

SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,
Brems Buildings
London

Wednesday, 2 July 2013

BEFORE:

THE HONOURABLE MR JUSTICE IRWIN

BETWEEN:

Z

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

MR H BLAXLAND QC (instructed by Birnberg Pierce) appeared on behalf of the appellant.

MS C PALMER (instructed by the Treasury Solicitor) appeared on behalf of the Secretary of State.

Transcribed by Harry Counsell
7th floor, 61 Southwark Street, London, SE1 0HL
Telephone 020 7269 0370

RULING

MR JUSTICE IRWIN:

1. In this case, as all parties agree, there have been a number of breaches of bail in the past. As I outlined in a previous ruling of 4 October of last year, there is a history of instability here and, so far as the evidence affords, there were at that stage four efforts to damage the tag that was then applied.
2. Despite that, I quite consciously liberalised the bail regime for Z, so that he would be in conditions where he would be likely to remain as stable as possible. The Commission accepts - and has from before that point - that there are genuine depressive symptoms here, and that they can be exacerbated by separation from his family.
3. The next development as that on 23 December of last year, the new tag sustained damage. Z reported that himself. Of course, it sooner or later would have been discovered, because the equipment is inspected, but he reported it himself. On 26 December, the evidence given to the Secretary of State was that the damage was deliberate. That is, of course, in issue, but it is a very important issue. As a consequence, Z was arrested on 22 January and his bail was revoked, a revocation confirmed by Upper Tribunal Judge Latta on the same day.
4. There is, regrettably, as yet no outcome of the investigation as to whether the expert view that this was deliberate damage was correct. I need not recite the detail. It is clear that Z is

depressed and anxious as a result of his being in prison, his wife and family miss him greatly; he is committed to his wife and family. It is also clear from the report of Professor Katona, who has looked after this patient for some time, that his mental health has deteriorated. The Professor's essential conclusions are contained in paragraph 5.1 to 5.4 of the report of 12 May.

5. I have also read and understand the witness statement of Mrs Z as to the impact on the children. She raises a number of health problems of her own. It is clear, though, that they are not central to this bail application because they are not urgent or immediate requirements for treatment.

6. Mr Blaxland makes his application based on two critical points. Firstly, that this application is precipitated by the deterioration in Z's mental health; secondly, that it does not make sense, he says, to infer or conclude a risk of absconsion even if the damage to the tag was deliberate. I accept the first point, there is a deterioration. However, if this was deliberate damage, then the consequence is the consequence of Z's own actions. I reject the second argument. It is perfectly logical to say that, if you are going to abscond, you could do it in a more organised and calmer and more deliberate fashion. But, as I concluded on the previous occasion, what we are dealing with here is someone who is unstable and, therefore, unpredictable. Action, including absconsion, may well be a risk. The fact that it is not terribly logical to damage the tag while you are in your curfew hours is not to the point. What we may be dealing with is an unstable or impulsive man, who

tests out damage to the tag on impulse, and might very well choose to abscond with his family. I am not suggesting that that necessarily is so, I am not suggesting that it can be a firm conclusion, but it is a real risk. In the context of someone whose adherence to bail conditions has been very patchy, and following a deliberate liberalisation of his bail conditions in October designed to gain stability, such an interference does logically and sensibly found a risk of absconding.

7. Therefore, bail is refused today. However, I move to consider the timing of all of this. It seems to me that it should have been obvious to all sides that the damage to the tag issue is critical for bail. Until the recent crisis in Z's mental health, everyone was accepting that a renewed bail application would follow the resolution of that issue. Yet I am now being told that there is no prospect of that happening before the summer break. There is time in the Commission in the next fortnight or so, or, rather, after a week for about a fortnight, to hear an application. I also indicate that, exceptionally, I would be willing to deal with this matter in a short hearing in the first week of August outside normal term. I understand that Z's representatives might not be available for any of those dates. I cannot wave a wand and grant a hearing that will fit everyone's timetable, but this is, after all, a fairly straightforward factual issue, albeit with expert evidence.
8. The Commission will make every effort to accommodate a hearing, but it cannot do so unless the necessary work is done. I understand Mr Blaxland's point that this issue has to be examined properly and it is no help to either Z or others if the matter is not dealt with

thoroughly. I cannot help that, all I can do is to say that the Commission will do its level best to accommodate a hearing and, if there are directions that can be given today - or probably I should indicate later on today, once the parties have discussed matters - in order to ensure that that issue is moved along, I will happily give them. I need to indicate to the parties that there is a fixed video link in this hearing room to Istanbul beginning at 10am and we need to, therefore, vacate in time for that. I would encourage counsel and solicitors to discuss the timetable. I am not content to let this drift, because nobody gets a grip of the preparation. If the conclusion were otherwise on this issue, then Z would have been likely to have got bail today, and we cannot leave him simply sitting in Belmarsh over the vacation, because nobody has got it together to resolve that issue.
