9. He was aware that the gases he was involved in testing were used against the Iranians in the war and that Nazar would make a decision on how to deploy these gases in weapons against the Iranian people during the war. It was not his decision against whom it would be used but he did know that both Iran and Iraq had used chemical weapons and in his opinion Iran had used those weapons first, deploying mustard gas in 1983.

10. He disputed the claimed use of chemical weapons against the Kurds in Halabja by the Iraqi forces in Iraq in 1988. He was aware of suspicions that the Iranians carried out these attacks and might have done so in order to gain sympathy with the United Nations.

11. There was a two stage test to producing chemical warheads. His job fell within the first test of chemical analysis and was carried out in the lab. The second test was where chemical samples produced by Iraq were placed inside the containers/bombs and were launched by the Military Tactics Department. Samples would then be taken of these explosions to determine/assess the concentration and pollution levels.

12. He was referred to a report of the "Iraq Survey Group" which investigated Iraq's Chemical Weapons (CW) Programme in the aftermath of the second Gulf War (2003 onwards). That report speculated that binary rounds might either have been buried or moved to one of two bunkers in the mid-1990s when the UN ordered the Al Muthana complex to relocate a large number of chemical munitions. The same report referred to the appellant by name and as the manager of the binary sarin munitions project as frequently storing munitions he was working on but had not tested in the basement of his laboratory at Al Muthana, and this report also noted the existence of a Salah al-Din Laboratory at the Al Muthana complex which was noted to have a basement in which chemical rounds were stored and these included binary sarin rounds which were stored there to check for leaks and chemical degradation and in addition research into the production of nerve agents was carried out in the Salah al-Din Research Department. The appellant, when this was put to him, accepted that his name might be referenced due to the information he had given American forces but denied that this referenced him personally as he did not have any role in developing any nerve agent. Alternatively, he believed that the Salah al-Din Research Department was headed by Dr Mahmoud Al Samarrai, who was prosecuted and imprisoned after the second allied invasion due to his work within that department. This had not been under his administration and he did not work for or with Dr Al Samarrai. As regards the reference to him in the report being the manager of the sarin munitions project, whilst he maintained he was not involved in the production of chemical weapons but did accept that he managed the storage of chemical weapons. The agents would be placed inside a bomb in storage and he would take monthly samples of the agent to ensure it was still usable. One could only store these weapons for a certain period of time and if held too long, weapons would have to be decommissioned. He did not recall how many weapons he held in storage but they

numbered in multiples of ten and he would update his bosses with the results of his tests on the weapons.

13. He accepted that his management of the storage and testing of chemical weapons brought him within the second test stage of the production of chemical weapons. Although he was not involved in deploying the weapons himself he understood that another department did this.

14. He believed that his work at Al Muthana increased the risk of him being targeted by the Iranian government if he were returned to Iraq. He regretted what had happened in the Iran-Iraq War and did not like the field he specialised in and was against war and killing people.

15. If he had not carried out his work during the war he would have exposed himself and his family to harm and had not had a choice. The potential consequences of leaving stopped him from trying to do so earlier.

16. After the Iran-Iraq War ended in 1988 he worked as head of development in the planning department of the Baghdad industry factory which produced medical drugs and chlorine for sterilisation and he later returned to teaching and worked as an academic science teacher in universities and colleges up to 2006.

17. He first worked with coalition forces after the first Gulf War between 1991 and 1998, providing them with information about Al Muthana and his own work. The Iraqi government had provided them with his details.

18. After the invasion in 2003 there came a new sectarian government. He was identified as a high-ranking Ba'ath Party figure and provided full cooperation to the coalition forces and authorities on a weekly basis and disclosed all information known to him about the Al Muthana Establishment. He had wanted protection but there was also concern about this information falling into the wrong hands. Because of his previous work as a scientist and his connection to the coalition forces his family were placed in danger as Al-Qaeda groups operating in Baghdad became aware of his former work. His concerns caused him health problems and he had to travel to Jordan in March 2006 to undergo open heart surgery. He subsequently received threatening phone calls and letters, and having returned to Iraq, he subsequently fled to Jordan and was there until July 2010 when he came to the United Kingdom on a Tier 5 international exchange visa, having agreed an overseas placement to work for the University of Liverpool as a senior researcher.

19. Having thus summarised the appellant's evidence, the decision-maker went on to summarise evidence concerning chemical weapons, dividing these into various categories and then went on to consider chemical weapons and Iraq's development and use of chemical weapons, citing a number of sources for this information. In a CIA Report of 2004 the appellant was named as a weapons design expert and toxicity research

having received training at the Russian Chemical Warfare Academy between 1973 and 1979.

20. The decision letter goes on to describe how the outbreak of the Iran-Iraq War in 1980 led to an increase in Iraq's CW research and production under the name Project 922 (also known as the Samarra Chemical Weapons Production and Storage Complex). The project's aim was the production of CW including mustard gas, sarin, tabun, VX and white phosphorus. The project was housed in the Al Muthana State Establishment based at Samarra near Baghdad. As a cover for the production of chemical weapons the facility was referred to as the State Establishment for Pesticide Production (SEPP). The project was successful in producing mustard gas, sarin, CS and tabun.

21. As noted above, the report of the Iraq Survey Group identified the appellant as the manager of the binary sarin munitions project or at least named that person as having the same name as the appellant. It also noted the existence of a laboratory apparently bearing his name at the Al Muthana complex which was noted to have a basement in which chemical rounds were stored. The appellant had stated that one of his friends and colleagues at Al Muthana was Dr Ala Al Saeed. The research showed that a Dr Alal Saeed worked in the missile industry and was a member of Iraq's national National Monitoring Directorate, which cooperated with UN weapons inspectors during the 1990s.

22. The decision letter goes on to address these weapons by the Iraqi regime during the Iran-Iraq War and notes that in the course of that war the Iraqi military was responsible for a range of war crimes and crimes against humanity. In 1985 the Secretary General of the United Nations abhorred in particular the use of chemical weapons in this conflict and in 1987 the United Nations reported the repeated use of chemical weapons by the Iraqis against the Iranian Army. In the following year the United Nations mission to investigate chemical weapons reported that the Iraqis used chemical weapons on an intensive scale. Such weapons had been used against Iranian civilians in an area adjacent to an urban centre lacking any protection against that kind of attack and even children had been injured. The UN concluded that Iraq had used both mustard gas and tabun and that chemical weapons played a significant role in the conflict. In the aftermath of the Iran-Iraq War CW production was initially halted but in 1990 production of sarin, VX and mustard gas restarted.

23. In addition to the use of chemical weapons in the Iran-Iraq War, Iraq also deployed CW against uprisings within Iraq, resulting in significant civilian casualties. In 1983 it was reported that the Iraqis had tested chemical weapons on live human subjects and Iraq deployed CW against the Kurdish opposition and in northern Iraq in what were known as the "Anfal Campaigns". According to Human Rights Watch the deployment of CW had a significant impact during operations in the 1980s during which time between 50,000 and 100,000 Kurds were killed by Iraqi forces.

24. There was also a brief section noting the long history of legal prohibitions on the use of chemical weapons dating from 1675 and more recently the 1925 Geneva Protocol and the Chemical Weapons Convention or CWC opened for signature with a ceremony in Paris on 13 January 1993.

25. The respondent went on to refer to the CIA Report of September 2004 and it was stated that a person bearing the appellant's name was a weapons design expert and toxicity research who had studied at the Russian Chemical Warfare Academy alongside Dr Imad Hussein Abdullah Al Ani (research and development) and Dr Hammad Shakir (weapons preparation expert) during the period concerned. This study was said to have been conducted under the direction of the Al Hasan Ibn-al-Haytham Research Foundation in Iraq and that the oversight of the Iraqi Intelligence Service is part of the Ministry of Higher Education and Scientific Research. The objective was said to be to research the synthesising of chemical warfare agents including mustard, sarin, tabun and CS as well as pesticides.

26. In addition, further to being named as a weapons design expert, research in the same report compiled by the CIA in 2004 noted a person with the appellant's name as being the manager of the "sarin munitions project" who frequently stored munitions or arms he was working on but had not tested in the basement of his laboratory. At interview the appellant had accepted that he managed the storage of chemical weapons and monitored their outgoing viability, but still denied being involved in their production. At interview he disputed that he was a doctor, that he was the person named in the above report, that he studied within the Chemical Warfare Academy and that his work was directly linked to the Al Hasan Foundation. He was aware of Al Hasan's work and that colleagues of his were connected to it, but stated that this came under the separate intelligence service (Mukhabarat) direction. He said that from 1981 to 1983 he worked in a laboratory called Baghdad Javida, which were the original laboratories of the Mukhabarat until such time as the Al Muthana facility was ready to use in 1983.

27. The respondent considered that there were serious reasons on the basis of this evidence for considering that it was the appellant who had been identified in the objective evidence and that the two Iraqi colleagues he named as studying with him in Russia were also named in the report. It was concluded that there were serious reasons for considering that he did work under the direction of the Al Hasan Foundation with oversight from the Mukhabarat and that the overarching aims of these studies was to research the synthesising of chemical warfare agents to be deployed in chemical weapons. It was further noted that after the 2003 invasion and following a change of Iraqi government he was identified as a high-ranking Ba'ath Party figure and provided full cooperation to the coalition forces and authorities on a weekly basis and disclosed all information known to him about the Al Muthana Establishment. He wanted protection but was also concerned about this information falling into the wrong hands. It was

believed that other colleagues had done the same and that this had contributed to the information contained within the CIA Report. It was considered by the respondent to be in the appellant's interest to provide accurate and impartial information. There were significant grounds for believing that the objective evidence relied upon which he had disputed in part had actually come from his own testimony to the coalition forces and that this strengthened the belief that the information was correct.

28. It was said that as such there were serious reasons for considering that the information which named the appellant as a doctor and cited his specialism as both a weapons design expert and toxicity research was accurate and that he had made a significant individual contribution to the production and storage of chemical weapons by the Iraqi regime as set out earlier in the decision letter. He had already accepted his role within toxicity research and admitted that he was involved in the storage and maintenance of chemical weapons at the Al Muthana facility. He also accepted from his own accounts that the overarching purpose of Al Muthana was the production of chemical weapons. It was concluded that there were serious reasons for considering that he was a chemical weapons design expert, had obtained a doctorate in studies at the Chemical Warfare Academy in Moscow and had gone on to work in Baghdad Javida and Al Muthana with the knowledge that the overarching purpose of his work and of the unit holistically was the production of chemical weapons. It was believed that given his qualifications, allied to the value of his information to the coalition forces and his subsequent problems caused by his connection to this work that he had made a significant individual contribution to the ability of the Iraqi regime to establish initially and successfully operate its Chemical Weapons Programme.

29. In light of the guidance in MT [2012] UKUT 00015 (IAC) in the context of aiding and abetting, it was considered that there were serious reasons for considering that the appellant had provided practical assistance to the commission of war crimes and crimes against humanity by the Iraqi regime in the war with Iran and the commission of crimes against humanity internally within Iraq. It was said that his specific role was fundamental to the ability of the Iraqi regime to target its opponents effectively and that there were serious reasons for considering that he worked as a leading scientist within the Iraqi Chemical Weapons Programme in the field of studying and researching the effects of chemical weapons, in addition to the storage and maintenance of chemical weapons which had a substantial effect on the perpetration of international crimes by the Iraqi regime. Whilst he had stated that he had no involvement in the production of chemical weapons himself, he had admitted at interview that his research and storage of chemical munitions brought him within both aspects of the two stage process required for producing chemical munitions. He understood that the overarching nature of the department's work was the production of chemical weapons. It was noted that he had tested the concentration, stability and explosiveness of gases

that were used in chemical weapons, feeding the results of his team's research up to his boss, in the understanding that he deployed these gases in chemical weapons. Though he had stated he had no involvement in decisions on how chemical weapons were deployed by the Iraqi government, he understood that these weapons had been deployed against Iran, stating that he believed that Iran had used these weapons in the conflict first. Reference was made to objective evidence that had been cited which showed that chemical weapons were deployed against Iranian civilians and the Iranian military on an intensive scale.

30. It was noted that he disputed the use of chemical weapons against the Kurds in Halabja by the Iraqi forces in Iraq in 1988. He was aware of suspicions that the Iranians carried out these attacks and might have done so in order to gain sympathy with the United Nations. Notwithstanding his belief, it was considered that during 1983 to 1999 the use of chemical munitions by the Iraqi government against civilians in different areas of Iraq had been extensively documented in objective information as set out above in the decision letter and had been reported on as fact by the United Nations. It was noted for instance that up to 100,000 Kurdish people, many of whom were civilians, were thought to have been killed through the use of chemical weapons in bombing campaigns in Iraq in the late 1980s. It was believed that the appellant had denied the use of chemical weapons against civilians in Iraq in the face of incontrovertible evidence in order to attempt to distance himself from the crimes committed by the regime. He had demonstrated a high degree of knowledge of how chemical weapons were used by the Iraqi government against its opponents and understood that the intent was in order to maintain territorial integrity and retain control within Iraq. As such, it was said to be inconceivable that he was not aware of their use inside Iraq and that there were serious reasons for considering that he was aware of the commission of crimes against humanity and made a significant individual contribution to them.

31. With regard to joint criminal enterprise, it was considered that there were also serious reasons for considering that the appellant had worked alongside numerous senior and junior colleagues in the Iraqi Chemical Weapons Programme who shared a common criminal purpose of maintaining security in Iraq between 1981 and 1988 using any means possible, including the commission of war crimes and crimes against humanity. His specific role was said to be fundamental to the ability of the Iraqi regime to target its opponents effectively and there were said to be serious reasons for considering that following his period of study at the Chemical Warfare Academy in Moscow he had worked as a leading scientist within the Iraqi Chemical Weapons Programme leading a team in the study and research of the effects of chemical weapons, in addition to the storage and maintenance of chemical weapons. It was considered that there were serious reasons for considering that he made a significant individual contribution as part of a plurality of persons both under his control and alongside his superiors to the Iraqi government's commission

of crimes against humanity in a widespread and systematic manner. These crimes were committed against government opponents and civilians as part of the common plan of maintaining security and territorial integrity in Iraq and as such he formed part of a joint criminal enterprise.

32. As regards any defence of duress, consideration was given to the guidance in AB [2016] UKUT 00376 (IAC), and it was concluded that there was no evidence to suggest that the appellant ever tried to disassociate himself from employment with the Iraqi government over a prolonged period which spanned his studies in Russia at the Chemical Warfare Academy until his services were no longer required following the end of the Iran-Iraq War. There was no suggestion that he was ever threatened with harm should he want to leave his employment during the course of his service in the Chemical Weapons Programme and it was believed that he had the means to leave Iraq permanently at a much earlier date if he had had the inclination to do so.

33. The respondent accepted that returning the appellant to Iraq at present would be in breach of Article 3 of the European Convention on Human Rights and that he therefore qualified for a grant of restricted leave to remain in the United Kingdom in line with published guidance on asylum cases where an Article 1F decision has been applied. His claim under Article 8 was considered and rejected, as was a claim that he was entitled to Article 3 protection on the basis of his medical condition.

34. The appellant has health problems and as a consequence was unable to give evidence. The only oral evidence at the hearing therefore was provided by the expert Dr Alan George.

35. Dr George has provided a detailed report, dated 30 October 2020. He has set out details of his experience and expertise, such that it is proper to accept, as I believe was uncontested, that he is an acknowledged expert in relation to the matters addressed in his report.

36. Dr George set out a good deal of background evidence with respect to the recent history of Iraq and the current situation. I will not attempt to paraphrase that detailed exposition, but will refer to it where relevant in the context of Dr George's evidence and the other evidence.

37. Dr George has read the appellant's witness statements and interview record. He notes his history of having attended the Military Academy of Chemical Protection in Moscow, gaining a PhD in analytical chemistry and on his return to Baghdad working for the Defence Ministry teaching Ministry personnel. In 1981 the appellant started working for the State Establishment for Pesticide Production at laboratories in Baghdad specialising in the characteristics of various chemical agents and in 1983 he transferred to Iraq's key chemical weapons facility, the Muthana State Establishment, located near Samarra, as head of research in the Department of Protection, Limitation and Pollution Detection. He had

stated that he played no role in the actual production of chemical weapons. He was promoted several times, attaining the rank of brigadier general. After the end of the Iran-Iraq War in 1988 the appellant was appointed head of development in the medicines factory and was also involved with a plant producing chlorine for sterilisation.

38. The appellant had testified that following the 1990 to 1991 Kuwait crisis he assisted UN inspectors tasked with unravelling Iraq's chemical weapons and other weapons of mass destruction programmes. After the 2003 invasion he cooperated fully with the U.S.-led coalition in its effort to locate and neutralise Iraq's weapons of mass destruction and during this period he was provided with personal protection by the coalition.

39. Dr George sets out thereafter the appellant's remaining history while in Iraq, his move to Jordan and his subsequent arrival in the United Kingdom in July 2010, where he has since worked at Liverpool University.

40. At paragraph 136 of his report Dr George says that lacking direct first-hand knowledge of the events described by the appellant that affected his family, he is not in a position to provide direct corroboration of his testimony. He states that as a general comment however he found his testimony to be generally plausible in the sense that it accords broadly with the historical record and with Dr George's understanding of conditions in Iraq and the wider region at the relevant times. Dr George made it clear that he made a distinction between plausibility and credibility, the latter being a matter for the Tribunal.

41. The first issue that Dr George had been asked to consider was: "What privileges and/or influence would the appellant have derived from his Ba'ath Party membership?" He emphasised that under Saddam Hussein's regime Ba'ath Party membership was a prerequisite for government employment and professional advancement. He did not accept, however, what had been said by the Home Office that students who refused to join the Ba'ath Party were expelled from colleges and universities. To the best of his knowledge and belief, Ba'ath Party membership was not compulsory as such for students, equally however, students were pressured to join the party as a means of demonstrating their loyalty to the regime and he considered it plausible that there might have been circumstances where students were expelled from colleges/universities for refusing to join the party. Membership of the party in and of itself said nothing about a person's personal political convictions or lack of them. Party membership was widely seen and understood to be a useful and often essential requirement if a person wished to progress in their career and also a helpful safeguard against suspicion of political dissent, a suspicion that could carry dire consequences.

42. The appellant had said that he had joined the Ba'ath Party in 1970 but never advanced beyond the rank of "firka", which he defined as the second level of membership from the bottom. Dr George addressed the

evidence in this regard and accepted that the appellant's party membership level was the second level of full membership, the lowest being "active member". He could not be reasonably described as being a high-ranking member of the Iraqi government. Certainly he held a significant and sensitive position in Iraq's Chemical Weapons Programme, but Dr George asserted that that in and of itself would not make him a high-ranking member of the Iraqi government. There were tens of thousands of people at his level in Iraq. In the Iraqi government's revised post-2008 de-Ba'athification programme, holders of the appellant's rank were not considered to have wielded significant influence in the Ba'ath Party and were not subjected to any sanctions.

43. Dr George put to the appellant the point that as a former "adhu firqa" in the Ba'ath Party he should have been excluded from public sector employment and yet he had worked in the public sector at the time of the U.S.-led invasion and from July 2004 as a teacher in a university, and he said that teaching staff who were in the university and were part of the de-Ba'athification programme were returned back to teaching in all Iraqi universities.

44. The next question to which Dr George was asked to provide a response was: "In your opinion, how important was the appellant's involvement in/contribution to Iraq's chemical weapons project?".

45. Dr George emphasised that he is not a specialist in military or chemical weapons projects and this needed to be borne in mind. However, as a journalist in the 1980s he had devoted considerable time and effort over several years to elucidating Saddam Hussein's weapons of mass destruction programmes, and his expertise had been acknowledged in the Scott Inquiry, as referred to at paragraph 7 of his report.

46. Dr George had found a reference to the appellant's involvement in Iraq's Chemical Weapons Programme in a book by Kenneth Timmerman: "The Death Lobby: How the West Armed Iraq". There is a reference to a visit by an Iraqi team led by the director of SEPP (State Establishment for Pesticide Production) and an SEPP chemist, the appellant, which visited a subsidiary of a chemicals firm in Germany. The Baghdad representative of the German company later telexed the head office in Frankfurt with information on the Samarra "pesticides" project and advised the company not to get involved, and on 4 May 1982 German customs documents showed the travelling Iraqis to have visited the German company's Hanover office claiming they represented the Baghdad Water Supply Administration and on another trip SEPP's general manager claimed he was from the State Establishment for the Oil-Refining and Gas Industry.

47. This was put via his legal representatives to the appellant, who said it was 41 years ago and he did not remember much but when they went to visits there were different teams and his purpose was more of exhibition to look for equipment more related to chemical analysis. His reasons for the trips

were for equipment, not materials and he would not buy but would advise buying for his work. He said that SEPP was more agricultural and the organisation had different departments, biological, chemical etc. and he was in the chemical department. After 1983 the name of SEPP was changed to 922 Project and then after a long time changed to the Al Muthana State Establishment.

48. Dr George observes in his report at paragraph 162 that at that time the appellant was an army officer who had studied to a high level in Moscow in the field of protection from chemical weapons. Under cover of establishing a pesticides plant Iraq was in the process of establishing a full-blown chemical weapons production facility. In the company of central figures in that project, i.e. Dr Emad Abdullah al-Ani, who had provided an email in support of the appellant in this case, the appellant had toured Europe with the aim of procuring equipment for the Al Muthana plant. In Dr George's opinion, while it may well be that the appellant's priority was to identify laboratory and related equipment that he would need for his research and analytical work, he did not consider it plausible that he would not have been fully aware that SEPP was engaged in the development of a chemical weapons project. Dr George goes on to observe, at paragraph 163 of his report, that indeed the appellant's testimony confirms repeatedly that he was well aware of the activities of the Al Muthana project but states consistently that he was not personally involved in the production or deployment of chemical weapons but rather as "head of research in the Department of Protection, Limitation and Detection of Pollution with Chemical Agents". He was involved with developing new methods of protection against a possible chemical attack, developing protective gear for the respiratory system and skin protection and ways to limit the impact of chemical attacks on Iraqi soil, water plants contamination, finding methods of quick detection, containment and decontamination of any possible form of chemical attack. He had said in his evidence that his work at Al Muthana included testing chemical weapons to determine the periods for which they could be stored without degrading.

49. At paragraph 165 of his report Dr George went on to say that the appellant was knowingly engaged in Iraq's Chemical Weapons Programme at a time when such weapons had been used to devastating effects both against Iranian forces in the Iran-Iraq War and also against Kurdish civilians. In the sense that analysis and research were key elements in the programme, he fulfilled a key function. Dr George went on to say, however, that equally he knew of no reliable evidential basis for an assertion that the appellant initiated or directed the programme or that he was responsible for the actual deployment of chemical weapons. In his opinion the appellant was certainly a senior and trusted figure in the programme, although not one who was directly involved in the deployment of chemical weapons and not one who appeared to have enjoyed wide autonomy.

50. The next issue put to Dr George was a request to comment on the likely reliability of information about the appellant contained in the

Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD (Weapons of Mass Destruction) ("the CIA Report") dated 30 September 2004.

51. Dr George says that after the 2003 invasion and occupation of Iraq the U.S.-led coalition appointed an Iraq Survey Group (ISG) to investigate Saddam Hussein's WMD projects. Key organisational roles were played by the Pentagon and the U.S. Central Intelligence Agency (CIA) and the majority of the ISG's 1,400 personnel were Americans.

52. In Dr George's opinion the CIA Report offers by far the best available overview of Iraq's WMD projects and is impressive, especially given the secrecy within which the weapons projects were developed. At the same time, however, he considers that the report's information must be treated with at least a degree of caution. He sets out what is said in the report itself in its "key findings" section, saying, among other things, that while some detainees' statements were made to minimise their involvement or culpability leading to potential prosecution, in some cases those who were interviewed spoke relatively candidly and at length about the regime's strategic intent. The report went on to say that the interview process had several shortcomings. Detainees were very concerned about their fate and therefore would not be willing to implicate themselves in sensitive matters of interest such as WMD, in light of looming prosecutions. Debriefers noted the use of passive interrogation resistance techniques collectively by a large number of detainees to avoid their involvement or knowledge of sensitive issues; place blame or knowledge with individuals who were not in a position to contradict the detainees' statements, such as deceased individuals or individuals who were not in custody or who had fled the country, and provide debriefers with previously known information. It was said that the quality of cooperation and assistance provided to ISG by former senior Iraqi regime officials in custody varied widely. Some obstructed all attempts to elicit information on WMD and illicit activities of the former regime, others, however, were keen to help clarify every issue, sometimes to the point of self-incrimination. It was said that ISG's efforts to uncover information on CW-germane[sic] research, development and infrastructure were complicated by uncooperative detainees, threats to some sources and extensive looting and burning of documents and facilities.

53. Dr George remarked that it was evident from the CIA Report that it did not claim to contain only irrefutable and complete information. He quotes from a subsection headed "Origin of the Binary Sarin Round Used on BIAP". This cited no fewer than four inconclusive and partly or wholly conflicting reports around the origin of a particular sarin shell.

54. Dr George observes that the CIA Report includes information about the appellant that he had insisted is inaccurate. At page 61 it states that he gained his PhD in Moscow from "the Chemical Warfare Academy". He states that in fact he studied at the Academy of Chemical Protection, and

Dr George noted that he had submitted copies of certificates from that academy relating to him.

55. The appellant also was described at page 61 of the report, volume 3 as "weapons design expert and toxicity research". He denies that he was ever involved in weapons design and Dr George was unaware of any evidential basis other than the CIA Report for the claim that he was so engaged.

56. At page 100 of the report he was described as having been "the manager of the binary sarin munitions project". He denies that he held any such position and again Dr George was unaware of any evidential basis other than the CIA Report that he held such a position.

57. As regards the reference to the Al Muthana chemical weapons complex included a "Salah ad Din Research Department", and the fact that it was averred by the Home Office in the appellant's third asylum interview that this must have been named after him as that name reproduces part of his name, the appellant denied that the department/laboratory was named formally after him although he conceded that it might have been named after him in the sense that it identified the laboratory in which he worked. In fact, as Dr George notes, Salah al-Din, known in the West as Saladin, was a revered renowned 12th century Islamic military commander, and the Iraqi governorate of which his hometown Tikrit was the capital was named Salah al-Din Governorate.

58. Dr George went on to conclude that to the best of his knowledge and belief the conflict between the appellant's testimony and the items concerning him in the CIA Report could not be resolved by reference to independent sources as there were none covering the specific points at issue. The only exception perhaps was the name of the academy at which he studied for his doctorate in Moscow. The conflicting evidence was a matter for the Tribunal.

59. The next issue Dr George was asked to address was the significance, if any, of the lack of punitive action against the appellant by the U.S.-led coalition that invaded Iraq in 2003 and by post-invasion Iraqi governments.

60. It appeared from the evidence that the appellant may not have been on the coalition's pre-invasion blacklist, Dr George noted, although that was uncertain. Even if he was, no action was taken against him either by the coalition or by the post-2003 Iraqi authorities despite his having been at a level in the Ba'ath Party that until 2008 triggered penalties. His testimony, supported by a letter from the U.S. Embassy in Baghdad of 20 August 2003 was that he assisted the coalition's effort to unravel Saddam Hussein's WM projects. In Dr George's opinion a likely reason why no action was taken against the appellant was simply that he was not

considered to have been of sufficient importance in the Chemical Weapons Programme to have merited detention or other targeting.

61. The next issue that Dr George was asked to comment on was the Home Office's assertion that the appellant could have disassociated himself from Iraq's chemical weapons project. It had been put to him that there was no suggestion that he was ever threatened with harm should he wish to leave his employment and he was believed to have had the means to leave Iraq permanently at a much earlier date if he had been inclined to do so.

62. The appellant in his evidence stressed the exceeding brutality and viciousness of the regime and this was supported by background evidence. Dr George commented that the appellant would have been well aware of the nature of the regime and of its human rights abuses. In the political and security context of the day, instructions from the regime including employment placements could not generally be resisted by the individuals affected by them except at great risk. For an individual to have declined to accept duties imposed on or even suggested to him/her by a regime instruction could have resulted in imprisonment and torture and the imprisonment and torture of the person's family. This was perhaps especially so for army officers such as the appellant for whom disobeying direct orders would have prompted severe retribution.

63. Dr George was then asked to comment on the Home Office's assertion in the decision letter that the appellant's position that chemical weapons were not used against Iraq's Kurdish civilians represented an attempt to distance himself from the crimes committed by the regime. Dr George noted that the evidence that the regime repeatedly used chemical weapons against Iranian forces in the 1980 to 1988 Iran-Iraq War and against Iraqi Kurdish fighters and civilians was incontrovertible. The appellant had expressed the belief in his 2019 statement that the attack on the Kurdish town of Halabja in March 1988 where up to 5,000 people were killed and many more wounded, "may have been perpetrated by Iran". He had also opined that Iran had used chemical weapons before Iraq during the Iran-Iraq War.

64. Dr George states that the established record is that it was Iraq that initiated the use of chemical weapons in its war with Iran but equally there was evidence that Iran had also used chemical weapons, albeit on nothing like the same scale as Iraq. He also notes that in Iraq as in the wider Middle East there is now a tendency to confuse supposition with hard fact. Conspiracy theories are rife and agents or spies are routinely blamed for all manners of misfortune. This is the context in which the appellant's position on the use of chemical weapons by the Saddam Hussein regime required to be considered and it was a matter for the Tribunal to determine if his position represented a genuine, albeit gravely misguided belief or a calculated attempt to distance himself from the crimes committed by the regime.

65. In his oral evidence Dr George identified his signature at the end of his report and adopted it as part of his evidence. He agreed that as he had said at paragraph 136 of the report, the appellant's testimony was generally plausible. What the appellant had said at paragraph 5 of his statement at page 25 in the bundle was plausible and also at paragraph 47 about the appellant's role though not the programme itself. As regards paragraph 25, this was not necessarily the full story. The regime was involved in much more than protection from Iranian attacks. It was plausible that that was his role in the programme. As regards the contrast between the Home Office description of where the appellant had studied in Moscow as the Chemical Warfare Academy as opposed to the Military Academy of Chemical Protection, it seemed at best to be a mistranslation. He was unaware that the Soviet Union had a chemical warfare named establishment. Such institutions were always described as involving defence and not war, for example Porton Down had originally been called the Chemical Warfare Experimental Station but recently the Chemical Defence Establishment and the same would go for the Soviet Union. Dr George emphasised that he was not an expert on it but it was the sort of name he would expect for an establishment of that sort. If the CIA Report said that it was called the Chemical Warfare Academy in the Soviet Union then it was wrong.

66. He had said at paragraph 169 of his report that the CIA Report's information must be treated at least with a degree of caution because as he had said in the report, the information came largely from detainees who had every motivation to avoid culpability themselves, so they put it onto others. It was the best report there was at the time but it had its limitations.

67. As regards the allegation the Secretary of State made of the appellant being a weapons design expert, at page 317 of the Home Office bundle, Dr George was not aware of any other evidence or source alleging that. Likewise, he was not aware of any other source for the allegation made by the Home Office that the appellant was the manager of a binary sarin munitions project.

68. He was referred to the sections of his report concerning the appellant at paragraphs 159 to 162 and was asked whether if the appellant had trained at a chemical warfare academy or was a weapons design expert or involved in the manufacture of sarin, would he have expected to find some evidence for that in his searches. He said that he would. These were covert operations but as could be seen from paragraph 7 of his report, he had specialised in the past in the researching of these matters and the appellant was the kind of person he had been looking for. He was asked whether if the appellant had had the role the Home Office said it was likely he would have found it somewhere and said that likely was a strong word and an overstatement as these are all covert operations and so he was not sure. As he had said at paragraph 162 of the report, he did not consider it

plausible that the appellant would not have been fully aware that SEPP was engaged in the development of a chemical weapons project.

69. As regards the appellant's key functions and as set out at paragraph 163 of the report, he was asked whether he could say whether the appellant's work would constitute a crime against humanity. Dr George said that went beyond his expertise. It was clear in the Iraqi context that decisions on the use of such weapons would have come from Saddam Hussein and his circle. The appellant would not have been in a position to deploy such weapons. It was correct as set out at paragraph 154 of the report that his party rank was not high and there were tens of thousands like him in Iraq. He was asked how he would describe the appellant's status and said he had a significant military rank but that did not mean much with regard to the government, for example if a person were a close relative of Saddam Hussein, then military rank would have been irrelevant. He would not have had the power to get near the deployment of the chemical weapons. As the role of a firka was nominal: a mid-rank and not significant and would be obtained just to get a job. As he had said at paragraph 181 of the report, the likely reason why no action was taken against the appellant was simply because he was not considered to have been of sufficient importance in the Chemical Weapons Programme to have merited detention or other targeting. He was asked whether there was any other evidence leading him to the same view or relevant to the point and he said that was the key point. There was a blacklist before the invasion. No operative action had been taken against the appellant and that was indicative that he was not seen as a bad person in comparison to others. With regard to page 547 and the Halabja issue, it could be relevant: it concerned the families of victims and Dr George had noticed no reference to the appellant as a defendant though his boss was and it seemed he was not a critical player. He stood by what he said at paragraph 186 concerning the consequences of disobedience. What the appellant said at paragraphs 48, 66 and 67 about threats of harm was an accurate statement of the reality. Dr George gave an example of a person who by mistake had placed a coffee cup on a photograph of Saddam Hussein when Dr George had been in Baghdad in 1984 and this person was never seen again.

70. Dr George accepted that the circumstances in Iraq at the time constituted an actual threat. Even distant relatives could be targeted if a person fled with their immediate family. It was possible to flee but few had done so.

71. With regard to Iran, it was put to Dr George that the appellant had said that he was charged with dealing with what would happen if Iraq was attacked and involved in detection and countermeasures and he was asked what the extent of Iran's culpability was at the time. As regards the position of Iran and the appellant saying that he was charged with dealing with what would happen if Iraq were attacked, by means of detection and countermeasures, he was asked about the extent of Iran's culpability at the time. Dr George said that the situation was very blurred. There had

been intermittent reports of Iranian use of chemical weapons but nothing compared to what Iraq was doing. Iran was almost experimenting. What he had said at paragraph 189 of the report was what the Iranians were doing. He was asked to what extent propaganda would have influenced the appellant, bearing in mind his statements at interview concerning his belief in respect of Iran's culpability, whether this was not consistent with the objective evidence. Dr George said it was entirely plausible what was being said about Iran being engaged in chemical weapons. There were genuine Iraqi reports about Iranian use of chemical weapons, so it was reasonable to assume that. With regard to de-Ba'athification and the evidence at page 355 he said yes, that was what he had referred to. After the 2003 invasion the U.S. had decided that the Ba'ath Party would be dissolved and there would be no jobs for people who had been more serious members but some years later this had been revised and they had changed the levels of culpability as the earlier arrangement had been too all-embracing. This was confirmed by what he said at paragraph 156 of his report.

72. It was suggested to Dr George that if the appellant had been culpable of what the CIA alleged was it likely he would have been rehabilitated in this way but Dr George said that one could not really assume that and it was questionable what would be done if the report were accurate. There was a lack of clear procedures and rules and a lot of what happened in Iraq was arbitrary. He accepted that the appellant had not been targeted and he had been rehabilitated in the sense that they were talking about. He was asked whether it was plausible that there was a lack of targeting if he was as close to the regime as the Home Office contended. Dr George referred again to the lack of clarity and said if he had closely and personally been involved in the regime he did not think he would be rehabilitated in that way. He made the point also that the appellant's former boss was living in Northern Iraq and had sent an email about the case and as far as he was aware this person had not been targeted by the Iraqi authorities and he was senior to the appellant. This was an email from Dr Emad at page 61 of the bundle.

73. When cross-examined by Ms Cunha Dr George agreed that he had read the appellant's interview notes and statements. He was aware of the Home Office position that the appellant had been producing chlorine as he had said in answer to question 15 at interview and that he had studied in Russia. He thought that in fact the institute at which the appellant had studied was outside Moscow. The certificate from the university in Russia was in the bundle. He accepted that it was plausible that the references made were to the same institution. What he had said at paragraph 129 of his report concerning the appellant's background was based on the appellant's evidence. It was put to him that the appellant had been offered an amnesty after the amnesty expired, when the coalition forces left Iraq he had left for Jordan and Dr George said there was no reference to an amnesty in his report but the appellant had referred to it and it was while the coalition forces were in Iraq.

74. He was asked whether that would have impacted on whether the coalition would have decided to take action against the appellant and he said yes, it was plausible that a senior chemical engineer with his history would assist. There were individuals who were detained and operational with weapons of mass destruction but the appellant had not been detained. It was hard to know the significance of that. It could be because he had helped the coalition but some who had provided help had also been detained.

75. He was asked whether it was fair and plausible that as a result of the appellant's ability to work with the coalition his evidence to it would have been stronger than those detained and he said that one could only speculate and he would rather not do so. There was a section in the CIA Report on this. It was a spectrum. He was asked whether it was plausible that the appellant could have been helpful to the point of self-incrimination and said he could not answer that and if he had said such a thing it was likely he would have been targeted, and he had not been. He had been able to teach at a military college in Baghdad despite party members of his level not being allowed to work in the public sector. It was put to him that the appellant could still have been involved in the perpetration of these acts and he said that he did not think the appellant was personally involved in the deployment of chemical weapons. It was put to him that he had assisted in the mass production of chlorine which could assist and Dr George said that chlorine could be used, for example, for safe purposes. As regards his involvement with sarin gas Dr George said that given that chlorine had so many potential uses it was impossible for him to say what the appellant had done or had not done. The appellant had been a key figure in the weapons project and as a journalist Dr George would say he was a whisker away from being culpable, pretty close but not quite there.

76. It was put to him that in his interview the appellant said in answer to question 33 that the first department had researched chemical agents at a laboratory level and they transmitted to a bigger volume. They called it pilot plant. It was used for army purposes and the answers to questions 34, 35 and 39 were also relevant. He stood by what he said in the final sentence of paragraph 162 of his report that he did not consider it plausible that the appellant would not have been fully aware that SEPP was engaged in the development of a chemical weapons project. No doubt the appellant would have known he was engaged in a chemical weapons project. It was put to him therefore that it was plausible that the appellant had been aiding and abetting a department which was producing chemical weapons to protect the army and he said aiding and abetting was a legal term. The appellant had been a key figure in a major chemical weapons project as head of research. He had checked the conditions of weapons in storage, so yes, in a lay term but again, it was a spectrum. He had clearly been involved in a significant role in a chemical weapons project.

77. Dr George agreed that in a general sense the appellant as a senior scientist with his knowledge would be aware of the international implications of producing such chemical weapons. The Iraqi regime and the appellant would very likely have been aware of the United Nations and international protection but of course restrictions applied in general including to the United Kingdom's nuclear weapons. It was irrelevant what the appellant had thought about international Conventions at the time. It was a question of the immediate situation he found himself in.

78. Dr George was referred to page 146 in the CIA Report and he said that in the Iran-Iraq Wars from 1980 onwards Iraq was much more active than Iran with regard to chemical weapons.

79. He was asked whether it was plausible that at the time when the appellant returned to Iraq having completed his PhD in the USSR he would have been aware of Iraq's motivation in seeking these potentially chemical weapons. Dr George said he did not know how underpaid Iraqis' knowledge of these missile projects would have been. As an army man it was plausible that the appellant would have had some awareness. He had no idea about the appellant's awareness of missiles/chemical weapons connections.

80. He was asked whether he accepted that a person who was part of the military and went to the USSR to study chemical engineering would plausibly be in the know about producing these weapons and he said it was implausible that the appellant would not have known in the 1980s. He could have believed that he was learning defence techniques and a lot of countries including the United Kingdom were aware of the risk provided by chemical weapons.

81. He was referred to the CIA Report at page 257 bearing in mind the appellant's role in the chemical weapons side and whether it was plausible that he would know of the restrictions of the UNSC Resolution and how much he could be assisting the government. Dr George said it was not clear. He did not know what the appellant knew about the UN Resolution and it was quite irrelevant to the Iraq regime. It was put to him that the appellant would be aware of the limits on the amounts to be produced and he said he could not know what the appellant would have known at the time. It was put to him that if inspectors had visited the institution they would have had to know what they could do. He said that the appellant had assisted UNSCOM and accepted he had done or he would have been told to. It was not a gold star. The Iraqis were playing a cat and mouse game with the UN officials at the time.

82. He was referred to the report also referring to the Iraqi intention to make Iraq less reliant on other countries for its natural resources and access to certain solvents and he was asked whether he would say that it would be consistent with what the regime would have wanted to do. He said that there was a general drive to have a self-sufficient arms industry. He was

not aware that the appellant was involved in the production of chemical weapons. Iraq had been obtaining precursor chemicals from Europe but it was necessary to be specific about what chemicals.

83. With regard to the appellant's role in the Ba'ath Party, which Dr George had addressed at paragraph 144 and elsewhere in his report, he disagreed with what the Home Office said about students refusing to join the Ba'ath Party being expelled from colleges and universities. He said that in effect it was necessary to be a member of the party for working in the public sector. This was seen as showing loyalty to the regime. The appellant had become a firka when he returned from the USSR although he was already a party member. Everyone was promoting the party. Someone had to organise the students, bearing in mind his academic role with students. He was asked whether it was plausible, given the appellant's role as a lecturer, he might have only spoken of and promoted the party's intentions about the chemical warfare programme and he said no, it would have been a military matter and he would have offered no more than general praise for the regime with references to the wise leader protecting the nation. That was if he had done so but he did not know what the appellant would have said.

84. General Al Attar, to whom reference was made at paragraph 166 of Dr George's report, was not the same person as Dr Emad, who had provided an email at page 61 of the bundle. General Al Attar was, as said there, the appellant's direct superior, according to his evidence. He was only aware of the general in the context of this case.

85. He was asked with regard to what he had said at paragraph 181 of his report about the fact that it appeared the appellant might not have been on the coalition's pre-invasion blacklist that it was plausible, given his low rank, that he would not be on that list and he said yes, those who drew up the list did not think he was important enough to target. They must have known of his existence as he had helped the UN in 1989 after the Kuwaiti invasion. As regards the alternative that they knew he was helpful and could give the intelligence they needed he said one could only speculate. He thought that there were people on the list, and one could see the CIA Report with references to those who were targeted but had helped the regime. It was very unclear.

86. He agreed that the appellant had moved to Jordan after the coalition forces left Iraq. He could not say what UNHCR's reasons were for refusing the appellant refugee status. He could not comment on plausibility of them wanting to distance themselves from somebody like the appellant.

87. On re-examination Dr George was asked about people who were on lists and who were targeted and nevertheless cooperated and whether this was a point he had dealt with at paragraph 169 of his report and he said that it was.

88. That concluded Dr George's evidence.

89. In her submissions Ms Cunha developed the points made in the skeleton argument that she had provided. In essence, it is argued that given the fact that the appellant was a ferka working for the Ba'athist military until 2003, paid to study analytical chemistry including completing a PhD in the Soviet Union, where it was known by him that that country was a key leader in the production of chemical weapons, and that he subsequently on his return took a position as a lead researcher in the Al Muthana Establishment in 1988, it was more likely than not, given his level of command and seniority, that he would have known that his research would have facilitated the increased production of chemical weapons including chlorine, which was a base ingredient used in the production of sarin and mustard gas. It was argued that with him being charged with the research of expanding such production the appellant would inevitably have provided a means for the creation and use of chemical weapons commissioned by the regime during the Iran-Iraq War. It was argued that although the appellant claimed he was solely involved in the production of chemical detectors capable of assisting the military in their defence by way of detection of chemical weapons ,nevertheless it was more likely than not that he knew that in the ordinary course of events their scientific contribution would be used in Project 922 (also known as the Samarra Chemical Weapons) and would successfully aid and/or assist the regime in its objective to obtain such weapons and use them in defence and against their own civilians.

90. It was argued that also given his clear understanding of how the regime functioned, having been a member of it for more than twenty years, he would have known how brutal and persecutory it was in its mechanisms of defence and control of its population. He had admitted that he knew what the Ba'athists' wider intentions were and these had been identified clearly in the CIA Report as including recreating WMD capability and thus would have known that his research into the mass production of chemicals in Al Muthana was more likely than not to further the regime's aim in increasing its capability of those weapons. Ms Cunha referred in detail to the contents of the CIA Report and what was said about the regime's intentions and the use of chemical weapons at the relevant time including the use of chlorine. There had been no mention at the time of Iran being involved in procuring chemical weapons and there was no evidence of this. It was common knowledge that the facility at which the appellant worked received a lot of funding. The appellant might have had responsibility for methods of detecting agents in the soil but also with regard to avoiding detection by international agencies and seeing how the weapons could be transported as a solvent, facilitating their use as military weapons. He had been careful in his wording in answering questions at interview, having for example said he had no direct involvement but he did not deny involvement in the mass production of solvents which went into the nerve agents nor that part of his research would inevitably support the government's position and what their objectives were. The respondent

had to show that his actions would be enough to demonstrate serious reasons for considering on the balance of probabilities that he was involved in crimes against humanity and it was argued that the research that he did provided a means of creating the weapons and as a result he had aided and abetted the regime.

91. As regards duress, if this were part of his claim, then the evidence of how the regime worked did not mean that he could not avoid harm. For example, there was evidence at page 282 of the bundle of Saddam Hussein ignoring advisers. It was said that there would not be severe implications if for example he had sold information but the evidence showed that he was not that involved and he could have come out of the situation and had chosen not to. It was a choice he had decided to make, so duress was not made out. He had the background and the knowledge necessary to assist the regime in getting what it wanted. He had known what was happening and he was involved in the production of a solvent which was used in the production of these weapons.

92. In his submissions Mr Jacobs relied on and developed the points set out in his skeleton argument. With regard to Dr George's evidence, he had assessed the appellant's account as being plausible in the sense that it accorded broadly with the historical record and his understanding of the position in the regime at the relevant time. Ba'ath Party membership at the time was a prerequisite to government employment and professional advancement and the appellant's party rank of ferka could not have made him a high-ranking member of the Iraqi government.

93. The appellant's evidence was that the Al Muthana Establishment was divided into departments and that although he was aware of the production of chemical weapons there he did not contribute towards the development of those weapons but that his work in the Iraqi military was confined to detection and countermeasures in relation to chemical weapons. He had been the head of research in the Department of Protection, Limitation and Detection of Pollution with Chemical Agents. His evidence had been consistent throughout the asylum process. His contribution had been to reduce the impact of the chemical weapons, protection of the army and civilians in Iraq and to specify the pollution from the chemical wars, from the chemical weapons and identify the polluted lands from the chemical weapons and determine the chemical weapons that had been used. The work he had conducted was in anticipation of a threatened chemical attack by Iran. The work undertaken by his department was for the purpose of conducting tests to protect against chemical agents. The work was done in anticipation of a threatened chemical attack by Iran. He had provided detailed responses to the 2018 interview transcript.

94. Dr George concluded that the appellant played a key role in the Chemical Weapons Programme in the sense that analysis and research were key elements of the programme. He had pointed out that the appellant was

not directly involved in the deployment of chemical weapons and did not enjoy a wide autonomy. It was argued on the appellant's behalf that the detection and countermeasures based role that he had played fell significantly short of the requisite tests of facilitating the commission of a war crime in a significant way.

95. It was argued with regard to the September 2004 CIA Report, that though Dr George considered it offered the best available overview of Iraq's WMD projects, the information contained within it required to be treated with a degree of caution. There were concerns as to the reliability of sources, in particular people who had been detained giving information using passive interrogation resistance techniques which included placing blame or knowledge with individuals who were not in a position to contradict the detainees' statements. There were also inconclusive and partly or wholly conflicting reports within the CIA Report. There were no independent sources to resolve the conflict between the appellant's evidence and the items concerning him in the CIA Report. The only aspect of the CIA claims that were capable of resolution according to Dr George had been resolved by the appellant through production of the relevant documents confirming his account over the assertion from the CIA sources.

96. It was also relevant that there had been no punitive action against the appellant by the coalition forces and post-invasion Iraqi governments. He had assisted UNSCOM teams by providing data and information about previous work in Al Muthana between 1991 and 1998 and further assisted the coalition forces in 2003, again providing information on Al Muthana. He was clearly known to the international forces and the military coalition, who did not view him as responsible for the commission of any crimes against humanity. He cited the case of Dr Mahmud Al Samarrai at question 125 of his 2018 interview as a person who was in charge of five of the laboratories at Al Muthana and who was arrested by the American forces. The appellant's position on this issue was supported by evidence from the U.S. Embassy in Baghdad of August 2003. It was noted that the Secretary of State, on whom the burden lay in this case, had made no attempts to establish the appellant's standing with the coalition forces. Dr George considered that a likely reason why no action was taken against the appellant was simply because he was not considered to have been of sufficient importance in the Chemical Weapons Programme to have merited detention or other targeting. This was a significant finding.

97. The defence of duress was available to the appellant. This was in the alternative, given that he averred that his work concerned the question of how Iraq was to respond to chemical attack. It was argued on the appellant's behalf that the nature of the Saddam Hussein regime was such that had he tried to disassociate himself from the Iraqi government or requested a transfer this would have placed him and his family in grave danger. There would have been dire repercussions for his family and extended family had he refused to work for the regime. There was support for what he said from Dr George's report.

98. As regards the extent to which the appellant was influenced by propaganda, at interview he had indicated that he believed that the attack on Halabja may have been perpetrated by Iran. Dr George had noted that the Iraqi authorities were reporting internally that Iran had used chemical weapons, and cited a number of articles confirming this position and this supported the appellant's view, albeit that it was misguided.

99. In essence, the Secretary of State's case on Article 1F(a) rested on a CIA Report which was unsupported, unsourced and to a significant extent unreliable. The Secretary of State had not established that there was sufficient clear, credible or strong evidence to establish that the appellant's contribution through research and analysis in detection and countermeasures facilitated the commission of crimes against humanity in a significant way. The appeal should be allowed.

100. I reserved my decision.

The Law

101. Article 1F(a) of the Refugee Convention states materially as follows:

> "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> …"

102. Article 1F has been incorporated into domestic law through Article 12(2)(a) to (c) and Article 17(1)(a) to (d) of the Qualification Directive, and through paragraphs 339(c) and (d) of the Immigration Rules.

103. The applicable test is as set out in Al-Sirri [2013] 1 AC 745 at paragraph 75.

> "We are, it is clear, attempting to discern the autonomous meaning of the words 'serious reasons for considering.' We do so in the light of the UNHCR view, with which we agree, that the exclusion clauses in the Refugee Convention must be restrictively interpreted and cautiously applied. This leads us to draw the following conclusions:
>
> (1) 'Serious reasons' is stronger than 'reasonable grounds';
>
> (2) the evidence from which those reasons are derived must be 'clear and credible' or 'strong';

(3) 'considering' is stronger than 'suspecting'. In our view it is also stronger than 'believing'. It requires the considered judgment of the decision-maker;

(4) the decision-maker need not be satisfied beyond reasonable doubt or to the standard required in criminal law;

(5) it is unnecessary to import our domestic standards of proof into the question. …"

104. In JS (Sri Lanka) [2011] 1 AC 184 the Supreme Court held that in Article 1F cases a close and careful examination of the individual facts will always be required. At paragraph 54 Lord Kerr listed six non-exhaustive factors that may be relevant to exclusion: the nature of the organisation; the method of recruitment to it; the opportunity to leave it; the position and rank enjoyed by the individual concerned; the length of time that he had spent in the organisation; and his knowledge of the organisation's atrocities.

105. The leading case on aiding and abetting in relation to Article 1F(a) is MT (Zimbabwe) [2012] UKUT 15 (IAC). The following guidance is set out there:

"Commission of a crime against humanity or other excludable act can take the form of commission as an aider and abettor, as a subsidiary (or non-principal) form of participation. Drawing on international criminal law jurisprudence (as enjoined by R (JS) (Sri Lanka) v SSHD [2010] UKSC 15), aiding and abetting in this context encompasses any assistance, physical or psychological, that has a substantial effect on the commission of the crime, i.e. the contribution should facilitate the commission of a crime in some significant way."

106. As regards duress, the five requirements to establish duress are set out in AB [2016] UKUT 00376 (IAC):

"i. There must be a threat of imminent death or of continuing or imminent serious bodily harm;

ii. such threat requires to be made by other persons or constituted by other circumstances beyond the control of the person claiming the defence;

iii. the threat must be directed against the person claiming the defence or some other person;

iv. the person claiming the defence must act necessarily and reasonably to avoid this threat;

v. in so acting the person claiming the defence does not intend to cause a greater harm than the one sought to be avoided."

Discussion

107. In essence, the appellant claims that although he was aware that there was production of chemical weapons at the Al Muthana Establishment he did not contribute towards the development of chemical weapons in Iraq and his consistent evidence has been that his work in the Iraqi military was confined to detection and countermeasures in relation to chemical weapons. The essential basis for the respondent disagreeing with this is contained in the references to the appellant in the CIA Report. Other than the appellant's own evidence the main evidence put in on his behalf has been that of Dr George, whose report and oral evidence I have found to be knowledgeable, informative, balanced and objective. In this CIA Report it is stated at its page 61 in volume iii that the appellant gained his PhD in Moscow from the "Chemical Warfare Academy". The appellant states that in fact he studied at the Academy of Chemical Protection, and has provided copies of certificates from that academy relating to him. At the same page the report describes the appellant as "weapons design expert and toxicity research". He denies that he was ever involved in weapons design. At page 100 he is described as having been "the manager of the binary sarin munitions project" and denies that he ever held such position. At page 90 of that report it is noted that the Muthana chemical weapons complex included a "Salah al-Din Research Department". This is referred to several times as the "Salah al-Din Laboratory". The appellant at interview denied that the department/laboratory was named formally after him personally although he conceded that it might have been named after him in the sense that it identified the laboratory in which he worked.

108. Dr George commented that to the best of his knowledge and belief the conflict between the appellant's testimony and the items concerning him in the CIA Report cannot be resolved by reference to independent sources as there were none covering the specific points at issue. The only exception perhaps was the name of the academy at which the appellant studied for his doctorate in Moscow.

109. Dr George at paragraph 169 of his report described the CIA Report as offering by far the best available overview of Iraq's WMD projects and as being impressive, especially given the secrecy within which the weapons projects were developed. However, he considered that the report's information required to be treated with at least a degree of caution.

110. He noted that while some detainees' statements were made to minimise their involvement or culpability leading to potential prosecution, in some cases those who were interviewed spoke relatively candidly and at length about the regime's strategic intent. It was said also within that section of the report that the interview process had several shortcomings. Detainees were very concerned about their fate and therefore would not be willing to implicate themselves in sensitive matters of interest such as WMD, in light of looming prosecutions. Debriefers noted the use of passive interrogation resistance techniques collectively by a large number of detainees to avoid

their involvement or knowledge of sensitive issues; place blame or knowledge with individuals who were not in a position to contradict the detainees' statements, such as deceased individuals or individuals who were not in custody or who had fled the country, and provide debriefers with previously known information.

111. It was also said that the quality of cooperation and assistance provided to ISG by former senior Iraqi regime officials in custody varied widely. Some obstructed all attempts to elicit information on WMD and illicit activities of the former regime but others were keen to help clarify every issue, sometimes to the point of self-incrimination. It was also said that overall ISG's efforts to uncover information on chemical weapons, germ research, development and infrastructure were complicated by uncooperative detainees, threats to some sources and extensive looting and burning of documents and facilities.

112. Dr George also commented that it was evident from the report that it did not claim to contain only irrefutable and complete information, referring to the section of the report concerning origin of the binary sarin round used on BIAP. This cited what he regarded as being no less than four inconclusive and partly or wholly conflicting reports around the origin of a particular sarin shell. As regards the issue of a link between the appellant and the Salah al-Din Laboratory, Dr George notes that Salah al-Din Yusuf al-Ayyub known as Saladin in the West was of Kurdish ethnicity, born in Tikrit, and the Iraqi governorate of which Tikrit is the capital and which contains the town of Samarra and formally the Muthana chemical weapons complex was named Salah al-Din Governorate.

113. I bear in mind these caveats of Dr George about the CIA Report. In many ways it is a question of the appellant's word against the matters that go contrary to his account and the CIA Report. I shall return to this when I come to consider overall the weight to be attached to the CIA Report and other evidence in light of the appellant's evidence and the situation overall.

114. It is relevant to note and bear in mind the lack of punitive action against the appellant by the U.S.-led coalition that invaded Iraq in 2003. Dr George considers that it is uncertain whether or not the appellant was on the coalition's pre-invasion blacklist but even if he was, no action was taken against him either by the coalition or by the post-2003 Iraqi authorities despite him having been at a level in the Ba'ath Party that until 2008 triggered penalties. In Dr George's opinion the likely reason why no action was taken against the appellant was simply that he was not considered to have been of sufficient importance in the Chemical Weapons Programme to have merited detention or other targeting. He made the point that one could not really assume that if the appellant was guilty of what the CIA alleged he would have been rehabilitated. He referred to the lack of clear procedures at the time and the fact that a lot of what happened in Iraq was arbitrary.

115. This opinion must of course be given proper weight. Equally, it might be argued that the reason why no action was taken against the appellant was because the degree of assistance he provided was such as to make it appropriate to decide to leave him unprosecuted. The position is unclear but the absence of prosecution or other adverse action against him is a matter to be placed into the balance. It is also relevant to bear in mind that Dr George said he was not sure that he would have found evidence of the appellant having had the role the respondent said he had, that it was not plausible that the appellant would not have been aware that SEPP was engaged in the development of a chemical weapons project, that the appellant had been a key figure in a major chemical weapons project as head of research and that as journalist Dr George would say that he was a whisker away from being culpable.
116. Bringing these matters together, I consider that there is a sufficient degree of specificity in the CIA Report despite the protestations of the appellant to the contrary and the defects within that report and bearing in mind Dr George's evidence, to be such as to show that the respondent has made out her case in this regard. The report itself expressed the concerns I have set out above about the shortcomings of the interview process and contains, as I have noted, the inconclusive and partly or wholly conflicting reports about the origins of a particular sarin shell. It appears to have been wrong in the name it gave to the institution where the appellant obtained his PhD in Moscow, but I consider that to be a relatively minor point since the statement is in my view essentially descriptive rather than purporting to provide the specific name of the institution at which the appellant studied. But it is relevant to note that there were no caveats attached to the particular parts of the report in respect of which the appellant was identified as a weapons design expert and toxicity research and to have been the manager of the binary sarin munitions project. Also relevant in this regard is the naming of the Salah al-Din Research Department within the chemical weapons complex at Muthana, referred to several times in the CIA Report as the Salah al-Din Laboratory, which the appellant, though he denied it was named formally after him, accepted that it might have been named after him in the sense that it identified the laboratory in which he worked.

117. In coming to a conclusion in this regard I bear in mind of course the guidance in the authorities that it is necessary to remember that serious reasons are stronger than reasonable grounds, that those reasons must be clear and credible, that considering is stronger than suspecting and stronger than believing, in concluding that the evidence is such despite the appellant's consistent denials, that the respondent has shown that the appellant is guilty of aiding and abetting the commission of crimes against peace, war crimes or crimes against humanity in the sense that he provided assistance which had a substantial effect on the commission of such crimes in that his contribution facilitated the commission of a crime in some significant way, given the role that I accept on the evidence from the CIA Report he had in the Al Muthana complex during the relevant

years. He clearly had a position and rank of significance, he spent a good deal of time there, he was clearly aware of the organisation's atrocities, the nature of the organisation was as set out above and he was recruited to it as a consequence of the training he had received in Moscow. The opportunity to leave it may have been limited and I bear that in mind as a point in relation to duress.

118. Having found as I have that the appellant was properly regarded by the respondent as a person who has aided and abetted the commission of crimes against peace, war crimes or crimes against humanity, there is the question of duress. I have set out above the guidance from AB (Iran) as to what is required to establish duress.

119. I do not consider that there is a requirement of there having been a specific threat made against the appellant in this case. I accept the evidence from Dr George and the general evidence that has been provided , for example from the USSD report of March 2003 and the Amnesty International Report of 2003 as to the nature of the regime and the risks of non-cooperation with it. As Dr George said in his report at paragraph 186, for an individual to have declined to accept duties imposed on, or even suggested to him/her by a regime instruction could have resulted in imprisonment and torture and the imprisonment and torture of the person's family, particularly so perhaps for army officers such as the appellant, for whom disobeying direct orders would have prompted severe retribution (and, one might add, especially so as a key scientist involved in a central project whose relevant education abroad had been funded by the state). There was in my view a real and constant and ongoing threat to the appellant that if he did not continue the work that he carried out for the regime at Al Muthana that he and his family would face a real risk of significant ill-harm at the hands of the regime. Accordingly, I find that the duress defence is made out in this case.

120. This appeal is accordingly allowed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 21 July 2021

Upper Tribunal Judge Allen