

**SPECIAL IMMIGRATION APPEAL COMMISSION**

Hearing Date|: 3<sup>rd</sup> January 2014

BEFORE:

**UPPER TRIBUNAL JUDGE LATTE**

BETWEEN:

**‘Z’**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondents

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MR M FOOT (instructed by Birnberg Peirce and Partners) appeared on behalf of the appellant.

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

MR M GOUDIE (instructed by the Special Advocates' Support Office) appeared as Special Advocate.

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**(Bail Revocation Hearing)**

**RULING**

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UPPER TRIBUNAL JUDGE LATTER:

1. This matter has come back before the Commission following damage to the appellant's tag, which was reported by him on 23<sup>rd</sup> December 2013. What happened then is set out in the witness statement from the immigration officer. The Secretary of State later obtained an expert report about the damage and, following that, the appellant was arrested on 2<sup>nd</sup> January 2014. The appellant has sought further time to obtain evidence and fully prepare his response to the allegations made against him which, essentially, are that he deliberately damaged his tag. The parties agree that the appellant should have that opportunity and so the only issue for me at present is whether the appellant should be detained or be released on bail until the adjourned hearing.
  
2. I have been reminded that the relevant statutory provisions are at paragraph 24(3) of Schedule 2 of the 1971 Act. The very brief background is that the appellant is an Algerian national who overstayed after his arrival in the UK. Charges under the Terrorism Act were withdrawn, but he was convicted of an offence of fraud, but, subsequently, proceedings were taken before the Commission. The appellant was unsuccessful and he has been refused permission to appeal. There is a pending application to the Court of Appeal. If that application were to be refused, that would be the end of the domestic proceedings, but there may, of course, be further proceedings before the court in Strasbourg.
  
3. When considering whether it is right to grant bail until this matter can be looked at in full, I have attempted to take all the relevant factors into account. I have, in particular, taken note of the fact that the appellant has been described as a historic national security risk in that at the hearing in front of Mr Justice Mitting on 12 November 2012, he said that the public harm was

not as great as it once would have been, but, nonetheless, I am satisfied that there is clear evidence that there is a real and significant risk to national security arising from the appellant's background and the previous findings of the Commission. I also note from Mr Justice Mitting ruling on 12<sup>th</sup> November 2012, when he re-admitted the appellant to bail, that he commented that the appellant had been in detention for 16 months and that was long enough for him to learn the lesson of what would happen should he deliberately breach his bail conditions. I have also taken into account that there is evidence of a significant level of mental health difficulties, which were described by Mr Justice Irwin in his ruling on 4<sup>th</sup> October 2013. In paragraph 2 he said that there was a real degree of volatility with the appellant and that, while he accepted the broad picture of the pressure on him and his family, particularly his wife, that also gave rise to concern because of that volatility, particularly, with the fairly recent history of trying to get away from the tag. The appellant's family circumstances have been considered in the psychiatric report which has been produced before me.

4. I also take into account the point made on behalf of the appellant that it was he who notified his solicitor and then UKBA of the damage to the tag. The counter-argument is that, if the damage was caused by his tampering, there is a strong inference that he would be left in a position where the most sensible course of damage limitation in such circumstances would be to then notify the authorities. There is a report prepared by Mr Campbell, which reaches to some very clear conclusions. In paragraph 13 of his report, he says, "In the absence of any other physical damage to the tag, I cannot think of any other possible situation in which a strap could be overloaded without leaving behind physical damage except deliberate loading of the strap by soft tissue of the fingers or ankle to intentionally break the strap or stretch it with the aim of trying to slip the tag off the ankle". Later in his report, after he carried out experiments to see how damage might be inflicted, he says in paragraphs 19 and 20, that, in

his opinion, the damage is indicative of repeated deliberate and premeditated efforts to defeat the tag.

5. It may be that further evidence will become available which might cast a different light on the damage to the tag and how it happened, but, nonetheless, I am satisfied that there is strong *prima facie* evidence of deliberate damage to the tag and I must also take into account that there has been a previous finding by Mr Justice Mitting, applying the criminal standard, that the appellant has deliberately damaged the tag on one occasion in the past.
  
6. The bail conditions were reviewed by Mr Justice Irwin on 4<sup>th</sup> October 2013 and some variations were made and, indeed, the conditions are really quite complex, carefully thought out and extend to some 11 pages, but they are prefaced on the condition set out at number one, that the appellant wears a tag and that he must not damage or tamper with it or the monitoring equipment. As I have said, there is very strong evidence that there has been deliberate damage to that tag. Taking into account the previous finding that he has damaged a tag and the fact that this matter will be restored for hearing without undue delay, I am satisfied that the appellant should not be granted bail. I find on the evidence before me that there is a real risk of absconding as of a breach of his bail conditions. I am not satisfied that bail should be granted and it follows that the appellant must be detained until the matter can be considered at the adjourned hearing.