Appeal no: SC/98/2010
Hearing Dates: 22nd – 24th March 2011
Date of Judgment: 15th April2011

SPECIAL IMMIGRATION APPEALS COMMISSION

OPEN JUDGMENT

Before:

THE HONOURABLE MR JUSTICE MITTING (Chairman)
SENIOR IMMIGRATION JUDGE ESHUN
MR S PARKER

(J1)

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellants:	Mr T Otty, QC & Mr E Grieves Birnberg Peirce & Partners Solictors
For the Respondent:	Ms K Grange & Ms R Davidson Instructed by the Treasury Solicitor for the Secretary of State
Special Advocate:	Ms A Dhir, QC & Mr J Hyam Instructed by the Special Advocates Support Office

The Hon Mr Justice Mitting :

Background

1. The appellant is a 32 year old Ethiopian national. His father, who is still alive and lives in Ethiopia, was a press attaché at various Ethiopian Embassies under the Derg. His mother died soon after he was born. His father remarried. He has an older sister, a half brother and a half sister. The family entered the United Kingdom on 1 August 1990. When the Derg was overthrown in 1992, his father was recalled to Ethiopia. He was accompanied by the appellant's stepmother and his half brother and half sister. The appellant and his sister were left behind in the United Kingdom. They applied for asylum, which was refused. Eventually, after two appeals, they were granted exceptional leave to remain for one year in 1998, subsequently extended until 11 June 2004. On 9 April 2003 the appellant was granted indefinite leave to remain.

2. The appellant and his sister were brought up as Christians, a religion to which she still adheres. By 1998 – the precise date is not clear from his witness statement – the appellant had converted to Islam. He took a Muslim name, Abdul Shakur. He married a Muslim convert in January 2003. She had a five year old daughter from another relationship whom he unhesitatingly accepted as a child of the family and treated her as if she were his own. He and his wife have four children of their own.

3. By a decision notified on 25 September 2010, the Secretary of State decided to make a deportation order against the appellant on conducive grounds for reasons of national security. The decision was certified under s97(3) of the Nationality Immigration and Asylum Act 2002. By a notice of appeal, given in time on 8 October 2010, the appellant appealed against that decision to SIAC. He has been in immigration detention since 25 September 2010. Applications for bail heard on 16 November 2010 and 28 January 2011 were rejected. He remains in detention. By directions given on 16 November 2010, SIAC gave directions for the hearing of his appeal. The two principal issues were ordered to be heard separately: the national security case in the week commencing 21 March 2011 and (if appropriate in the light of SIAC's findings on the national security issue) safety on return in the week commencing 13 June 2011.

National Security

4. The Secretary of State has filed two open national security statements and called witness ZW to explain and support them. The appellant has filed a lengthy witness statement dated 24 January 2011, amended on 24 February 2011. In it, he has given a detailed explanation of his own and his family's background and a partial answer to the Secretary of State's open case, but has expressed reticence about what he could say further, for three stated reasons: he fears what might happen to him in Ethiopia, if his appeal fails and he is deported there; the allegations against him would place his father, stepmother and half brother and half sister, all of whom live in Ethiopia, in danger; and the individuals named in the Secretary of State's open statements could be put in danger if he gave an account of contact that he had had with them and the

circumstances of that contact (paragraph 119 if his witness statement). We have drawn no inference adverse to him from this reticence. None of the conclusions which we have reached on the national security issue are founded, to any extent, upon it.

5. SIAC has determined this aspect of the appeal by applying its Procedure Rules, in particular Rule 4, and its settled practice – for example, in receiving and relying upon evidence of a Security Service witness who was not personally involved in any investigation into the activities of the appellant. Mr Otty QC has reserved his position on all of these questions and has not invited us to rule afresh upon them.

6. For reasons which are principally set out in our closed judgment, we have accepted the Secretary of State's case that, subject to the issue of safety on return and the right to respect for family life of the appellant and his family and the interests of his children, the Secretary of State was right to conclude that it is conducive to the public good for reasons of national security that the appellant should be deported to Ethiopia. Our principal reasons for reaching that decision are set out in the closed judgment. They centre upon events in 2009 and 2010, of which the appellant has only been given the most general outline in the Secretary of State's open case, to which he has, for the reasons already referred to, declined to respond in detail. In this open judgment, all that we can do is to state our conclusions about these issues in general terms. We are satisfied that the appellant was an associate of three men who left the United Kingdom, for terrorism related purposes, for Somalia in October 2009, Bilal Berjawi, Mohamed Sakr and Walla Eldin Rahman. We accept the assessment of the Security Service based on that association, that he knew in advance about their travel and its purpose – terrorist training and activity in Somalia. We accept that Berjawi has remained in contact with his UK based associates since his departure; and that before his detention on 25 September 2010, the appellant was an important and significant member of a group of Islamist extremists in the United Kingdom which provided support to them. We have reached those conclusions at least on the balance of probabilities. They have informed our view about the past events in which the appellant was concerned about which more specific detail is given in the Secretary of State's open statements.

7. By itself, the bizarre story of the aborted trip to Loch Ness/Ben Nevis in late December 2004 is of no significance. On 29 December, at 1.30am, the appellant and three others were found by police in a white Kia Pride motorcar in a car park in Lanark. They said that they were en route to Fort William, but had broken down, in a car that they had just bought, because the one in which they had travelled had been damaged in a road accident. The appellant has stuck consistently to this account; and there is nothing to disprove it. An odd feature of the police report is the suggestion that the occupants of the car were wearing plastic gloves. Any suggestion that this was to avoid leaving fingerprints inside the car is, in our view, far fetched. One feature of the trip cannot, however, be wholly dismissed: a training or bonding camp had been organised by Mohammed Hussein Ahmad Sa'id Hamid, near Loch Ness at about the same time. Hamid was convicted in February 2008 of soliciting to

murder and providing terrorism training. This was not the only camp which he had organised. He had also run a training camp in Cumbria in May 2004 which was attended by four of the five men convicted of the failed London bombings on 21 July 2005. Two other men, acknowledged by the appellant to be well known to him, Dawit Semeneh and Joseph Kebide attended the same camp. But for subsequent events, the abortive trip of the appellant could readily be dismissed as a coincidence. There is no evidence or reason to believe that he knew or had ever met Hamid. Subsequent events suggest that it may not have been. No firmer conclusion than that can be reached.

8. In May 2005, a group of men, all of whom were friends or acquaintances of the appellant, travelled to Somalia: Semeneh, who had shared lodgings with the appellant in Oxford Gardens, attended the same mosque as him and played football with him in White City; Nathan Oqubay, not acknowledged as a close friend, but a visitor to the lodgings and a participant in football at White City; Zulgai Popal, one of those found by the police in the car in Lanark on 29 December 2004, a friend since 1999/2000 and a fellow footballer; Elias Girma Eyassu, whom he met at the Oxford Gardens lodgings in 1996/97 and who also played football at White City and attended the same mosque as the appellant occasionally; Kebide, a close friend who had named the appellant as his next of kin. The appellant accepts that he knew at the time that the trip was primarily organised by Semeneh and gives the same explanation for it as that which was disbelieved by Keith J in AP and by SIAC in XX – that it was for a proselytising, religious, purpose. The appellant contends, correctly, that there is no open evidence to demonstrate, or even suggest, that he played any part in organising the trip. It is not necessary to conclude that he did for these events to have some significance. The principal conclusion which we draw is that the appellant was a friend or acquaintance of a group of men who went to Somalia for a terrorism related purpose in 2005. Again, but for subsequent events, that could be explained as an unfortunate coincidence. Subsequent events suggest that it is more than that.

9. On the morning of the failed London bombings of 21 July 2005, a mobile telephone which the appellant now accepts was used by him, was in contact with a telephone used by one of the bombers, Hussein Osman. The appellant originally suggested, unconvincingly, that the telephone call had been made by his wife, but now accepts that it may well have been made by him. Viewed independently of other events, there is nothing to show that this was not simply a coincidence. The appellant also left the United Kingdom, for Ethiopia, on the following day, 22 July 2005. This, we are satisfied, was a true coincidence. His flight had been booked by his sister, against whom no allegation of complicity is terrorism-related activity has been made on 18 July. There is, and can be, no suggestion that he was fleeing the United Kingdom to avoid arrest for complicity in the failed bombings. He had a genuine purpose for his trip: to care for his depressed and suicidal half brother in Ethiopia. While there, he would have had the opportunity to visit Somalia, but there is no evidence that he did.

10. The appellant made a further trip to Ethiopia in 2006. Again, he had a legitimate reason for doing so – to care for his brother – and the opportunity to

visit Somalia. There is no evidence that he took it. All that is known is that which he admits – that Girma and he met each other in Ethiopia on a number of occasions.

11. We accept the assessment of the Security Service that the appellant has demonstrated security awareness. The example given – that in April 2007 the appellant and another man waited away from the platform for a train to arrive and then raced down the escalator when it did, so as to avoid being followed – was just that: an example of such conduct and not the totality. By itself, it is not of great importance.

12. Mr Otty QC submits that the Secretary of State's open case is flimsy and relies to an unacceptable extent on guilt by association. There would be considerable force in his submissions if the open case stood alone; but of course it does not. The closed material which we have considered is determinative of the appeal. All that the open case does is to set the context for the events of 2009 and 2010, which are only described in the most general terms in the open case. We accept that the appellant is and has been a devoted husband, father and brother and has undertaken non-extremist activity in the United Kingdom; but the closed material about the events of 2009 and 2010 has satisfied us, at least on balance of probabilities, that they do not reveal the whole picture about him.