

SPECIAL IMMIGRATION APPEALS COMMISSION

Field House,
Brems Buildings
London

25th February 2014

BEFORE:

THE HONOURABLE MR JUSTICE IRWIN

BETWEEN:

J1

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

MS S HARRISON QC (instructed by Birnberg Peirce and Partners) appeared on behalf of the appellant.

MR R TAM QC and MS K GRANGE (instructed by the Treasury Solicitor) appeared on behalf of the Secretary of State.

**RECUSAL OF CHRISTOPHER GLYN-JONES
RULING**

MR JUSTICE IRWIN:

1. It is critical to the operation of the jurisdiction of SIAC that, when substantive evidence bearing on intelligence and foreign relations is adduced, that the proper level of expertise is included within the Constitution of the tribunal and, to that end, the Lord Chancellor has appointed lay members of the tribunal, lay only in that they are not legally qualified, who have such experience. The history of this case is unusual, even by the complex standards of SIAC. The evidence will now contain the evidence of Mr Anthony Layden, formerly the UK representative dealing with return and with the operation of memoranda of understanding. Yesterday, all parties successfully applied to the tribunal that Mr Warren-Gash, who had been retained to sit on the case, should recuse himself on the basis that he had a connection with Mr Layden, in the sense that he succeeded him as Ambassador to Morocco. I need not repeat the circumstances. In an attempt to maintain the hearing, the Commission asked Mr Christopher Glyn-Jones to rearrange his diary, which he was willing to do at the very last minute, and is here to be able to sit. Mr Glyn-Jones has no personal acquaintance with Mr Layden.
2. In discussion this morning before the tribunal sat, I raised the question of whether there was any knowledge on the part of Mr Glyn-Jones of any aspect of this individual case. He made it clear, as I outlined to the parties earlier, that in 2005 he acted as a consultant to the Ethiopian Government in a project funded by DfID. This was not a classified project, it was an open project. He was retained to advise on the reformation or better organisation of the Ethiopian National Security Council and its secretariat. His engagement consisted of two visits to Ethiopia and stopped when there was an incident in Addis Ababa involving shooting 40 protesters in the street. Ethiopia was left with suggestions authored by Mr Glyn-Jones as to how the National Security Council might better be organised. The intention behind the project was to strengthen and improve the governance in relation to national security within Ethiopia.
3. I recite these facts so that they are within this ruling all in one place and all parties can see the factual basis upon which the ruling is given.
4. Mr Glyn-Jones also made it clear that, while he met the previous head of the Ethiopian Intelligence Service (NISS), he had no discussions with him. It will be clear from those facts that Mr Glyn-Jones has expertise in the intelligence field, but also clear that he was not at that stage a serving member of the intelligence services of the UK.
5. Both parties now apply, in effect, for an indication from me to Mr Glyn-Jones that he, too, should recuse himself from sitting. Mr Tam has made clear, and I am sure that Mr Otty joins with this, that there is no suggestion of any unfairness or anything other than a completely open-minded approach by Mr Glyn-Jones to his task, and no

suggestion of any actual bias on his part. The application is based on the fact that it is said that he, Mr Glyn-Jones, will have knowledge which may mean that he has an unconscious predisposition one way or the other on some of the issues that arise. Mr Tam emphasises that Ethiopia is, in effect, a one-party state with enduring individuals involved in the Government and that the knowledge acquired extrajudicially by Mr Glyn-Jones is, of course, not capable of being explained or set out for the parties to examine. It is unknown and will remain unknown, to the parties and, therefore, there is an apparent concern that some of that knowledge might be brought to bear on the issues that will arise.

6. Mr Otty makes very similar points. He emphasises that the question of whether Ethiopia has changed over the last period, even stretching back as early as 2005, may be relevant, that it may be relevant whether there is a contrast between the reaction of Her Majesty's Government to what happened in 2005 leading to the disengagement from this project and Her Majesty Government now proposing that it is proper to rely on the Memorandum of Understanding between the countries as a protection against human rights abuses. Mr Otty adds the point that it is likely there were classified briefings to Mr Glyn-Jones before he engaged with the project and the content of those will be unknown. That appears to me to be a well-considered and well-taken point. The extent and content of those briefings cannot be known, but are likely to have prepared someone for such a project in a detailed way. In addition, and I think this is a supplementary point, Mr Otty indicates that there is at least one prisoner or detainee in Ethiopia, the facts of whose individual case are said to be relevant to that of J1, as an example of concern, in which the prisoner was there and incarcerated as early as 2005.
7. I reluctantly accede to the joint applications and will give the indication to Mr Glyn-Jones that he should stand down. I stress in these remarks, as I have made clear when giving reasons for my ruling yesterday in relation to Mr Warren-Gash, that we are here concerned not with the substance of bias, but with its possible appearance. For that reason, the hearing will not be able to proceed. The Commission staff struggled successfully and with great energy to see if the hearing could be kept alive, but we know that cannot be done again.
8. I want to add one or two points so that they are completely clear to all parties. Firstly, the Commission has and will continue to ensure that anything that might even remotely raise such an argument as those which were developed today and yesterday are known, and anyone considering the operation of the SIAC can be confident that that will happen. There will not be an instance where anything, which might even possibly engage such an argument, is dealt with behind the scenes, however inconvenient that may be in its consequences.

9. Next, it is absolutely essential that the kind of expertise available to SIAC from the third members continues to be available. It is inevitable that, in general terms, those who are qualified to play that role will have had long and senior careers either in the Foreign Service or within the intelligence services of the United Kingdom. They will inevitably acquire acquaintance with witnesses. Acquaintance with witnesses is not a basis on which applications of this kind will succeed. It will always take more than that. It will always take something specific, something firm, which might give rise to concern in accordance with the authorities. It is not to be assumed that merely because all parties make an application of this kind that they will succeed. The Commission will be careful to balance the specific considerations raised, with the need for senior figures, suitably qualified, to take part in the Commission's work. I do not intend, in dealing with this ruling, to repeat the substance of the authority that was brought to my attention yesterday and taken as read today. There will be a rather longer ruling in relation to the application that led to Mr Warren-Gash standing down, in the course of which I will rehearse some of that authority, but the principles are very well known to all concerned.