

SPECIAL IMMIGRATION APPEAL COMMISSION

Field House, Breams Buildings
London
Tuesday, 17th April 2012

BEFORE:

THE HONOURABLE MR JUSTICE MITTING

BETWEEN:

MOHAMMED OTHMAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

MR E FITZGERALD QC and MS J MIDDLETON (instructed by Birnberg Peirce and Partners) appeared on behalf of the Appellant.

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

MR A McCULLOUGH QC (instructed by Treasury Solicitor Support Office) appeared as Special Advocate.

REVOCATION OF BAIL
DECISION

Transcribed by Harry Counsell
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MR JUSTICE MITTING:

1. The appellant was detained today and, in accordance with the law, has been produced to SIAC within 24 hours of his detention for his bail position to be reconsidered. The Secretary of State has, I believe, made a statement to the House of Commons at 3.30 this afternoon. I do not know its terms, but I have been provided with a letter of 17th April 2012, which I have no reason to believe does not summarise the gist of what she said accurately. It is that, in the light of existing and new factors produced by negotiations at the highest level with the Government of Jordan over the last two months, the risk that caused the Strasbourg Court to block, in so far as it could, the deportation of the appellant to Jordan has now been satisfactorily removed. Consequently, the Secretary of State has announced her intention to deport the appellant "on or about 30th April 2012".
2. If that intention is realistic, indeed, if it has any real prospect of success, the position has been significantly altered. Whereas on the last occasion that I considered the appellant's circumstances what lay in prospect was, at best from the point of view of the Secretary of State, a long period of uncertainty, there may now be a realistic prospect to bring this matter to a close rapidly.
3. If the deportation of the appellant is imminent, if the Secretary of State is able to fulfil her declared intention, then, in my judgment, the risk that he will abscond has significantly increased. I reach that judgment not because of any breach by him of his bail conditions, none is alleged - there is no evidence of any - but because of the

declarations made by others who may have the capacity and will to assist him to do so. Amman news has reported a statement, apparently signed by Al Qaeda's General Command and published on jihadi forums, that, if the appellant is extradited, Al Qaeda would "open the gates of evil" into Britain and its citizens everywhere. "We warn the British Government against extraditing Sheikh Abu Qatada to Jordan". "Act with reason and wisdom ... or you will regret it".

4. It is a fact that ten years ago the appellant did disappear from view for a prolonged period. There is every reason to expect that, if he were determined not to return to Jordan, those who wish to assist him could do so. All of this involves, necessarily, a high degree of speculation, but, applying the test that I have done in the past where an application has been made by the Secretary of State to revoke bail, on the basis that it is likely that if an appellant remains on bail he will breach his bail conditions - is there a real possibility that, if readmitted to bail, he will abscond? - I am satisfied that that possibility does now exist.
5. If the deportation of the appellant is imminent, the risk that he will abscond has significantly increased. If deportation is not imminent, then the risk that he will abscond may not have significantly increased. I express no view about that for reasons that I will now explain.
6. Both the appellant and the Secretary of State can be brought to the point of having this issue determined rapidly. There is in existence already a deportation order signed in January 2009. The only means under domestic law by which the appellant can

challenge that order is to apply to the Secretary of State to revoke it. If, as I anticipate she will, she refuses to revoke it, that will be an immigration decision which attracts a right of appeal, in a case such as this, to SIAC. If there is an effective appeal in this case against such a decision, it is likely to be many months before it can be determined. But there is a route by which the Secretary of State can short circuit, a route to which, for obvious reasons, she cannot commit herself now because she must consider all representations made to her and all the circumstances known to her with a fair and open mind. But, if, having done so, she were to conclude that the application to revoke the deportation order was clearly unfounded, she could issue a certificate to that effect, the effect of which would be that the appellant could not appeal to SIAC. His only right of challenge would then be in the Administrative Court, to the decision to certify.

7. The court system can cope within the time frame anticipated by the Secretary of State with such a challenge. A Divisional Court, that is to say a court presided over by the President of the Queen's Bench Division or another Lord Justice and a High Court Judge, could sit to determine such a challenge on Wednesday, 25th April. If the parties act with great speed, it is possible that this very long-running saga can be brought to a rapid and conclusive end within, at most, a matter of a very few weeks, even allowing for the possibility of a decision adverse to the appellant against which he appeals to the Court of Appeal. The court system is able to deal in appropriate cases even with complex matters such as these with appropriate speed.
8. Accordingly, the course that I am going to take will put both sides to what is, in effect, an election. The appellant will be compelled by reason of the Secretary of State's

declared intention rapidly to apply to her to revoke the deportation order. If she wishes to put into effect her declared intention to deport him on or around 30th April 2012, she will have to respond rapidly and, if she considers it appropriate, to certify the claim is clearly unfounded. The court will then entertain any challenge by a judicial review claim by the appellant, which, again, he will have to make promptly, because there would, otherwise, be nothing to prevent his lawful deportation, within a very tight time frame.

9. If it is obvious after two or three weeks have elapsed that deportation is not imminent, either because the Secretary of State has not certified or because, having done so, a certificate is struck down by the Divisional Court, then I will reconsider bail along the basis of a more leisurely timetable than that necessarily required for a full-blown appeal to SIAC. Meanwhile, the appellant must remain in detention.
