Abstract: Using the United Kingdom’s asylum and immigration laws as a case study, this paper critiques three of its mechanisms with a view to improve legal representation of asylum seekers in determining their status as refugees. These are: the methodology of granting asylum by the Home Office, the use of country guidance information and country expert reports in supporting asylum cases. Despite the value in all of these processes in producing just and transparent UK immigration laws, they have distinct limitations because they do not adequately investigate the religious, political, cultural, linguistic and social dimensions of an asylum seeker’s case. It is left to an unwitting member of the Home Office or one expert to make sense of an asylum seeker’s race, religion, nationality, membership of a particular social group or political opinion. The result is that asylum seekers are not given a fair and rigorous voice to represent themselves. My question, therefore, is: how effective are current evidence-gathering procedures in UK immigration law to help us understand an asylum claim? In order to answer this question, my chapter will give case studies from the field of immigration and asylum law to demonstrate the current limits of evidence-gathering procedures. By undertaking this evaluation, it is hoped that judges, decision-makers, lawyers and experts focus more on an asylum seekers’ religion, theology, politics, culture, language and ultimately, identity to fully comprehend the vital details and subtleties of their asylum claim.

Keywords: UK immigration law, asylum seeker, country guidance, country expert, evidence, Home Office

1 I would like to thank Professor Katarzyna Górk-Sosnowska and her team at the SGH Warsaw School of Economics for holding their series of international conferences on Muslim minorities and the refugee crisis in Europe. They gave us an opportunity to discuss pertinent issues pertaining to the Muslim world and made our stay in Warsaw, Poland comfortable.

2 Anglia Ruskin University & Head of Diverse Legal Consulting, UK.
Introduction

Using the United Kingdom’s asylum and immigration laws as a case study, this paper critiques three of its mechanisms with a view to improve legal representation of asylum seekers in determining their status as refugees. These are: the methodology of granting asylum by the Home Office, the use of country guidance information and country expert reports in supporting asylum cases. Despite the value in all of these processes in producing just and transparent UK immigration laws, they have distinct limitations because they do not adequately investigate the religious, political, cultural, linguistic and social dimensions of an asylum seeker’s case. It is left to an unwitting member of the Home Office or one expert to make sense of an asylum seeker’s race, religion, nationality, membership of a particular social group or political opinion. The result is that asylum seekers are not given a fair and rigorous voice to represent themselves. As Refugee Action states,

“People seeking asylum arrive in the UK with almost nothing. Many have made a long and perilous journey. War and persecution have forced them to flee the homes they love. They hope and expect that they will receive a compassionate welcome. But for too many, the asylum system that they are confronted with in the UK is a hostile one, characterised by long delays, poor decisions, and a total lack of information” (Refugee Action, 2018).

And, the Law society has stated,

“As UK Visas and Immigration (UKVI) faces possibly the largest single influx of applications in its history when EU nationals living in the UK seek to settle their status post-Brexit, the Law Society of England and Wales is raising the alarm on a system that – despite areas of good practice – is already failing too many applicants and their families.

“Almost 50% of UK immigration and asylum appeals are upheld – clear evidence of serious flaws in the way visa and asylum applications are being dealt with,” said Law Society president Joe Egan.

“Solicitors, charities and the media have long reported huge delays and unreliable decisions in many areas of immigration – from business and worker applications to family, children and asylum cases.

“We know there is good practice in the Home Office and officials who clearly want to make a difference, but each error or delay may – and often does – have a devastating effect on someone’s life” (Law Society, 2018).
My question, therefore, is: how effective are current evidence-gathering procedures in UK immigration law to help us understand an asylum claim? In order to answer this question, my chapter will give case studies from the field of immigration and asylum law to demonstrate the current limits of evidence-gathering procedures. By undertaking this evaluation, it is hoped that judges, decision-makers, lawyers and experts focus more on an asylum seekers’ religion, theology, politics, culture, language and ultimately, identity to fully comprehend the vital details and subtleties of their asylum claim.

Definitions

A few definitions are in order before analysing the way in which evidence is used under the UK’s immigration laws and procedures. Immigration Rules Part 11, 11A, 11B deal with asylum claims; part 12 deals with procedure and rights of appeal and part 13 deals with deportation (UK Government – Immigration Rules). It should also be noted that on 12th May 2016, the Immigration Bill received Royal Assent and will now be known as the Immigration Act 2016. This will introduce new sanctions on illegal workers and rogue employers, provide better co-ordination of regulators that enforce workers’ rights, prevent illegal migrants in the UK from accessing housing, driving licences and bank accounts and introduce new measures to make it easier to enforce immigration laws and remove illegal migrants. Asylum claims, therefore, are not only affected by internal immigration procedures themselves which govern rules of evidence and appeal but by related legislation such as the Immigration Act 2016. For example, if an asylum seeker continues to live illegally in the UK, he/she may be denied basic amenities and economic rights and faces the threat of deportation (UK Legislation – Immigration Act 2016).

The terms in this chapter revolve around refugees and asylum seekers and it is important to clarify the difference between them. Refugees are defined and protected in international law. Under the 1951 Refugee Convention, a refugee is,

“someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality,

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3 It is important to note that by the end of 2017, there were 25.4 million refugee men, women and children registered across the world (‘What is a Refugee?’, the UN Refugee Agency) and two-thirds of all refugees worldwide come from just five countries: Syria, Afghanistan, South Sudan, Myanmar and Somalia (Ibid).
membership of a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (Convention and Protocol Relating to the Status of Refugees, article 1, A (2))

Asylum seekers, however, are “people [who] flee their own country and seek sanctuary in another country, they apply for asylum – the right to be recognized as a refugee and receive legal protection and material assistance. An asylum seeker must demonstrate that his or her fear of persecution in his or her home country is well-founded” (‘What is a Refugee?’, the UN Refugee Agency).

Asylum seekers, therefore, argue for the right to be recognized as a refugee by applying for asylum. They must demonstrate that they have a fear of persecution in their own country that is well-founded. If their claim is successful, they acquire the status of a refugee.

The 20-Step Procedure to Claim Asylum in the UK

As a summary, I have set out the 20 steps below that an asylum seeker needs to take to claim asylum.

1. Asylum seeker arrives into the UK
2. Claims asylum
3. Asylum seeker is assigned to a local council that offers him/her accommodation, food and financial subsistence including a personal social worker
4. Social services contact a law firm or organisation vested with legal authority and a legal aid contract to represent an asylum seeker
5. Solicitor takes the asylum seeker’s witness statement, usually with an interpreter present
6. Asylum seeker attends a Home Office interview, usually with an interpreter present
7. Home Office sends the asylum seeker’s interview record to the solicitor
8. Solicitor makes his/her representations based on the asylum seeker’s witness statement, interview record, points of law and country guidance information to argue for the asylum seeker’s claim.
9. Solicitor’s representations are submitted to the Home Office.
10. The Home Office decide on the asylum seeker’s claim – accepting or rejecting it.
11. If rejected, Home Office gives the asylum seeker the right of appeal.
12. Solicitor submits an appeal form and a hearing date is given by the First-tier tribunal.
13. **In the meanwhile, the solicitor asks a country expert to produce an expert report to conduct an objective analysis of the asylum seeker’s country and threat of persecution which may be used to support the case.**
14. The solicitor also hires a barrister to represent the asylum seeker in court.
15. A week before the hearing, the solicitor submits a court bundle to the First-Tier tribunal with evidence to support the asylum seeker’s case.
16. The First-tier tribunal may grant or reject the asylum claim at the hearing.
17. If rejected, the First-Tier tribunal allows the asylum seeker to request permission to the First-tier tribunal to appeal to the Upper-Tribunal.
18. If accepted, the appeal is heard at the Upper-Tribunal.
19. Upper-Tribunal may accept or reject the appeal. If accepted, the matter may be remitted back to the First-tier Tribunal for a fresh hearing.
20. If rejected, there are very few options for the asylum seeker to pursue his/her claim and he/she may only succeed in exceptional circumstances (Browne, 2017, ch:9).

The focus of this chapter is evaluating steps 8, 10 and 13 which involve the decision of the Home Office, use of country guidance information and role of the country expert in the asylum seeker’s case.

**The Home Office Determination Letter**

The Home Office Determination Letter is the first evidence-based response that an asylum seeker receives as to whether he or she has been granted asylum. In the letter, the Home Office Presenting Officer (HOPO) outlines the reasons for his/her decision as to why asylum status has been granted or not. The letter, usually sent to the asylum seeker’s solicitor, is structured as follows: date the asylum claim was made, the immigration law that is being followed, summary of how the asylum seeker entered the country, summary of the asylum seeker’s claim, reasons as to why the asylum seeker’s claim or parts of it are accepted or not accepted (which includes the manner in which he/she entered the country, his/her nationality, his/her fear of persecution and the chain of events leading to it and most importantly, whether or not he/she satisfies the definition of being a refugee), conclusion of the HOPO and finally, the time the asylum seeker has to appeal the decision and the method by which he/she can do so (Ibid).
What is particularly important is how the HOPO has arrived at his/her decision to accept or reject the asylum claim in question. After reading numerous Home Office Determination Letters, an asylum claim is either accepted or rejected on the basis of the following factors: firstly, whether or not the asylum seeker is actually a national of the country from which he/she fled; secondly, the consistency and accuracy of the chain of events by which the asylum seeker left his/her country and in particular, the events leading up to his/her persecution; thirdly, whether or not there is supporting evidence, especially from country guidance information, which lend support to the persecution the asylum seeker is claiming and finally, whether or not the asylum seeker satisfies the definition of being a refugee. If for any reason one of the above grounds is found to be weak, the whole asylum claim is rejected. The asylum seeker, therefore, has the task of satisfying the above four grounds from his/her statement in his initial asylum claim form, interview record which is conducted by a government official and the representations his/her solicitor makes on his/her behalf. Once all these documents are submitted, it is left to the HOPO to make the decision as to the veracity of the asylum seeker’s claim (Ibid).

Whilst the aforementioned procedure should be commended for investigating an asylum claim transparently so that the asylum seeker and solicitor can understand why a claim has been rejected, it has many flaws. Firstly, the issue of criticising an asylum seeker’s chain of events and concluding that his/her account is inconsistent is simplistic and leads to unfairness in immigration procedures. The fundamental question is how do we determine what facts, specifically material facts, are in human society? The one who experiences an event such as a witness or the appellant considers his/her experience to be factual whereas to the HOPO or judge it is not factual or factually inconsistent. A fact is fundamentally subjective unless there is a collective experience of it or it satisfies the rules of logic to the extent that it would be difficult (not impossible) to deny. For example, the fact that a prime minister gave a speech can be verified by the public that listens to him/her and it would be difficult, if not impossible, to deny that this event occurred due to the sheer number of people witnessing and reporting it.4

4 Within Islamic sciences, specifically ‘ilm al-hadith (the science of narration), the notion that a report would be very difficult, if not impossible, to fabricate due to the sheer number of people witnessing it is known as mutawatir (widely narrated). This is defined as, "one that has been narrated by such a great number of reporters that it would be impossible for them all to have agreed to fabricate it. This is similar to the way in which al-Shahid al-Thani has defined it in his Dirayah, namely, "it is that [report] whose narrators reach such a greater number that it is conventionally impossible for them to have colluded upon its fabrication" (Al-Fadli, 2011, 80). This is in contrast to khabr al-wahid or ahad (solitary report) which is "any report in which multiple successive transmission has not been attained, whether it has one reporter in its chain or more than one" (Ibid, 91).
As a second example, the verification of a scientific reality may be dependent on a number of factors such as observation, experimentation and theory which together may give us a scientific fact. We would call this a scientific truth unless new evidence comes to light so even scientific facts are liable to change but for a long-period of time may be difficult to refute. As a third example, moral facts such as justice and injustice, falsehood and truth are arguably instinctual in nature but our collective experience plays a role in determining the foundational nature of these principles as facts of human existence. The details of how we apply them and in what situation may differ widely but we would still term as morals facts of human existence without which human society would not be able to function. In all of these three examples, our personal observations and/or instincts are aided by collective testimonies which make up the term ‘fact’ (Muzaffar 2006; Bradley and Swartz, 1988; Lange, 2008).

The question is how do we view facts reported by one human being? Facts pertaining to personal human situations are very subjective and coloured by issues of bias, memory, perception and emotion. Such facts would be regarded as ‘solitary reports’ that can only be verified as true if the reporter of the event is trustworthy, clear and has a good memory. Asylum seekers attempt to give their solitary report by describing a chain of events which follow logically from one another leading to a plausible end scenario where they fear persecution in their own country. However, putting their events of migration and persecution in a logical chain is difficult because of the trauma, memory loss and emotion they have undergone in coming to the UK. Moreover, they are meant to recall this chain of events in a Home Office interview, often lasting a couple of hours with an interpreter so that the interviewer can understand their circumstances in English.

So already the asylum seeker faces several problems: firstly, the difficulty of recalling traumatic events in the past and putting them in a coherent order for others to understand; secondly, communicating these events to an interpreter who he/she doesn’t know who in turn communicates them to the interviewer – the saying, ‘lost in translation’ comes to mind!; thirdly, the pressure of relaying everything in the space of a couple of hours. If mistakes are made, there is little or no chance to rectify them and this then becomes the ‘interview record’ for the asylum seeker which is relied upon by the solicitor, barrister and judge. To put it simply, the asylum seeker faces an uphill task of explaining his/her background and chain of events even before the asylum claim is determined by the Home Office. The reality is that details about our personal experiences come in intermittent drops of memory rather than a flowing stream of consciousness. These challenges
have been significantly commented upon by Hilary Evans Cameron, a Canadian refugee lawyer, who argues,

“Refugee status decision makers typically have unreasonable expectations of what and how people remember. Many assume that our minds record all aspects of the events that we experience, and that these memories are stored in our brains and remain unchanged over time. Decades of psychological research has demonstrated, however, that our memories are neither so complete nor so stable, even setting aside the effects on memory of trauma and stress. Whole categories of information are difficult to recall accurately, if at all: temporal information, such as dates, frequency, duration and sequence; the appearance of common objects; discrete instances of repeated events; peripheral information; proper names; and the verbatim wording of verbal exchanges” (Cameron, 2010, p. 469).

And,

“In addition, our autobiographical memories change over time, and may change significantly. As a result, while gaps or inconsistencies in a claimant’s testimony may in some cases properly lead to a negative credibility finding, such aspects are often misleading and should never be used mechanically, and the bar must be set much lower. Many decision makers must fundamentally readjust their thinking about claimants’ memories if they are to avoid making findings that are as unsound as they are unjust” (Ibid).

Cameron’s arguments are striking and show that we must take into account the deeper psychological conditions of the asylum seeker, not rely on the purely verbatim account of the claim and importantly, not have unreasonable expectations in verifying an asylum claim as true or not. I would like to share two examples from my own consultancy, Diverse Legal Consulting, where I regularly write country expert reports and have to analyse Home Office Determination Letters as evidence of the strength of Cameron’s arguments.\footnote{See: ‘Diverse Legal Consulting’ www.diverselegal.com.}

**Case Study 1: Appellant AFG**

The first example involves an Afghani appellant who I will refer to as ‘Appellant AFG.’ Appellant AFG, a minor, was born in the Tagwap district in Afghanistan and lived in Bader Khail, which is in the Kapisa province. His older brother went to Pakistan to study at a *madrasah* (Islamic school) in Peshawar. Appellant AFG
later learnt that his older brother had joined the Taliban. His older brother went out to fight one night and the day after, Appellant AFG was informed he had been killed in an airstrike. 1 or 2 months after his older brother’s death, members of the Taliban visited Appellant AFG’s house and told him they have given his brother a weapon and ammunition. They threatened Appellant AFG stating that if he does not return the weapon and ammunition then he would be forced into joining the Taliban. The Taliban visited Appellant AFG again and threatened his mother. Soon after, arrangements were made for Appellant AFG to leave Afghanistan. Appellant AFG arrived into the UK in 2013 as an asylum seeker.

On 13th July 2016, the Home Office refused his asylum claim on the grounds that his account of events was inconsistent and secondly, using country guidance, the Taliban no longer use forced recruitment. The law firm representing Appellant AFG appealed to the First-Tier Tribunal and on 5th July 2016, Judge Lambert held that:

“The grounds argue there to have been ‘no finding’ as to the minor Appellant’s account of his brother having held weapons for the Taliban. Contrary to ground 1, this was found by the judge at paragraph 39 to be not credible, however the reasoning is arguably inadequate” (First-tier Tribunal (Immigration and Asylum Chamber), 2016, para 2).

And,

“Similarly the points made at paragraph 15 (argued flawed analysis of background material and expert evidence as to forced recruitment) may be arguable in light of the relatively brief reasoning at paragraphs 43–44 of the judge’s decision” (Ibid, para 3).

Judge Lambert decided that there is an arguable error of law and allowed the appeal to proceed to the Upper Tribunal where Judge McGinty held that,

“Regrettably therefore when making his findings in respect of forced recruitment, the judge also has not adequately dealt with the arguments actually raised by the Appellant or the evidence that was relied upon by the Appellant regarding the risk of him being called up as a result of the death of his brother and a result of him being seen as westernised” (Upper Tribunal (Immigration and Asylum Chamber), 2017, para 18).

“I therefore do consider that the failure to actually deal with the arguments raised by the Appellant also sadly in this cases also amount to a material error of law and I cannot say that the decision reached by the judge would have been the same irrespective had those errors not been made” (Ibid, para 19).

Judge McGinty ultimately held that the case should be remitted back to the First-tier Tribunal for a fresh hearing and specifically because a “substantial amount
of fact-finding is required” (Ibid, para 23). Judge McGinty’s decision demonstrates that the Home Office had not examined the facts of the case properly, failed to respond to the Appellant’s arguments and did not consider the country guidance pertaining to the case appropriately. Therefore, after approximately 4 years in the UK, Appellant AFG has to prepare himself psychologically for a fresh hearing and to restate his facts again all because of the Home Office’s lack of attention to his account of events and in particular, the overall psychological and social context of these events. Moreover, the Home Office used country guidance that was 4 years old which is a poor selection of evidence as countries in which violence, terrorism and persecution exist can shift rapidly from stability to instability in the space of weeks and months, not years.

The Home Office specifically focused on the verbatim inconsistency of Appellant AFG’s asylum claim arguing that it was unclear when his brother returned from Pakistan informing Appellant AFG that he had become a member of the Taliban and the fact that he had given him a gun. Appellant AFG, however, plausibly states that his older brother went away for a long time and returned home to tell him he had joined the Taliban or that he returned home from time to time. One can argue here that Appellant AFG is not contradicting himself but rather trying to recall a chain of events regarding his brother with consistency and attempting to recollect when he was told that his brother is a member of the Taliban. It would not be unreasonable to expect Appellant AFG, who is a minor and fleeing from persecution, not to remember the exact day or period of when he was told this news. Cameron’s arguments about having lower expectations for witness statements will help the UK immigration process significantly as it gives asylum seekers a fairer and holistic approach in verifying their witness statements and save courts time and money to hear an asylum claim again.

Use of Country Guidance Information

Country guidance information constitutes the body of literature written by governmental and non-governmental organisations to describe a range of issues happening in a particular country or a particular group within that country. This is often known as ‘grey literature’, which is defined as:

“That which is produced on all levels of government, academics, business and industry in print and electronic formats, but which is not controlled by commercial publishers” (Grey Literature Report).
For example, the UK government produces country policy and information notes on Egypt commenting on its security situation, political, social, economic and welfare and its attitudes towards different religions and minorities. They also have a separate report on the Muslim Brotherhood, a political party founded by Hasan al-Banna, their ideology, status within Egyptian society and treatment by Egyptian authorities. Country guidance information therefore offers the first port of call for the Home Office, solicitor and barrister to understand what is happening in a particular region.

At times, research within country guidance information is from primary sources which means a member of the UK government has actually visited the region and commented upon the events that have transpired there or primary legislation and documents have been accessed from the country itself. However, most of the time, country guidance information draws upon data and information collected by other government and non-government organisations. Examples are wide-ranging including country guidance information from other states such as Australia, Canada and the USA, human rights organisations such as Human Rights Watch and Amnesty International, news sources such as the BBC and online encyclopaedic material such as Encyclopedia Britannica. This means that country guidance information use secondary source data that has not actually been observed. Whilst one may argue that the information has been taken from organisations which have observed the events they are describing (such as incidents of persecution), the information can be out of date, lack accuracy and adversely shape governmental policy and law. My case study below demonstrates the aforementioned problems in using country guidance information to determine an asylum claim.

Case Study 2: Appellant IRQ

My second example involves an Iraqi asylum seeking minor who I will refer to as ‘Appellant IRQ’. Appellant IRQ was born in Kirkuk, Iraq. His father used to be a labourer but in 2011, joined the Peshmerga forces (the military forces of the federal region of Iraqi Kurdistan) because of a better salary at the age 35–36. His father was captured by ISIS in October 2015. Soon after, his brother was captured by ISIS because his father was a Peshmerga soldier. His brother was eventually killed. Due to fears for his own life, Appellant IRQ left Iraq and arrived clandestinely into the UK on 24th December 2015.

On 29th December 2017, the Home Office refused his asylum claim because according to BBC reports, the average Peshmerga recruitment age is 18–25 years
of age. Therefore, his father would not be able to join the Peshmerga because he was aged 35–36 years. Accordingly, they argued that Appellant IRQ’s father was never a Peshmerga soldier, brother was never killed and Appellant IRQ’s fears of persecution were unfounded. The analysis by the Home Office, however was flawed and contradictory because firstly, they used a short BBC report without further corroboration from other country guidance information on Iraq but most importantly, primary source data. Secondly, the BBC report they cited contradicted their own argument. The report stated,

“Pte Harry Corbyn says the Kurdish fighters think it is “great” soldiers from the UK have come to work with them. “They loved us. They were quite keen to learn, they wanted more training,” he says. “Some of them have just turned 18 while some of them have been Peshmerga for 20–30 years, so you’ve got quite a big gap in age. “Myself, being quite young, it was good to see some of the lads that have just turned 18–19 doing what they want to do for their region of northern Iraq” (BBC News, 2015).

The admission by Pte Harry Corbyn shows Peshmerga soldiers vary in age so it is not unreasonable at all that Appellant IRQ’s father was a Peshmerga soldier at 35–36 years of age. Secondly, recent country guidance information also confirms the above:

“According to three sources, no conscription to the Peshmerga forces exists. Being among these sources, Visiting Scholar Renad Mansour said that recruitment to the Peshmerga forces is encouraged through a nationalist rend in the Kurdish population. He further added that the recruits are being promised that they will be paid a salary and pension. According to various sources, at the end of September/beginning and mid-October 2015, the Peshmerga fighters were, however, not receiving any salary. Among these sources, Visiting Scholar Renad Mansour said that the lack of payment did influence the recruitment but not the moral of the fighters. PAO/KHRW, however, referred to Peshmerga soldiers deserting because they did not receive a salary. PAO/KHRW said that no standardized criteria for recruitment to the Peshmerga forces exist. According to PAO/KHRW, there is a military academy under the Patriotic Union of Kurdistan (PUK) at Qal’at Julan in Sulaimania and another under the Kurdistan Democratic Party (KDP) in Zakho, Dohuk. PAO/KHRW informed that graduates have to apply to the Peshmerga and must be supported by the political parties. According to Human Rights Watch, the Kurdistan Regional Government (KRG) president, Massoud Barzani, in January 2015 called for retired Peshmerga to reenlist, indicating that the government had the authority to force them to do so” (Danish Immigration Service, 2016).
The Home Office then proceeded to reject Appellant IRQ's claim that he fears ISIS because of his father's position as a Peshmerga soldier and the threat of ISIS in Kirkuk. However, based on the evidence above, it can be proven that his father was a Peshmerga fighter. Moreover, the Home Office argued that ISIS had lost control of Kirkuk but according to numerous and recent country guidance information, ISIS continue to have presence in Kirkuk, fight with the Peshmerga and recruit children. It also shows the general instability of Kirkuk.6

The law firm representing Appellant IRQ is currently appealing his case. The arguments I have cited above again show a lack of investigation of the facts surrounding Appellant IRQ’s case but this time, it was not about the inconsistency of his claim but rather the veracity of it. The Home Office's argument hinged on poor sources of evidence – a short BBC report that was not supported by other country guidance information and just as in the case of Appellant AFG, they failed to use recent country guidance and primary source data which showed the continued instability of Kirkuk due to ISIS. Had there been stringent research on the Peshmerga and use of up-to-date country guidance information on Kirkuk, Appellant IRQ may not have had his asylum claim refused or at the least, examined according to correct information.

The Country Expert Report

The final piece of evidence that is crucial in an asylum claim is the country expert report. A country expert report is a report produced by an expert of a particular region with the aim of commenting on the plausibility of the asylum claim in question. As a country expert, he/she is meant to have knowledge of the issues and trends of the region in question to verify if what the asylum seeker is claiming is true based on his/her expert knowledge and professional opinion. The country expert cannot express his/her personal judgement in any matter nor whether the asylum claim should succeed or not. His/her focus is on the plausibility of the asylum claim with specific reference to the persecution the asylum seeker is facing in his/her country of origin.

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The principles of expert evidence which Mr Justice Cresswell laid down in his judgment in the shipping case known as The Ikarian Reefer. They have become widely accepted as a classic statement of the duties and responsibilities of expert witnesses. They were endorsed by the Court of Appeal, commended by Lord Woolf in his report on the civil justice system in England and Wales, and have been cited with approval in several subsequent cases. This is not to say that they have won complete acceptance but they constitute current best practice for country experts:

1. “Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.

2. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise (see Polivitte Ltd -v- Commercial Union Assurance). An expert witness in the High Court should never assume the role of an advocate.

3. An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.

4. An expert witness should make it clear when a particular question or issue falls outside his expertise.

5. If an expert’s opinion is not properly researched because he considers that insufficient data are available, then this must be stated with an indication that the opinion is no more than provisional. In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report (see Derby v Weldon).

6. If, after exchange of reports, an expert witness changes his view on a material matter having read the other side’s expert’s report or for any other reason, such a change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the court.

7. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports” (The Ikarian Reefer, 1993; Speaight, A, 2000)

Despite the aforementioned principles, after reading and writing a number of country expert reports, I myself have observed that qualities of reports can vary widely. I have read reports that use almost use no primary source data such as news and books in the original language of the country, interviews, analysis of religious and cultural terminology and actual engagement with the minority
community in question. Yet other reports use all of the aforementioned things and constitute high quality research, attention to detail and a genuine attempt to critically examine the asylum claim. The issue of quality or lack thereof quality country expert reports has been commented by Thomas who states:

“In practice, the type of people who act as country experts in asylum appeals ranges very broadly. At one extreme, there are those individuals with particular expertise in the relevant country; at the other extreme, are those who could not reasonably be said to possess any such expertise.” (Thomas, 2011, p. 184)

And,

“In AS v Secretary of State for the Home Department (Kirundi/Buyenzi – ‘country expert’ evidence) Burundi [2005] UKAIT 00172 [4], the fact that a country expert is an academic ‘does not of course mean that anything falling from his pen is to be accepted as gospel; but that decision-makers are entitled to accept his reasoned conclusions on general questions, without detailed sourcing, where those do not go against other information from generally accepted background sources before them, or reported decisions of the Tribunal. (On the other hand, it would in our view be a wrong approach in law not to engage in vigorous critical analysis of “country experts” views, where those were out of line with such material)” (Ibid, p. 188).

Considering that the judge has to rely upon one country expert report which may be of varying quality in order to help him/her determine the asylum claim, demonstrates that an asylum seeker’s life is in the hands of an expert who may actually have little knowledge about the country in question. Therefore, whilst country expert reports are more useful than country guidance information, they cannot be considered as the only and best type of evidence to understand what is going on in a country and the persecution the asylum seeker may be facing.

Conclusion

Despite the usefulness of the Home Office Determination Letter, country guidance information and country expert reports, they all have limitations; limitations which if unchecked can lead to wrong country information, poor analysis of evidence and lack of primary source data. All of these limitations can harm an asylum seeker’s claim as he/she cannot authentically express himself/herself under UK immigration and asylum procedure. The asylum seeker is wholly reliant on others to explain his/her claim such as the interpreter, solicitor, barrister and
country expert. If all of these parties do not fully comprehend intricate aspects of the asylum claim, the asylum seeker’s access to justice is restricted. In short, he/she has not been fully represented in court.

What is required is a continual evaluation of evidence-gathering procedures within UK immigration law to prevent evidential inconsistencies and a deeper understanding of the asylum seeker’s religion, theology, politics, culture, language and ultimately, identity to fully comprehend the persecution that he/she may be facing. A greater focus on these complex issues will help bring about the vital details as well as subtleties of an asylum seeker’s background so that their claim does not end up in a “lottery” (Brewer, 2018) – a scenario that many asylum seekers in the UK face currently.

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