

Appeal No: SC/09/2005
Hearing Dates: 30th April 2014
Date of Judgment: 16th May 2014

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

**THE HONOURABLE MR JUSTICE IRWIN
UPPER TRIBUNAL JUDGE PETER LANE
MR HAYDON WARREN-GASH**

“B”

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellant:
Instructed by:

Ms S Harrison QC & Mr A Vaughan
Birnberg Peirce & Partners

For the Respondent:
Instructed by:

Mr S Gray
The Treasury Solicitor

As Special Advocate:
Instructed by:

Mr K Beal QC
Special Advocate's Support Office

OPEN REASONS FOR RULING ON BAIL

Mr Justice Irwin

1. On 13th February 2014 judgment in this case on two preliminary issues was handed down. Those issues were the prospect of removal of B to Algeria and the question as to whether the conditions of bail imposed by SIAC have constituted a deprivation of liberty. The judgment sets out the relevant facts concerning this appellant, including a history of his bail conditions. It is not necessary to repeat any of that here.
2. In paragraph 65 of that judgment the Commission expressed two conclusions: firstly, that without a change of the approach by B, there is no reasonable prospect of him being removed to Algeria. Secondly, the Commission concluded that B had not been the subject of a deprivation of liberty up to the point in January 2014 when he became detained under the Mental Health Act 1983. We then went on to indicate that his bail conditions required to be reviewed as soon as possible. The Commission indicated that the consideration of bail “must include a review of whether and to what extent B represents a threat to national security today.”
3. At the beginning of the proceedings on bail, the parties addressed the question of whether this appellant was seeking further disclosure on the basis of ZZ v SSHD [2013] 3WLR 813 (CJEU). It was agreed that the issue could not be addressed in the course of this hearing. Later in the course of the hearing the Commission confirmed to the parties that we had reached the conclusion that there was no closed material which would, incrementally to the open material in the case, be relied on by the Commission adversely to the appellant. It was therefore agreed that the issue of additional disclosure would not be pressed in the course of this decision.
4. Also in the course of the hearing, the Commission authorised a communication by Kieron Beal QC, seeking instructions from the appellant’s open representatives as to whether the ZZ argument was to be pursued at the substantive appeal in this case. The Special Advocate pointed out that if the point was to be pursued, considerable delay would be introduced to the case. Following discussion, we issued a direction to the appellant that he should give such instructions to the Special Advocates by 4pm on Wednesday 7th May 2014.
5. The appellant’s arguments in favour of a major liberalisation of the bail regime can be summarised very shortly. Firstly, any national security risk at the present time is at a very low level. All of the matters relied on to substantiate the proposition that this appellant has been a national security risk date from the year 2000 or before. There is no evidence of any later activity or contact with others involved in terrorist activity. In addition, the appellant has significant and ongoing psychiatric difficulties which have led to him being a compulsory mental health patient since January 2014. His condition has improved somewhat. Part of the necessity for a ruling on bail conditions is that he stands a good chance of being discharged as an in-patient in the next 2 weeks or so.
6. In addition to his ongoing significant psychiatric problems, the appellant was the victim of a serious road traffic accident on 19th December 2013. He suffered a hip fracture with some complications. His recovery has been slow. He is not walking

yet and is confined to a wheelchair, although he is beginning to learn to use crutches.

7. The Appellant says the evidence of treating psychologists and psychiatrists all points in one direction, namely that a relaxation of bail conditions will be therapeutic in B's case. Ms Harrison, QC, therefore argued that in addition to the age of the proved activity and the absence of subsequent activity the appellant is in no position mentally or physically to engage in terrorism-related activity of any kind, nor is he in any position to seek to abscond. She points out that prior to October 2012 there was no prohibition on contact on the part of this appellant with any of his former associates yet he has made no contact with them and they have made no contact with him. The lay evidence from Ms Burrows indicates that the appellant is barely able to organise ordinary daily life and Ms Harrison submitted it is inconceivable he could organise any terrorist activity. The treating psychologist Dr Hanna, emphasised that the appellant will need a high level of support in the community in order to survive. In sum, Ms Harrison submitted the evidence taken together indicates none of the risks needed to justify strict bail conditions. Her client had no capacity for harm currently, and no capacity to abscond currently.
8. In reply, the Mr Gray for the Treasury Solicitor emphasised that the Secretary of State did not regard this as a *de minimis* national security case. The judgment of the Commission in 2008 took into account the pattern of mental health problems already established, but nevertheless concluded in paragraphs 27, 28 and 29 that the appellant had demonstrated a capacity to be involved in terrorism-related activity. Mr Gray conceded that there was no evidence of any activity after the year 2000 and no evidence of renewed contact with those who had been involved in such activity. Mr Gray emphasised the deliberate and persisting defiance shown by this appellant in refusing to disclose his own identity. He submitted that there was a "logic in that refusal in 2010" and thereafter. There was no evidence of a change of heart or change of mind on the part of the appellant. The explanation of the absence of any further activity or contact with those formerly involved in such activity may well lie in the protective effects of detention, imprisonment, hospitalisation and/or the strict bail conditions which have applied from time to time.
9. Mr Gray did agree that, given the findings of the Commission in February 2014, some liberalisation was appropriate. He indicated that the Secretary of State would not object to slightly expanded non-curfew periods bringing the Thursday to Sunday into line with the current conditions between Mondays and Wednesdays. Mr Gray however submitted that 3 telephone calls a day represented a significant safeguard. He opposed any change to the boundary and submitted that specific variation should be sought before the appellant was permitted to travel outside his boundary area. In relation to the prohibition against receiving visitors, Mr Gray pointed out that evidence advanced in November 2013 in a previous bail application indicated that this appellant was not in a position to expand his range of visitors nor it appears had he been motivated to do so. Mr Gray also relied upon the appellant's submissions on that occasion disavowing the need to use a computer. Mr Gray indicated that the Secretary of State was firmly opposed to this appellant having access to the internet.

10. In reply, Ms Harrison emphasised that the period between March 2011 and February 2013 had been a period of relative stability for this appellant before he was committed to prison for contempt. He was capable of compliance. Ms Harrison emphasised the great gain to the appellant, and in particular to his mental health, of liberalisation of the conditions, an argument which supported her submissions that he represented no risk either to national security nor of absconding.
11. The Commission intends no disrespect to either party in not summarising the arguments at any greater length.
12. For reasons explained in the short closed judgment, the Commission concluded that the closed material provided no additional support to the position of the Secretary of State and some additional support to the submissions on behalf of the appellant.
13. In broad terms the Commission accepts the submissions on behalf of this appellant. The combination of his psychiatric problems and physical injuries and disability mean he represents a negligible current risk to national security. His earlier engagement with terrorism-related activity was significant, as the judgments of SIAC demonstrate. However that activity was indeed a very long time ago and there is no evidence to suggest it has been continued during this century. We are not in a position to make any finding as to the appellant's current attitude towards his previous jihadist activity or attitude, beyond saying there is no indication he has sought to repeat such behaviour or contact any of his former associates. His mental illness has been genuinely acute and long-lasting.
14. For all those reasons and the reasons set out in the closed judgment, the Commission reached the conclusions indicated on the day of the hearing. They can be summarised as follows;
 - The appellant's curfew is to be varied so that his non-curfew hours are from 09.00 to 00.00 each day.
 - The appellant must make 2 phone calls a day: the first without leaving his residence, between 08.50 and 09.30 and the second call between 21.00 and 00.00, after which he must not leave his residence.
 - The existing boundary is to remain. The Commission intends that arrangements should be in place whereby the appellant may give notice of his intention to travel outside that boundary, and of his destination outside of the boundary, provided that it is done in such a way that the Secretary of State can object if she thinks fit. The parties undertook to discuss the detail of such arrangement before the bail variation is implemented.
 - The existing visitor restrictions are to be removed, subject to the requirement that the appellant is not to be visited by named prohibited persons.
 - The appellant is to be permitted a non-internet enabled computer. He will be prohibited from access to the internet. The parties agreed to discuss how he may be given access to non-rewritable software, CDs,

DVDs etc which are commercially available, or available from a public library.

15. The Commission directed that draft agreed order reflecting these conclusions should be placed before the Commission by 4pm on Thursday 8th May 2014, so that a finalised order can be in place before the appellant is discharged from hospital.