

Appeal No: SC/37/2005
Date of Hearing: 18-23 April 2007
Date of Judgment: 14 May 2007

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

THE HONOURABLE MR JUSTICE MITTING (Chairman)
SPECIAL IMMIGRATION JUDGE BATISTE
MR M G TAYLOR CBE

Between:

'Z'

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellant: Mr H Southey
Instructed by Birnberg Peirce & Partners

For the Respondent: Ms L Giovannetti
Instructed by Treasury Solicitors for the
Secretary of State

Special Advocates: Mr A Goddard QC and Mr M Goudie
Instructed by Treasury Solicitors Special
Advocates Support Office

National Security

1. On 12th October 2006 'Z' gave written notice that he waived his right to contest the SSHD's national security case. Although he did so without accepting its truth, the fact of his waiver means that this part of the judgment can be much shorter than it otherwise would have been.
2. 'Z' is an Algerian National, born on 10th February 1967 in Cherchell, Algeria. He gained admission to the United Kingdom in 1991 on a six months visitor's visa, but overstayed his leave. He was arrested in May 1997 under the Prevention of Terrorism Act and on fraud charges. The proceedings gave rise to a celebrated decision of the House of Lords in his real name. In March 2000, no further evidence was offered against him on the Terrorism Act charges. On 16th June 2000, he was sentenced to 3 years imprisonment for the fraud offences. He was released in February 2001. In late 2001 he disappeared. He was traced and arrested under immigration powers on 15th September 2005. On 29th August 2006, his asylum claim was refused and a certificate was issued under Section 33 of the Anti-Terrorism Crime and Security Act 2001.
3. In the statement made in support of his asylum claim, 'Z' admitted that he was a supporter of the GIA. In its generic decision of 29th October 2003, SIAC found that the GIA was a functioning terrorist organisation, operating in Algeria, formerly associated with Al Qaeda. Participation by a person in its activities would provide clear evidence that the person concerned posed a risk to the national security of the United Kingdom. Convincing evidence of irrevocable abandonment of former views would be required before the risk could be assessed as acceptable.
4. By a report dated 25th July 2001 (1/32 – 40) the Metropolitan Police summarised the results of their investigation into 'Z' and others. There is no reason to doubt its conclusions. 'Z' was arrested, with another man on 22nd May 1997 at 31 Crane House, London SE15. A third man escaped from 85 Amina Way, London SE15 and was subsequently arrested on 31st July 1997. Searches of 31 Crane House, 85 Amina Way and 'Z's home, 15 Winslow House, Kinglake Street, London SE17 revealed, amongst other items, books and literature about bomb making, catalogues of military equipment, such as night vision sights, radios and rockets, credit cards in a number of different names, forged identity documents, blank identification cards and just under £20,000 in cash. Also found, were bottles marked sodium nitrate, sodium azide and lead nitrate and baby milk tins which had been cut and adapted with plastic inserts. The chemicals found had been bought by 'Z' from Sigma-Aldrich Chemical Company of Poole, Dorset. The chemicals listed in the order documents could, in combination, produce explosive products. In interview, 'Z' admitted that he was the leader of a GIA group in London and had been involved in the purchase and collection of chemicals, radio equipment and military and technical manuals

which had been sent to Algeria. One consignment, hidden in a hi-fi system, had been intercepted by the Algerian authorities. The baby milk tins were adapted for the purpose of smuggling. The money was to be used by the GIA to continue its fight in Algeria. He had raised it by opening a number of credit and bank accounts.

5. Z's arrest, detention and imprisonment did not diminish his interest in militarily useful equipment. When his home was searched on 19th December 2001, a quantity of pamphlets relating to rifle sights and telescopes was recovered.
6. By a note given to the Algerian Embassy dated 17th March 2006, Z' was described as follows:

“self confessed member of GIA. Believed to provide logistical support for members of various proscribed organisations. Conviction on deception charges relating to credit cards and sentenced to 3 years imprisonment. Released 2001. Certified under ACTSA but went to ground and so never detained under those provisions. Detained.”

This note is an accurate, if incomplete and understated, statement of Z's activities. These are more fully described in the closed judgment.

7. For reasons set out in both the open and closed judgments, we are satisfied on balance of probabilities that he has been involved in facilitating terrorist activity overseas. It is not asserted, and we have no reason to believe, that he has renounced his former views or would be willing in the future so to conduct himself as to pose no threat to the national security of the United Kingdom. The risk which he presents has not been eliminated or reduced to an acceptably low level.
8. For those reasons, we agree with the Secretary of State's certificate dated 29th August 2006, issued under Section 33 ACTSA 2001, now deemed to have been issued under S55(1) Immigration Asylum and Nationality Act 2006.

Safety on Return

9. By a Note Verbale dated 30 January 2007, the Algerian Ministry of Justice gave the following assurances to the British Government.

“Should the above named person be arrested in order that his status may be assessed, he will enjoy the following rights, assurances and guarantees as provided by the Constitution and the national laws currently enforced concerning human rights:

- (a) the right to appear before a court so that the court may decide on the legality of his arrest or detention and the right to be informed of the charges against him and to

- be assisted by a lawyer of his choice and to have immediate contact with that lawyer;
- (b) free legal aid shall be granted to him automatically;
- (c) he may be placed in custody only by the competent judicial authorities;
- (d) he will be presumed to be innocent until his guilt has been established by due legal process;
- (e) the right to notify a relative of his arrest or detention;
- (f) the right to be examined by a doctor;
- (g) the right to appear before a court so that the court may decide on the legality of his arrest or detention;
- (j) his human dignity will be respected under all circumstances;
- (k) since the above named person is of Algerian nationality, he may not be extradited to another country in accordance with Article 698 of the Code of Criminal Procedure;
- (l) with regard to the Charter for Peace and National Reconciliation it should be pointed out that the above named person may benefit from the application of that Charter if he satisfies the conditions required by law and complies with them.”

10. Three divisions of SIAC have now considered the state of affairs in Algeria and reliability of assurances given by the Algerian State. We adopt them and do not intend to repeat them. In summary they are that: Algeria is making a sincere, broadly supported and generally successful attempt to transform itself from a war torn authoritarian state to a normally functioning civil society; solemn diplomatic assurances given by the Algerian State to the British Government about individual deportees are reliable and can safely be accepted. (See ‘Y’, ‘BB’ and ‘G’). In ‘BB’ SIAC formulated yardsticks by which the reliability of assurances should generally be assessed, which were adopted with a qualification which is academic for present purposes in ‘G’. We adopt that approach to the assurances given in respect of ‘Z’.

11. Since those appeals were determined, four Algerian citizens have withdrawn their appeals to SIAC and have been deported to Algeria: ‘Q’, ‘K’, ‘H’ and ‘P’. Events after their return provide valuable, if disputed, information about both the reliability and the limits of the assurances given in respect of them; and, by extension, in respect of ‘Z’. Detailed analysis of, and the conclusions which can be drawn from, those events are set out in the open judgment in the case of ‘U’ at paragraphs 14 – 42. We adopt them and do not propose to repeat them. We share the conclusion that they confirm the reliability of the assurances, in particular that the Algerian State will respect the human dignity of a deportee and his rights under Algerian law; but that it promises no more than that.

12. On 11th October 1999 at the criminal tribunal in Algiers, ‘Z’ was convicted in his absence of an offence contrary to Article 87a6,

paragraph 2, of the Algerian Penal Code and sentenced to 20 years imprisonment. Article 87a6 makes it an offence for any Algerian National to be active within or to join a terrorist or subversive association group or organisation abroad. The second paragraph prescribes a maximum term of life imprisonment where the acts described are intended to harm Algeria's interests. Two arrest warrants have been issued by the Criminal Tribunal of El Harrach. It is not known whether they relate to the offence of which 'Z' was convicted in his absence or to other matters.

13. By a Note Verbale dated 4th April 2007, the Algerian Ministry of Justice confirmed that, in accordance with Article 326 of the Code of Criminal Procedure, if 'Z' were to give himself up or be arrested before his sentence had elapsed, it must be set aside so that he can be tried in accordance with normal procedures: 'Z' would have the right to a re-trial.
14. Because 'Z' has not presented himself to the competent Algerian authorities and declared that he is putting an end to his activities within the time limit prescribed by Article 5 of the Ordonnance, he will not be entitled, as of right, to avail himself of its provisions. It is uncertain whether or not he would, by the exercise of discretion, be allowed to avail himself of them if he were now to take that course. There is a real risk that he would not be able to do so. Further, the Ordonnance does not cover an offence under the first paragraph of Article 87a6: activities within or joining a terrorist or subversive association, group or organisation abroad "even if its activities are not directed against Algeria". The evidence available to the Algerian authorities may permit them to prosecute him for such an offence. Whether or not they do so may well depend upon their view of the risk which he poses to the Algerian state. They may well conclude that the risk is significant, in the light of recent terrorist activity in Algeria, in particular the bombings of 11th April 2007. Mr Layden's estimate is that there is a 50/50 chance that 'Z' will be retried. We are satisfied that there is, at least, a real risk that, because of the risk which he will be perceived to pose to Algeria, he will be charged and prosecuted for an offence under Article 87a6 paragraph 1.
15. Save that 'Z' is unlikely to be of the same degree of concern or interest to the Algerian authorities as 'U', the same factors apply to the issue of his safety on return as in the case of 'U'. We adopt what is said in paragraphs 44 to 68 of 'U'.
16. The evidence given by Mr Layden in this appeal, which we accept, reinforces those conclusions. He is a skilled and experienced diplomat, well qualified to make objective judgments about the trustworthiness of his counterparts and the medium and long term commitment of the states with which he negotiates. His judgment of Mr Amara is that he is an able and thorough man – a reliable interlocutor, who tells the truth. Neither he nor the Minister of Justice, nor the President have spoken with a "langue de bois" - in English idiom, stonewalled to

avoid answering awkward questions. In his judgment, they have become increasingly open and co-operative in their dealings with him. He is satisfied that the Algerian body politic has the capacity and political will to ensure that its solemn diplomatic assurances are fulfilled. We accept his view.

17. For the reasons stated in 'U' and above, we are satisfied that the United Kingdom will not act in breach of 'Z's rights under Articles 3, 5 & 6 ECHR if it deports him to Algeria and this appeal is dismissed.

MR JUSTICE MITTING

ADDENDUM

On 2nd May 2007 SIAC received, by fax, a letter from Sihali's solicitors Tyndallwoods, enclosing a witness statement by Natalia Garcia of the same date, which exhibited 2 letters said to be in the handwriting of Q, a former client of Ms Garcia. All advocates for the 4 appellants in whose cases judgment has been handed down today submit that SIAC should take the letters into account in reaching its judgments.

The Secretary of State also submitted, by letter from the Treasury Solicitor dated 2nd May 2007, further notes of discussions between a British Embassy official and Q's sister Djazia on 23rd April 2007; and between a British Embassy official and Maitre Tahri (one of H's lawyers) on 26th April 2007. Ms Garcia states that she recognises Q's handwriting and that the 2 letters are from him. We have no reason to doubt that they are.

The first is to Ouseley J and reads:

“Dear Sir Osly. To SIAC court my name [Q] former long lartin detainee I rhite you this wourd to let you no that my life here in Algeria in danger first I was torture betaine humiliton in police station.

Second here in Serkadji prison life here like slave. Algerian otority thay give a garanty but thay brook the agreement. So Mr judj Osly stop deportation to Algeria in end I wont let you no that eneythink happen to here in Algeria British otority responsnable for life

Thank you
Detainee Q.”

The second letter is to Miss Garcia and adds nothing relevant to the first. The first letter is dated 10th April 2007. Miss Garcia states that both letters were received by fax at her office on 23rd April 2007 at about 12.30pm from Q's sister. This is consistent with the fax imprints on each page which bear that date and are timed between 12.11pm and 12.17pm. Miss Garcia does not explain why it took until 2nd May 2007 to refer them to SIAC. She states that she is not at liberty to provide full details of the provenance of the first letter because of “serious concerns for the safety of third parties”.

She also refers to statements made to her by Djazia about the circumstances in which Q is now being held in Serkadji prison: in a dormitory with 25 others; and that he is required to take a sleeping pill each night, against his will. This information is entirely consistent with what the British Embassy official records Djazia as having told him on 23rd April 2007. It does not alter the view which all four panels of SIAC which have considered these cases have formed about the “prison conditions” issue under Article 3.

Q's claim in the first letter can be broken down into 3:

1. He has been tortured, beaten and humiliated “in police station” (which we take to be a reference to DRS custody in Antar barracks).
2. His life in Serkadji prison is like that of a slave.

3. The Algerian authorities have broken a guarantee in respect of him.

(i) is inconsistent with the description of him by one of his lawyers, Mrs Daoudi, as being “generally in decent health”; with her statement that what he complained of was hearing the sounds of apparent ill-treatment of others, not harm to himself; with Djazia’s statement to a British Embassy official on 12th March 2007, that following a family visit on 10th March 2007, he was well, but not happy about his detention; and with her statement to a British Embassy official on 23rd April 2007 that he had not been mistreated (otherwise than being removed to a dormitory in Serkadji prison and made to take sleeping pills at night). This allegation is also entirely unspecific and made very late in the day. While the possibility that he was ill-treated cannot wholly be dismissed it is no more than a mere possibility. This new allegation does not persuade us that there exists a real possibility that any of the 4 appellants with whose cases we are concerned will be tortured or ill-treated on return. Put in the language used by the Strasburg Court, this material does not give rise to substantial grounds for believing that there is a real risk that they would be subjected to treatment which would infringe Article 3 if it were to occur in a Convention state.

(ii) Adds nothing to the “prison conditions” issue already considered.

(iii) Cannot refer to any assurance given to the British Government in relation to Q, because none was given. It must refer to the promises said to have been given at the Algerian Embassy orally to individuals. We have already dealt with this issue in the judgment in U. This adds nothing to it.