

Appeal no: SC/85/2009
Hearing Date: 24th – 25th January 2012
Date of Judgment: 13th February 2012

SPECIAL IMMIGRATION APPEALS COMMISSION

OPEN JUDGMENT

Before:

THE HONOURABLE MR JUSTICE MITTING (Chairman)
UPPER TRIBUNAL JUDGE WAUMSLEY
MR M G TAYLOR, CBE DL

‘PK’

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT
RESPONDENT

For the Appellants: Mr M Goldborough
Cleveland and Co Solicitors

For the Respondent: Mr J Glasson & Mr R Dunlop
Instructed by the Treasury Solicitor for the Secretary of
State

Special Advocate: Ms C McGahey
Instructed by the Special Advocates Support Office

MR JUSTICE MITTING :

Background

1. The appellant is a 36 year old Iraqi national of Kurdish extraction. He now lives in Sulemaniyah with his wife and son. His parents live next door. He arrived in the United Kingdom on 9th August 2001 and claimed asylum. The Secretary of State refused his claim on 27th September 2001 but granted him exceptional leave to remain until September 2005. In February 2006, he was granted indefinite leave to remain. In May 2006, he was issued with a one year Home Office travel document. He says, and we do not doubt, that, while based in the United Kingdom, he has travelled to Saudi Arabia for about three weeks for the Hajj pilgrimage and to Iran for one and a half months to see his mother and father who were then living there. He also made a journey to Sweden in late 2003 or January 2004, to which we refer in greater detail below.
2. On 13th March 2009, he travelled from the United Kingdom to Iraq, via Istanbul. On 19th May 2009 the Secretary of State decided, in the exercise of her prerogative powers, to exclude him from the United Kingdom on the ground that it was conducive to the public good to do so for reasons of national security. At the same time, his indefinite leave to remain was revoked. Notice of both decisions was given to him in Sulemaniyah on 28th May 2009. Because the Secretary of State certified under section 97(1) of the Nationality Immigration and Asylum Act 2002 that the decision had been made wholly or partly in the interests of national security, he was entitled to appeal against the decision to revoke leave to remain to SIAC. He exercised that right by a notice of appeal given in time on 15th June 2009.

Law

3. We take the same approach to determination of this appeal as that which we set out in paragraph 6 of *EI v SSHD SC/98/2010* 20th April 2011: we will to the extent possible, find the facts – as to past events on the balance of probabilities – and, giving due deference to the view of the Secretary of State that it is conducive to the public good to exclude the appellant from the United Kingdom, review her decision in the light of the facts which we find.
4. Although the grounds of appeal and the claimant's skeleton argument, prepared for the purpose of this appeal, raise manifold issues, it is common ground that this appeal turns upon a single question: was the decision of the Secretary of State that it was conducive to the public good to exclude the appellant from the United Kingdom for reasons of national security justified?

Facts

5. The basic open assessment of the Security Service is that the appellant is an Islamist extremist. There are two open foundations for this assessment:

- i) On 30th January 2004, he wrote a letter to Ferman Abdullah (Ferman) in which he identified to Ferman individuals able to assist him in supporting terrorist related activity.
 - ii) He was a long term associate of a man (AE) who had received terrorist training and had a wide range of Islamist extremist contacts in the United Kingdom and abroad, in consequence of which, he was made the subject of a control order on 18th May 2006. His name is set out in the confidential annex to this judgement.
6. The appellant admits that he wrote the letter dated 30th January 2004 to Ferman. It reads:

“Dear Brother Ferman

After greetings I send my respect to Dana and others.

Regarding the subject you told me of earlier, I contacted (AE) and it appeared to me that he was aware of the subject and he already had a long discussion with Omar Baziani about the incorrect (improper) ideas he continues with. Before I mention the subject to him (AE), he had already decided to cut his relationship with him (Omar Baziani) and not to offer help under any circumstances. But regarding other brothers who were fighters with him (AE) I believe that he is helping them. I personally have no contact with these people. It is better, if you can, to contact Abdul-Bari who lives with Ismail in (indistinct word) regarding this issue. Regarding Saman, you have to be aware that he has connections to Komala and he is sympathetic with them.

Wishing from God that we all be victorious.

Hoshyar/Wushyar

Peterborough”

7. The allegation about the letter was first made openly in November 2010. All but the first of the appellant’s statements post-date that date; yet it is only in the last two statements dated 9th and 12th January 2012, that he has chosen to deal with the letter. Mr. Glasson for the Secretary of State submits that we should hold that delay against him. We are disinclined to do so, because we do not know the difficulties of communication between him and the solicitors that he has retained in the interim. We are only concerned with the explanation which he has now given. He states, and we accept, that he travelled to Sweden, before he wrote the letter, to visit his cousin, Lanja and her husband Bahman Abdullah (Bahman). While in Sweden, he met Bahman’s cousin, Ferman – he says at a party. He says that Ferman told him that he was collecting money for orphaned children and widows in Iraq and asked if he would help collect money for them and send it to Kurdistan. The appellant says that Ferman seemed a very complicated person. He explained in

evidence that this was because he asked a lot of questions, including whether he knew Ismail, Abdul-Bari, Baziani, AE and Saman. In his statement of 9th January 2012 the appellant said that Ferman asked him to contact Omar Baziani. In that statement, he said that he refused his request to collect money for orphans and widows. In his oral evidence, he said that he decided to refuse and did so by the letter of 30th January 2004, by diverting his request for assistance to Bari.

8. After returning to the United Kingdom, the appellant says that he spoke to AE and told him that Ferman wanted him to collect money for orphans and widows and to contact Baziani. AE said that he knew Baziani and told him to have nothing to do with him because he had “improper” ideology. In his oral evidence, the appellant explained that AE had told him that Baziani used to be a member of IMIK (a Kurdistan political party), but was not good. Hence the unfavourable reference to Baziani in the letter. In his two witness statements and in his oral evidence, the appellant explained that the subject matter of the letter was raising money for widows and orphans. When asked by Mr. Glasson why he did not refer to it in terms in the letter, he said that he did not know. As to the fighters, he said that AE was helping them. About five of them had been members of IMIK and were now jobless. Alternatively – his answers were not clear – they were fighters with AE between 1994 and 1998 and were now in the police or local government. When asked what the reference to “other brothers who were fighters” in the letter had to do with widows and orphans, the appellant said that the letter was intended to refer both to widows and orphans and to people who were now poor who had been with IMIK. This was the first occasion on which he had given that explanation: there is no reference to it in either of his two recent witness statements. Another oddity about his explanation was the reference to Bari. In his last witness statement, he said that he saw him once with Ismail, a person he knows who lives in Birmingham. He said in evidence that he had seen him twice. On any view, he did not claim to know him well. He said that the reason that he told Ferman to contact Bari was that Ferman already knew Bari. This explanation makes little sense and is inconsistent with the terms of the letter, which suggests that it was the appellant who told Ferman about Bari.
9. The appellant’s explanations for the letter are unconvincing and inconsistent with the wording of the letter. There was no reason not to refer expressly to providing charitable relief for orphans and widows and poor people in Kurdistan if that was the true subject matter of the letter. The references to Baziani and his improper ideology clearly have nothing to do with relief for orphans, widows and the poor. The appellant’s attempt to explain away the reference – Baziani had an improper ideology, because he confined relief to those who supported his political views – is wholly unconvincing. The true purpose of the letter is reasonably clear: the appellant was providing some help to Ferman by putting him in touch with someone who could contact those who had fought with AE. It is very unlikely that Ferman’s purpose was charitable. He was arrested by the Swedish authorities in April 2004 and convicted on 12th May 2005 of receiving and transferring \$148,000 to Ansar al-Islam, a Kurdish terrorist organisation, “with the aim that the money be

used for terror crimes”, for which he was sentenced to seven years imprisonment (subsequently reduced on appeal to 4 ½ years). A control order was imposed on AE on 18th May 2006 revoked and re-imposed on 11th September 2008 and then twice renewed until September 2009. The basic open grounds for suspicion that AE had been involved in terrorism-related activity were that he had received terrorist training, had extensive Islamist extremist contacts in the United Kingdom and abroad and had been actively involved in providing support for the terrorist activities of Ansar al-Islam in Iraq. We are satisfied, at least on balance of probabilities, that the purpose of the appellant in writing the letter to Ferman was to help him to contact those who had fought with AE in Ansar al-Islam for the purpose of conducting terrorist activity in Iraq. We have reached that conclusion for four reasons: the terms of the letter; the implausibility and internal inconsistencies in the appellant’s explanation for it – we can think of no other reason for them, but that they are an attempt to conceal a sinister message; the identity and activities of the addressee and one of the individuals mentioned, AE; and reasons set out in the closed judgment.

10. In his witness statements, the appellant has attempted to play down the closeness of his connection with AE. For reasons which are set out in the closed judgment, this attempt does not succeed.

Conclusion

11. The open case stands or falls upon the letter to Ferman. Given its true purpose, it demonstrates that the appellant was, in 2004, willing to provide some help to those who were actively involved in terrorist facilitation. The Secretary of State would undoubtedly have been justified in excluding him then had the opportunity arisen and the full facts been known. The decision to exclude him was not in fact taken until after he had left for Iraq on 13th March 2009. If, by then, he had frankly explained its purpose and satisfied the Secretary of State that he was no longer willing to provide assistance to extremists, her decision might have been open to challenge. But he has not done so. On the contrary, in witness statements and in his oral evidence, he has maintained a false account of his dealings with Ferman and AE. For that reason, and for the reasons set out in the closed judgment, we are satisfied that the Secretary of State was justified in concluding that it would be conducive to the public good for reasons of national security that the appellant should be excluded from the United Kingdom. We dismiss this appeal.