

SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: SN/62/2016
Hearing Dates: 27th and 28th February 2018
Date of Judgment: 13th April 2018

Before

**THE HONOURABLE MRS JUSTICE ELISABETH LAING
UPPER TRIBUNAL JUDGE PERKINS
SIR STUART ELDON**

Between

ZR

Appellant

and

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

Respondent

OPEN JUDGMENT

Mr C Jacobs (instructed by **Howe & Co Solicitors**) appeared on behalf of the Appellant

Mr S Gray (instructed by **the Government Legal Department**) appeared on behalf of the Secretary of State

Mr A Underwood QC (instructed by **Special Advocates' Support Office**) appeared as Special Advocates

Introduction

1. This is our OPEN judgment in this application for statutory review.
2. The Appellant was represented by Mr Christopher Jacobs and the Secretary of State by Mr Steven Gray. We are grateful to both counsel for their helpful and clear written and oral arguments.
3. It seems to us, having heard the OPEN argument, that there are potentially three OPEN issues in this review.
 - a. Does the late disclosure of a material allegation on 13 October 2017 pursuant to rule 38 of the Special Immigration Appeals Commission (Procedure) Rules 2003 mean that the procedure by which the Secretary of State refused the Appellant's application was unfair? The Secretary of State disclosed that she considers that the Appellant was a member of El Mujahid Detachment ('EMD').
 - b. Was the Secretary of State's OPEN decision refusing the Appellant's application for naturalisation, which did not rely on that allegation, lawful?
 - c. What is the impact of our decisions on the first two issues on the question of relief?
4. We note the schedule of open issues for determination. We do not consider that it is necessary for us to decide many of these. A premise of some of the questions in the schedule seems to be that it is for us to decide issues of fact, such as whether the Appellant's involvement with Al Haramain in Croatia related to the activities of Al Haramain in Bosnia. This is a statutory review, not a merits appeal, and (with one qualification, to which we will come) it is no part of our function to decide issues of fact. Our task, rather, is to consider whether the Secretary of State's decision was flawed by any error of public law. We will focus, therefore, on what seem to us to be the main issues raised in skeleton arguments and in oral argument.

The background

The Appellant's account

5. The Appellant is an Egyptian citizen. His account, mostly given in the course of his asylum claim in 1998, and supplemented in his interview in 2016, is that he studied in Egypt and gained a degree in accountancy. He had been a political prisoner for short periods in 1989 and 1990. He was suspected of being a supporter of Al-Gama'a al-Islamaya ('AGAI') (he denied supporting AGAI in his 2016 interview). He was tortured. He worked in a bookshop in Saudi Arabia in 1991-1992 and then for the charity Al Haramain. Between March 1993 and

September 1995, he worked as the chief accountant for Al Haramain in Zagreb, Croatia. A letter dated 2 May 1998 from the Medical Foundation ('the MF'), which he submitted in support of his asylum claim, said that after leaving Egypt he lived in Saudi Arabia, Iraq and Jordan, and moved to Bosnia in 1993, where he worked for the International Council for Voluntary Agencies ('the ICVA'). The author of that letter describes himself as a full-time psychiatrist working for the MF, and said that he had interviewed the Appellant three times at the MF with the help of an interpreter, and once with the Appellant's wife and children.

6. A document headed 'Interview Brief', prepared by the Secretary of State for the 2016 interview, notes that the account in the May 1998 letter conflicts with the account the Appellant gave in an asylum questionnaire, in which he did not refer to Iraq or Jordan, and claimed to have lived in Zagreb, Croatia, between 1993 and 1995, where he worked for Al Haramain. He submitted a photographic identity document identifying him as the chief accountant of Al Haramain. This was issued by the ICVA. We note that it appears to have been issued in November 1997 and to have been valid until December 1998.
7. The Appellant entered the United Kingdom on a Bosnian passport issued in Sarajevo on 10 September 1996. That passport appears to have been valid until 10 September 1998. The Appellant claimed to have obtained Bosnian citizenship because he married a Bosnian. He claimed to have been in London between October 1995 and January 1996 seeking political asylum. Records showed that he entered the United Kingdom on 7 November 1995 and left on 29 January 1996. He travelled on a Bosnian passport issued on 22 December 1994 (valid until 22 December 1996). He claimed asylum on 7 November 1995 and withdrew his application on 27 January 1996. Records show that when he applied for asylum he held a Croatian work permit valid until August 1996.
8. He claimed that he went to Bosnia from the United Kingdom in 1996 because the Dayton Accord meant that his wife would be able to return to her home town. Between January 1996 and December 1997, he was in Zenica, Bosnia. In December 1997 he returned to the United Kingdom and claimed asylum, claiming to have left Bosnia because he felt under threat. After the Dayton Accord, Croats returned to Zenica and they harassed the foreign Muslims living there. The Croats disliked him because he worked for a charity which only helped Muslims. He was the accountant for Al Haramain, a Saudi Arabian charity. Another foreign man who worked for an Islamic charity was shot, and he was beaten up for being foreign. He removed some pages from his Bosnian passport before his arrival in the United Kingdom, he said, because he did not want to be sent back to Bosnia. He said that between January 1996 and December 1997, he did not leave Bosnia.

9. The Appellant's asylum claim was refused on 6 July 2000. He was given exceptional leave to remain for four years. He applied for indefinite leave to remain ('ILR') on 28 May 2004. He was granted ILR on 13 May 2005.

The Appellant's application for naturalisation

10. The Appellant applied for naturalisation in 2006. After some delay, the Secretary of State refused that application in 2009. The Appellant applied for judicial review of that decision. In due course, there was a consent order. The Secretary of State withdrew the decision. The Appellant then made further representations, under cover of a letter dated 7 September 2015 from his then solicitors, Blavo and Co. Those concentrated on the Appellant's stress and depression.
11. When the Appellant made his application in 2006, the application form asked, among other things, whether the applicant had been involved in the commission, preparation or organisation of war crimes, whether he had been suspected, accused, investigated, charged, prosecuted or convicted of involvement in war crimes, crimes against humanity or genocide, whether he had ever been involved in financing, planning, preparation, commission or attempted commission of terrorism inside or outside the United Kingdom or been a member or supporter of an organisation which has done or supported acts of terrorism in furtherance of its aims, and whether he had engaged in any other activities which might be relevant to the question whether he was of good character (questions 4.8-4.11). The form had a space for information to be given in relation to any box which had been ticked. The Appellant ticked none of those boxes. At section 7.1 of the form he signed a declaration that to the best of his knowledge and belief, the information in the form was correct. He acknowledged that the information he gave might be submitted 'for checking against records held by other Government departments, the Security Service and other agencies, local authorities and the police'. He confirmed that he had read and understood the guide Naturalisation as British Citizen ('the guide'). The Appellant had passed a test in knowledge of life in the United Kingdom on 27 May 2006.
12. Section 4 of the guide dealt with good character. It said that checks would be done to ensure that the information given by an applicant was correct. Questions 4.7-4.11 were dealt with on page 25 of the guide. It told an applicant that he must say whether he had been involved in anything which *might* [our emphasis] indicate that he was not of good character. An applicant must give information about any activities, no matter how long ago they were. Checks would be made and an application could fail if an untruthful declaration was made. 'If you are in any doubt about whether you have done something or it has been alleged that you have done something which might lead us to think that you are not of good character

you should say so'. The guide said that an applicant must also say if he had had any involvement in terrorism. 'If you do not regard something as an act of terrorism but you know that others do or might, you should mention it'. An applicant must also say whether he had been involved in any crimes in the course of armed conflict, including crimes against humanity, war crimes or genocide; 'If you are in any doubt as to whether something should be mentioned, you should mention it'.

13. We are in no doubt that if the Appellant was involved, as the accountant for Al Haramain in Croatia, in funding EMD, or knew that that Al Haramain in Croatia was funding EMD, or if he was a member of EMD, he must have known, having read the form and the guide, that he was required to tell the Secretary of State about these activities. He also must have known that if he did not do so, his application might be refused. To the extent that he was not involved in any such activity, conversely, there was nothing for him to say about it in the form.
14. This is a statutory review. If the Secretary of State was reasonably entitled to decide that the Appellant was involved in funding EMD, then she was also reasonably entitled to conclude that the Appellant should have disclosed this in his application.
15. In so far as we have to consider the fairness of the process, however, it seems to us that we could not conclude that the Appellant was given fair notice of what he had to disclose when he made his application (in accordance with the reasoning in *Thamby v Secretary of State for the Home Department* [2011 EWHC (Admin) 1763] unless we were satisfied, on the balance of probabilities, that the Appellant was in fact involved in funding EMD. We do not consider, despite Mr Jacobs' submission to the contrary, that the statement in the briefing note (see below) that the Appellant must be asked in the 2016 interview whether he had been a member of EMD is decisive of, or even relevant, in this regard. Mr Gray submitted that the purpose of the interview was not to give the Appellant notice of matters that might be held against him, but, rather, to enable the Secretary of State to understand the factual picture about the Appellant's activities. We accept that submission. In any event, fairness is a question for the court, not for the decision maker. A crucial issue, it seems to us, on this aspect of the case, is whether, when he made his application in 2006, the Appellant, on the facts, had fair notice of what might be held against him, and of what he should therefore disclose. That depends on whether, on the balance of probabilities, he was either involved in funding EMD, or was a member of EMD.

16. The Appellant was told that the Secretary of State wanted to interview him for the purposes of his application. He was interviewed on 25 April 2016. A briefing note was prepared for that interview by the Secretary of State's Special Cases Unit. It is at tab 10 of the OPEN bundle. The briefing note starts with some general points for the interviewer. The key was to establish what the applicant did and what he knew. Chronology was important. 'All matters below must be covered at interview' (emphasis in the original). Under the heading 'KEY EVIDENCE THAT MUST BE OBTAINED AT INTERVIEW' are various points, including 'How/why/the SUBJECT joined the organisation', 'When they left and why', 'How quickly/easily they could have disassociated from the group', 'the applicant's personal role in the group' and so on. It is said that knowledge can be imputed, and that, in some circumstances, denial of knowledge can be refuted by circumstantial evidence.
17. The briefing note lists, in section 2, 'the facts', next to several bullet points. We have drawn on this material in setting out the background, above. Some of the 'facts' are clearly not facts, but assertions, for example, various claims made by the Appellant in the course of the asylum process. Some are facts, such as the dates when he entered, and left, the United Kingdom. Where the source of the information about a 'fact' is clearly the Appellant, we attribute no significance to the omission of the word 'claimed' before the 'fact'. We do not infer that where 'claimed' is missing from a 'fact', the source for which can only be the Appellant, that the Secretary of State in this briefing note necessarily accepts the claim as true. This document is not a pleading or a statute but an internal document prepared as an aide mémoire for the interviewer. It was not intended to be read, still less, relied on, by others, and has only come to the Appellant's attention relatively recently, when it was disclosed in the course of this appeal, on 27 April 2017.
18. The third section of the briefing note contains research, from open source material, about the war in Bosnia between 1992, EMD, post-war developments and Bosnian citizenship deprivations, Zenica, Islamic charities in Bosnia (including Al Haramain). The research summarised is extensive.
19. We note that the Bosnian war ended when the Dayton Accord was signed on 14 December 1995. During the war, between 1992 and 1995, foreign volunteers, many of whom were Muslim, arrived in Bosnia and fought for the Bosnian government. Some humanitarian organisations were linked to their recruitment. Some fighters had previous experience of combat. Many arrived via Croatia with the help of the Croatian authorities. Many were ready to wage jihad. Many arrived in Bosnia as members of humanitarian organisations. Many were based in Zenica. A jihadi camp was established in Zenica in May 1992. The foreign fighters committed war crimes against Croat and Serb forces. Funds came from many

organisations including the Al Haramain Islamic Balkan Centre. In August 1993 the Bosnian army established EMD. But it stayed to some extent autonomous. After this the headquarters of EMD was in Zenica.

20. EMD was disbanded in December 1995. Many foreign fighters got Bosnian citizenship after the war. There was a farewell function for EMD fighters in January 1996 (before the Appellant's return to Bosnia). Fighters continued to use Bosnia as a base for military training and for penetrating the rest of Europe. Some former members of EMD became terrorists in Bosnia or in Europe. Some of the extremists settled in Zenica. Zenica was known as centre of Mujahedin activity/settlement and of conservative Islam. Islamic charities had links to these activities, including the Bosnian office of Al Haramain.
21. Some sources suggested that as many as 12,000 foreign fighters were given Bosnian citizenship during the war. In 2001 the Bosnian government began to investigate those who gained citizenship during the war. Some left Bosnia voluntarily. In November 2005 the Citizenship Review Commission was established. By September 2007 it had reportedly revoked the citizenship of more than 600 people. The Appellant was named in a Bosnian investigation as being linked to an Al Qaeda network operating in Bosnia.
22. As well as being a centre for foreign volunteers, and for EMD, and a centre for Islamist activity, Zenica was a centre for the transit of weapons from overseas into Bosnia. In 1995, 1000 Islamist extremists were said to be based there. According to evidence given to International Criminal Tribunal for Yugoslavia ('the ICTY') at Delic's trial, the Balkan Islamic Centre in Zenica was used to help EMD and Al Qaeda.
23. From the start of the war, the guise of charity and humanitarian aid workers was used to help foreign volunteers to get into Bosnia. One of the earliest groups, mostly Saudis, entered Bosnia via Croatia using official documents which showed that they were to look into delivering aid. Some jihadis entered Bosnia with identification papers issued by the 'Saudi High Commission' and posing as charity workers. Charities were fundamental to the operations of the Bosnian army and to the foreign fighters. Millions of dollars of charitable aid were in fact used for military purposes.
24. Al Haramain is a Saudi based charity with offices in about 50 countries and annual expenditure of \$30-80m. Established in Riyadh in the early 1990s, its aim was to support Wahhabi practice overseas by funding various projects. Some of the money came from the Saudi government and two government officials had supervisory roles. Al Haramain was in turn supervised by the Muslim World League, also funded by the Saudi government, which gave about \$150m aid to Bosnia. Al Haramain had two offices in Bosnia in 1995, according to

the Bosnian authorities. The ICTY found in its judgment in Delic that Al Haramain was among the groups which funded and gave logistical support to EMD. The European Court of Human Rights ('the ECtHR') made a similar finding. Examples are given of a foreign fighters using work for Al Haramain as cover for their activities. Investigators found that Islamic charities in Bosnia were linked and handled large amounts of cash, did not properly record how money was spent and funded terrorists. Al Haramain funded Active Islamic Youth (an Islamist organisation set up in Zenica in 1995) to the tune of about \$500,000 before 2001. In 1997 Al Haramain financed the setting up of a similar group, Al-Furqan. Examples are given of Al Haramain employees who were also terrorists. A US Government report linked Al Haramain to general support for Al Qaeda and to jihad across the Balkans. From 2002, the US Government took action against Al Haramain, freezing its assets and asking the UN to list it as a supporter of terrorism. The Saudis were forced to take action against Al Haramain and acknowledged abuses of the charitable role carried out by branches of Al Haramain. In July 2002, both governments designated the branches of Al Haramain in Bosnia and Somalia as terrorist organisations. The Bosnian office stayed open for a while, despite orders to close. In 2002 the UN imposed sanctions on Al Haramain because of its links to Al Qaeda. The listing referred specifically to the Bosnia office of Al Haramain, and said that it had provided support for terrorism, but also said that 'viewed as single entity, Al Haramain was one of the principal NGOs active throughout the world providing support for the Al Qaeda network'.

25. The UN also noted that Al Haramain, including its Bosnian branch, provided various kinds of support to Al Qaeda and other terrorist organisations. Those organisations got money from Al Haramain and used Al Haramain as a front for fund raising and for operations. The Bosnia branch was linked to AGAI, 'an Egyptian terrorist group that was a signatory to Usama bin Laden's 23 February 1998 statement establishing the World Islamic Front for jihad against the Jews and the Crusaders'. The Bosnia branch was designated in March 2002 and operations in Bosnia stopped. Other branches of Al Haramain were also listed by the UN. The research also describes, in detail, the 'non-charitable activities' of other Islamic charities which were active in Bosnia, and their links with EMD. It also describes the sinister activities in Zenica of the Saudi High Commission for Relief to Bosnia ('SHC'). SHC employed members of EMD.
26. The fourth section is headed 'SPECIFIC AREAS TO BE EXPLORED AT INTERVIEW'. The Appellant needed to give background on Al Haramain, its work, and aims, and the type of Islam it promoted. There were discrepancies about the dates when he first started working/living in Bosnia. His activities in the office of Al Haramain in Bosnia needed to be explored. The relationship between Al Haramain and other charities which operated in Bosnia needed to be examined. The Appellant was active in Zagreb, Croatia; Al Haramain,

research showed, was closely linked to EMD. His activities there needed to be examined, and his knowledge of links between Al Haramain and EMD. Many EMD fighters entered Bosnia via Croatia. Research showed that Al Haramain provided the money and logistical support for EMD. As bookkeeper for Al Haramain it was logical that he would have played a role, if only by falsifying records to show that money had been spent on humanitarian causes rather than on military supplies. His knowledge of Al Haramain's support for EMD needed to be explored. Why did he claim asylum in 1995, when the war in Bosnia was still going on and there was still work for Al Haramain to do? Why did he settle in Zenica? The core of his asylum claim (that he was harassed by Croats who returned to Zenica) is not credible because research shows that Zenica was a centre of Islamist activity, with a significant population of former members of EMD. He needed to be asked whether he ever served as a member of EMD. '(NB there is no evidence to suggest he did, however, he needs to be asked just in case he slips up and changes his story)'. The research showed that after the end of the Bosnian war, a significant number of foreign fighters and humanitarian workers who settled in Bosnia were involved in terrorism, which led the Bosnian government to take action against Islamist networks. He should be asked about this, and why so many people who were ostensibly involved in humanitarian work were actually involved in terrorism. His acquisition of Bosnian citizenship, and whether it was revoked, needed to be explored. He was identified on the Bosnian government's list of foreigners associated with Al Qaeda and Islamist terrorist networks in Bosnia. This should be examined. Why was he of interest to the Bosnian authorities? What was he trying to hide by removing pages from his Bosnian passport?

The Appellant's interview

27. The Appellant was interviewed on 25 April 2016 by Ms Critchley of the Secretary of State's Nationality Team. Ms Critchley also wrote the decision letter. The interview was conducted in English. We note that the Appellant was applying for naturalisation as a British Citizen and that by the date of the interview he had been living in the United Kingdom for nearly 20 years.
28. The Appellant was told that the interview was about the good character requirement. Ms Critchley said that the interview would not be recorded, but that she would be typing his answers, and he should 'bear with me and speak slowly'. The interview would cover details of his time in Saudi Arabia and Bosnia. The interview was needed to create 'a full picture' of that period, and some questions which were not covered in the asylum process to 'attempt to fill in any blanks'. The Appellant was told to let Ms Critchley know if he did not understand any of the questions, and she would try to re-phrase them. He was also told that if he failed

to answer any questions without good reason, that might have an adverse effect on his application. He would be given an opportunity to ask questions, or to comment, at the end of the interview. He was then asked if he had understood what Ms Critchley had said so far. He said, 'Yes'. He was asked if he was happy to be interviewed in English. He said, 'Of course'. He was asked if he was well and content to be interviewed. He said, 'Yes'. His PTSD would 'not really' affect his ability to be interviewed. The only triggers Ms Critchley should be aware of were his lower back problems which might mean that he had to stand for a while.

29. The Appellant was asked about his studies and qualifications. He could not really remember when he left Egypt for Saudi Arabia. He went there to get away from Egypt. He did accountancy in Saudi Arabia for an organisation and printed and published books. He worked in a bookshop but could not remember the dates. He left the bookshop to go abroad and work for a charity, Al Haramain. He came to work for Al Haramain because they collected charity for Somalia and everywhere. He said that he was an accountant and liked to travel abroad. 'In my new life I have lost a lot of my past'. When Al Haramain offered him a job he was still working in a big office building. They sent him as an accountant, as a controller and there was work escorting ministers of organisations, charities, to show them where the donations were going and where it was spent. It was his job to show them that. He was asked what he understood Al Haramain to be. He did not answer that question, but said that he was interested in helping people, 'that is all'. He hated to work with people who tried to be above him. He felt that he wanted to run away for Saudi Arabia.
30. He was asked about his role for Al Haramain in Saudi Arabia. He said that before he went to Croatia, if money was sent by post, in Riyadh, he compared how much money they spent. He was asked if the Saudi government gave money to Al Haramain and he said, 'Yes it wasn't private organisation it was working under the government.' He was not the accountant for the whole of Al Haramain which was a big organisation and split into departments. He worked in the Europe department. He was the chief accountant in Saudi Arabia; the only one who had finished university. He was responsible for accounting for funds from Saudi Arabia spent in Europe, 'especially in Croatia'. The largest amount was over a quarter of a million Deutschmarks in three months. They spent money on the refugee camps in Croatia. The money went through the Croatian government. All the donations came through the Saudi government. All of the accounts he was responsible for concerned funds going to Croatia. He was personally responsible for reporting to the UNHCR. All of the money was for the Croatian refugee camps.

31. He was asked when he moved from Saudi Arabia to Bosnia (no doubt because of the conflict between the May 1998 letter and what he had said in the course of his asylum claim). He replied that he went to Croatia. People would come to his manager and were referred to him. They were from Bosnia but the priority was people from Croatia. The Croatian government could not support them. There were three different religions, not just Muslims. His job was to find out why they wanted money, and speak to Riyadh and decide whether to give it. Croatia was involved in the war, some refugees came to Zagreb and they had to help them, too. He didn't like to remember when he moved from Saudi Arabia to Croatia. It was a big part of his treatment to clear it. He was dealing with people who lost their family and it affected him personally. He moved from Saudi Arabia to Croatia because he did not like 'the Gulf mentality'. He wanted more freedom. He was more broad-minded than them. He always felt like a foreigner. It was not always the intention for him to move to Croatia when he started working for Al Haramain. He asked to do that.
32. His office was in central Zagreb. He could not remember the name [the address?]. When he moved there he had Croatian diplomatic ID. After a break, he was asked about his Bosnian citizenship. He married his wife on 2 February 1994. He met her in Zagreb in Croatia. She was a Bosnian refugee in a camp. He used to visit the camps. He was responsible for nearly 11 camps. He had to set up facilities in the camps and to report back to Riyadh. He was solely responsible for the camps in Croatia. He confirmed that the money was being spent properly.
33. He was asked if he was responsible for all the money coming from Saudi Arabia to all of Croatia or just into Zagreb. He answered 'Zagreb including Rajeka'. However, in a later answer, he said that the only Al Haramain office was in Croatia in Zagreb. The most he received in Zagreb from Saudi Arabia in three months was roughly £100,000. He was responsible for keeping an account of that money. The money did not come into his hands but into a bank. Money came directly from the Saudi Arabian government's bank to the Croatian government's bank. Sometimes goods came in. The charity's activities were controlled by the government and by the UNHCR.
34. He was asked about the structure of the charity and how he fitted into it. The charity was kind of helping people all over the world with war or flood and destruction 'so my part is just accountancy, nothing else'. His boss was the minister of charities in Riyadh. He gave an obscure answer to a question whether his boss worked for Al Haramain but took orders from the Saudi government. His boss was based in Riyadh. They did not meet much. He gave the Appellant a few hours 'to say you working ok and he report to the government'. The main office was in Riyadh. The only person from Al Haramain who worked in the Zagreb

office was the Appellant. He was asked whether Al Haramain had posts in Bosnia. He said one post 'as I said if you need accounting you come to us but it is not an office but later on we moved to Bosnia and have got office in Bosnia. But the office for Europe was in Croatia'. He was asked if he was the only person who worked there. He said, 'I worked as an accountant but this other one guy I think he was Palestinian, he was working there'. We do not consider that the natural meaning of this answer is that the Palestinian was an accountant, and we consider that a reasonable interpretation of this answer is that the Palestinian was not an accountant. The Palestinian was working for Al Haramain. About 15 people worked for Al Haramain in Zagreb, such as translators and drivers. He was responsible for paying their wages. Most of them reported directly to the Appellant, except his manager.

35. His manager's role was 'Just again to control me and control all of the accounts so whatever I confirm, he must confirm as well'. He was asked if he could personally account for every pound which went from Saudi Arabia to the Croatian bank. His answer was apparently evasive, we consider: 'Not that much but mostly whatever comes in and out because again as I say, it's in the charity's name, not my name, because I if had responsibility for all money I can get transferred to my accounts so the main manager I say is Abdul Muti'. He was asked if he would be able to see where every single pound was spent. He said that he had to. They had to report every single time to the government. There were two (or possibly three) copies of the report. One went to the Croatian government and the other to Riyadh.
36. He worked in Croatia until September 1995. He also worked in Zenica in Bosnia. He 'thought' that that was after he worked in Croatia. Ms Critchley said that what she understood was that he worked in Zagreb until September 1995 and then between October 1995 and January 1996 he was in the United Kingdom, and from there he went to Bosnia. He said, 'I went back, yes, you just refreshed my memory'. After the Dayton Accord his wife said they had their home back, and they went back. He went to Zenica in 1996. He had not been to Zenica before, but had been to Sarajevo under the British UN as a volunteer. He was asked whether when he went back to Zenica he was still working for Al Haramain. He asked to work with them but 'at that time it wasn't right'. It was very hard to stay as an Arab. The charity was 'very focused on helping Bosnian people and Muslim so it was very dangerous to stay there so I have to run away again'. Al Haramain did not only help Muslims, however. He was quite broad-minded; religion in Serbia is quite tough, '...sometimes we try to tell them that culture in Europe is different from culture there and you have to be broad minded'.
37. Ms Critchley then asked him whether he was aware of suggestions that Al Haramain was funding EMD. He replied, 'No we not allow it because the government say, even the head

minister say, you[re] not allowed to do that at all, no. As I said, I remember we support Serbian refugees and Croatia and Herzegovina which not belong to Croatia, we help them. But the only, again the minister and Abdul before he become king he was prince and choose 150 people, Muslim to go hajj and you have to collect 50 people who go...' We consider that this is also an evasive answer.

38. He was asked what he knew about Active Islamic Youth ('AIY'). His answers suggested that he had not heard of AIY. He eventually said that they were worried as 'this area was very dangerous just you can hear some groups but you never allow to come close to them because even as a charity you work still under the UNHCR and it was United Nations'.
39. He was asked if he had any involvement with money coming from Saudi Arabia going into Bosnia or was it just Croatia. He replied, 'Just Croatia, with Bosnia they ask me and I just say my opinion when money was going back from there and they ask me and I just say my opinion. If you go back to Zenica it's not safe at all so you have to feel you belong to someone to help you run away, if something happen to my UNHCR card or got to United Nations but it wasn't that I worked for them because at that time I got my wife's family and her family was in government that's why I got quick nationality'.
40. We were pressed with the argument that the Appellant in this answer was referring to work he did for Al Haramain after he went to Zenica in 1996. The question for us on this review is not (primarily) what we consider is the right interpretation of this answer, but, rather, how the Secretary of State might reasonably have interpreted it. We do not think that is the only reasonable interpretation of this answer. We consider that a reasonable interpretation of this answer is that the Appellant started by answering the question by reference to what he did when he was working in Croatia, and that he then diverted into a description of what happened after he went to Bosnia in 1996. That interpretation is supported by the fact that he had not, by this point in the interview, suggested that he worked for Al Haramain in Bosnia, but, rather, had suggested that he had not. It is also supported by the answers starting with, 'Yes, in Croatia' which we record in paragraph 44, below the answer we record in paragraph 45, below, and the exchange we summarise in paragraph 50, below.
41. He was then asked more about meeting his wife. They met in Zagreb in 1994 and got married very quickly. Her family were in the government 'until nowadays'. Initially, he said 'I can't remember, I can't remember' when asked when he got citizenship. He said he got it after he married his wife. He went to the Bosnian Embassy in Croatia, and her uncle supported him.

42. He was asked if, while he was in Croatia, he knew that some Saudis were entering Croatia for jihad. He said, 'No, but I know some, because we got different organisations as well from Saudi, it wasn't just Al Haramain there was 2 different organisations and some still work in Bosnia now for different stuff and they work as a group and report back, as they don't believe to deal with charity money even they got confirmation and everything but they need group of them to come back and speak to media, they need donations of people in Bosnia and only when they speak to media they trust and believe and then give donations'. We consider that this, too, is an evasive answer.
43. The Appellant was asked the name of the other organisation. He is recorded as saying 'The Saudi High Communicate' but we consider it likely, in the light of the research, that he meant 'the Saudi High Commission'.
44. He was asked where the Bosnia office of Al Haramain was. He said in Zenica. He was then asked, 'Zenica? Ok and you said that when they needed money they would have to come through you?' He replied, 'Yes in Croatia'. He was asked what his counterparts in Bosnia came to him for money for. He said that the Saudis wouldn't give money for people or invest money for families to have clothes, to make a small business to support them monthly. He gave as an example someone who wanted a machine to set up as a tailor. They would support them. He was only dealing with one person in the Bosnian office. The Bosnian could not go straight to Saudi and had to go through the Appellant because the Saudis did not trust Bosnians. He was asked if he liaised with Saudi for money going from Saudi to Bosnia. He replied, 'My responsibility is not the permission, there is not my money to give or not'. A reasonable interpretation of this answer is that the Appellant was trying to distance himself from any responsibility for Al Haramain's spending in Bosnia, despite having given answers which suggested that he must have been aware of it. He was pressed about this, with the question, 'You didn't give permission but you were the middleman'. He replied, 'Even the middleman is not for me. Is not middle who give decision not to give, I said yes I believe this guy is the guy he wants to do this and that, he needs the money. The mans the big man who comes from Serbia he signed it, he send signature to give confirmation to Croatia bank with my permission to give this person 5000 deutschmark or whatever'. He gave recommendations with evidence. Importantly, he was asked whether any funds went directly from Saudi to Bosnia without him being aware of it. He said, 'As the charity, not, we're not allowed to, no'. When he was asked whether he knew where all the money that came from Al Haramain to Bosnia went, he said, 'From government, not Al Haramain. As I said, it['s] just a name, just a name for people to go to the media, one speaker saying come and help and give money'. It seems to us that this is an odd answer in the light of the

Appellant's earlier replies. It appears to suggest that Al Haramain is not important at all, other than nominally.

45. Ms Critchley tried to clarify. The Appellant agreed that he was aware of all the money that came from Saudi to Bosnia. He knew what it was going to be spent on and he had to go physically to Saudi and report, to explain to them how things were going and things like that. He did not have to travel to any other countries. He said between 1994 and when he claimed asylum in 1997, that apart from Croatia, Saudi Arabia and Bosnia, he did not travel anywhere else. He was asked why pages had been removed from his Bosnian passport before he arrived in the United Kingdom. He said, 'Ok yes I removed them to be invalid, not a valid passport', so that he could claim asylum.
46. Ms Critchley started to ask him about 'what we know about the charities money and where the money went is...' He interrupted: 'I heard about that I think the owner come here I think after September 11th or something like that I heard they count Al Haramain as not, you know terrorism or fronting terrorism for a while but I think after they clarified they're not is ok'. Ms Critchley continued that we know that back in 1995 Al Haramain was funding EMD. Given that and 'given that you were aware of all the funds coming from Saudi into Bosnia...' The Appellant interrupted again: 'Because I know that money comes into sections, the money is, I'm not talking about Bosnia I'm talking about Croatia'. We consider that a reasonable interpretation of this answer is that the Appellant, realising the implications of his earlier answers, was attempting to retreat from them.
47. Ms Critchley said, '...let's stick to Bosnia for now'. The Appellant said that when he moved to Bosnia it wasn't his responsibility. He just gave his opinion. He was working for them in Croatia under the UNHCR, 'but in Bosnia, just my opinion'. It was not his role to sign cheques in Bosnia. It was the same in Croatia. It was a big problem when others came to Bosnia to visit. The visitors thought he was a stupid Egyptian. They put him in a corner. Head office sometimes asked for his views. 'I give my opinion but my opinion wasn't like permission, but the money was to go to Bosnia to give it to refugees, the only people I was in Croatia came for donations for some kind of business'.
48. Ms Critchley said that he was in a trusted position, so it didn't seem credible that he would not be aware that funds were going from Saudi to EMD. His reply was, 'I am against all of this kind of people and I don't agree and some of them come and people from Libya, they come for donation and I say no, this money come only for Bosnian refugee, you are not allowed. And they would donate in the name of and in Islam groups. I say you're not allowed to have them and they called me bad word as if to say I'm not a Muslim and even I know, I don't know as you said, but of course you have your evidence but as I know I am against all

this kind of people until end of my life'. It seems to us that a reasonable interpretation of this answer is that the Appellant was not denying that he knew that Saudi money was funding EMD, but rather, that he was saying that he was personally against that, and when it happened, he tried to stop it.

49. Ms Critchley said that if the Saudis, through Al Haramain, were funding EMD, it was hard to understand why they would put the Appellant in a trusted position, if he opposed it. The Appellant replied, 'You[re] talking about Bosnia and not Croatia and in Bosnia my power was very less. I wasn't in trusted position in Bosnia that was different people now, I'm just, only kind of in the frame but in the corner, it wasn't like how I'm the accountant working in Croatia. In Bosnia it was, this is happening so what do you think. I was not in a position of responsibility.' He gave the example of a group who came from Saudi Arabia to say what is possible and that women could not come in unless they were wearing a scarf. He objected to that.
50. Ms Critchley said that she understood what he was saying now. She was trying to understand; we know that money was going from Saudi, from Al Haramain to EMD in Bosnia. If that was so, why did an Al Haramain employee in Bosnia need to go through the Appellant to go to Saudi to get the money? Why wouldn't they go straight to Saudi? He replied, 'In Croatia?' She said yes, because the person in Bosnia went to the Appellant, who then gave a recommendation with evidence to the Saudis. She did not understand why they involved the Appellant in the process. The Appellant gave a convoluted answer. When someone wanted something that was not inside the framework, they asked him. They explained it all to him, and he had to translate to them.
51. Ms Critchley said that Al Haramain were funding AIY. The Appellant said that he wasn't aware and wasn't included about that. He agreed that he wasn't aware of any links between Al Haramain and EMD and AIY. She pressed on him about this, given her knowledge that Al Haramain provided financial and logistical support to EMD. He said, 'As I heard but it was not through me, they give some support for Muslim government but as I said...' Did he know about this at the time? He said, 'No like I said personally from my, what [I]m doing as a human being I have told everyone, whoever it has come from, Bosnian, Serb, Muslim and I come to this country it was like history'. A reasonable interpretation of this answer is that it is evasive.
52. Ms Critchley then asked the Appellant about his Bosnian citizenship. It started in 1994. It was easy if you had a wife and someone to help you in the government. 'And it didn't happen anymore, they take off'.

53. There was a break. When the interview started again, the Appellant volunteered, 'I would like to say I'm not the person who support this kind of group, I support my kids to become educated...' He described their achievements. He encouraged them to be broad-minded and didn't force them to wear a scarf; and he goes to the gym and does all kinds of exercise.
54. Ms Critchley asked further questions to clarify when the Appellant claimed asylum and why he left Bosnia. He left Croatia and claimed asylum in 1995 because he wasn't feeling 'that safe'. Croatia was involved in the war as well, though less than Bosnia. Even when he was in Croatia he didn't want people sending him back to Egypt. He accepted that he had chosen to go to Croatia in March 1993. He went there even though there was a war because he lost his humanity in Egypt and he wanted to help people. Ms Critchley said she found it difficult to understand why he should choose to go to Croatia when it was at war and leave for the same reason. A reasonable interpretation of his answer, in our judgment, is that it is not intended to be illuminating. It is difficult to follow. The clause 'this country is more safe but after a while again Croatia time to time Serbia hit and run' is particularly obscure. He travelled to the United Kingdom to claim asylum because, in short, it offered him and his family a better future. Why did he then withdraw his application after three months? His wife had a house and family near Zenica. He was asked why he had gone to the United Kingdom at all and why he did not go straight from Croatia to Bosnia. He said, 'At that time it wasn't Dayton. I think that was beginning of 1996'. When he went to Bosnia after leaving the United Kingdom in 1996 it was the first time he lived in Bosnia.
55. He was asked how long they lived in Zenica. He said a few months. He was referred to his asylum interview in 1998 when he said that they lived in Zenica between January 1996 and December 1997. He said, 'Yeah, a couple of months'. It was pointed out that that was two years. He explained that they had moved around a lot in that time because it was not safe. He was asked why he chose Zenica if his wife's family were not there. He said because the Al Haramain office was there, and he tried to get a job with them there. Why? He explained that 'At that time Al Haramain had moved from Croatia, after Dayton they transfer everything from Croatia to main country'.
56. He approached Abdul Murti (earlier in the interview he referred to 'Abdul Muti' as the main manager in Al Haramain's Croatia office). The Appellant confirmed that this was his old boss, but added that he didn't stay there long. Murti said he would call the main office, as it wasn't his choice. When the Appellant had left the Croatia office he had not said where he was going. He had said that he had to go somewhere. He kept it very secret. He feared being sent back to Egypt, even though he had Bosnian citizenship. It wasn't a respected nationality, it was nothing.

57. When he eventually got an answer from Al Haramain, 'It not the answer that I'm working for them or with them'. They gave him and his wife something to live on. Her parents came to Zenica to stay a while. He was pressed about Al Haramain's response (he had been in Bosnia for two years) he said, 'Its two years it not completely in Zenica, it's between Zenica and three places so the answer wasn't clear, just sometimes they didn't employ me as much, and sometimes I give them advice like as like a charity, and give me some money to live with, give me some packets to use'. Al Haramain weren't supporting him as working for them. They weren't allowed to give him money as an Arab, because he wasn't working for them, but they supported him through the Bosnian people, through his wife, by giving her money. It was suggested that that made no sense, and he was asked why Al Haramain didn't simply give him work. He said, 'Sometimes they, the donations list money and people, they say we didn't have that many employees, so then we can support your family as a refugee'. He had no other income when he was living in Bosnia.
58. He was asked whether he knew that EMD was in Zenica. He said, 'I didn't know but I know they were everywhere in Bosnia.' He denied that EMD'S headquarters was in Zenica. He was pressed on this point. He insisted that he didn't know, but that he knew they were everywhere in Bosnia. He named some other places. Ms Critchley explained that she was asking, so that he understood, was that 'Al Haramain were providing financial support to [EMD] and to a number of foreign fighters and you tell me that they were also providing you with financial support so that's why I'm asking'. He denied that Al Haramain were providing financial support to him. They weren't allowed to give him money. They must go through his wife. '...even at the time, this group it was existing in Zenica as you said, none of them were like me because I've got a very different mentality to that kind of thing'. He agreed that that was because he was more liberal.
59. Ms Critchley then asked him why he left Bosnia for the United Kingdom. The Serbian people were back, the Croatians were back. It was very hard for people, Arabs especially, 'so anyone or any Arabs was working with a charity was supporting only Bosnian people, was not supporting Serbian and Croatian'. He was reminded that he had said that he wasn't working for the charity in Bosnia. He replied, 'It was enough to be an Arab to work around the charity'. Al Haramain had provided support for all religions in his time in Croatia, but not now.
60. He was asked if he still retained his Bosnian citizenship. He did not. Did he renounce it or was it taken from him? His answer is difficult to follow. He seemed to be suggesting that if people left Bosnia their nationality was removed. Ms Critchley asked the question again, expressly in order to understand his position. He then said that his wife's uncle had told him

that he needed to renew his Bosnian citizenship, or he would lose it. He accepted that his wife was Bosnian and that her citizenship had not been taken away although he said that she now had to choose between Bosnian and British citizenship. He could not remember when he lost his Bosnian citizenship. It was some time after he came to the United Kingdom in 1996. He could not remember when.

61. Ms Critchley said that we know that it was in 2001. He thought that it was. She said that we know that the Bosnian government took some people's citizenship away in 2001. She asked him again if it was in 2001. He wasn't sure, at that point. She said that the Bosnians deprived of citizenship those who were involved in or had links to terrorism. Had he ever been considered to be someone with those kind of links? He said no, the contact between them and her uncle had been before that date. Someone else, a student, still has his nationality because he went and renewed it. Again we consider that it is a reasonable interpretation of this answer that it is evasive.
62. The questions which the Appellant was asked in the interview did not include a direct question whether he had been a member of EMD. Towards the end of the interview Ms Critchley asked '...did you have links too [sic] or know anyone who was part of [EMD]?' He replied, 'No I didn't know, I wouldn't like to know'. He was also asked, 'Did you know anyone, or have links to, Al Qaeda?' He answered, 'No'. He was then asked whether there was any reason why the Bosnian Government would have considered him as involved in terrorism. He answered, 'To put me in as terrorism'. He added, 'My wife family and my history of helping people in Croatia, I might mention with the Bosnian embassy when I was meeting, it's not kind of the terrorism they calling me, it wouldn't have been easy to go in and out of Bosnian Embassy if I was'. He was asked whether he could think of any reason why they would link him with terrorism and Al Qaeda. He said, 'As I know some Muslim people it was, their nationality was taken from them, if your [sic] not living there you don't have nationality. One part of my wife [he later clarified, part of her family] she live in America, she got USA nationality and they took off her nationality because you wasn't there so you don't get it'.
63. After a digression, he was asked again whether the Bosnian government would have any reason to 'believe or link, to believe that you were involved in or linked to Al Qaeda or [EMD]'. He replied, 'Not not at all, your question was to me, why not got links to them'. Ms Critchley then said that she was trying to find out if the government had any reason to link the Appellant to these groups and he didn't think that there was. The Appellant then said, 'No I try myself to be clear, every single step forward. My mentality, I hate people closed minded, its not my life, even when I was a teenager I got different mentality to that kind of people,

that's why I never let myself to think I belong to this kind of stuff, my family wouldn't become open minded, my daughter wouldn't be pianist, I wouldn't work this kind of field. I'm not one to allow to link me with this kind of stuff'. We consider that this answer sheds some light on the Appellant's apparent attitude to terrorist groups: the main problem with them seems to him to be that they have a closed mind (a point reinforced by paragraph 68.j., below).

64. Ms Critchley explained why she was asking this: the Appellant had been personally named in Bosnian investigations as someone who was linked to Al Qaeda operating in Bosnia. They had given the Appellant's name, date of birth, and passport number. The details clearly showed that it was the Appellant who was involved. He said, 'Do you know that Bosnian government, there is three governments, one Serbian, one Croatian, one Bosnian, even the Bosnian government is not Muslim, it is mixed. All of them are working against each other so they can collect a few names, this is an Arabic name so he was working with terrorism, after September 11th every Arabic name is suffering, even now on my name will be suffering, for example'. Ms Critchley said that it wasn't just a list of Arabic names who were said to be linked to Al Qaeda, they had a lot of information about him. The Appellant speculated that as the Home Office had found out that Al Haramain was connected to 'that kind of group' maybe they [sc the Bosnian government?] 'connected my name with this kind of group so it's not my fault if someone say this'.
65. Ms Critchley again asked the Appellant whether he was aware that Al Haramain was funding EMD. He said, 'No I'm not aware. I would not allow it but everyone has the right to do whatever they want'. We consider that it is a reasonable interpretation of this answer that the Appellant was not too concerned about the notion that Al Haramain had been funding EMD. He was asked whether he knew that many people who claimed to be involved in charities but were actually involved in terrorism; did he know that that was going on in Bosnia. He said, 'No'. Ms Critchley asked him whether he had known, before she had told him that day in the interview that the Bosnian authorities were interested in him as someone who was linked to Al Qaeda. He said, 'No not at all'.
66. She asked whether, when he was in Egypt, he had been suspected of being involved in AGAI. He did not answer this question directly at first (he said that when he was kind of broad-minded and that when a minister had come along and started to lie, he stood up and called him a liar). He had been young. He agreed, when the negative proposition was put to him, that he had not been. 'No, never at all, never'. He explained that he wanted to be an example for his children, and again described their achievements. He was asked if he wanted to add or to clarify anything. He said, among other things, that he had started a new life in

this country. He was happy. He felt he was doing something with his life. He hated accountancy. He studied fitness so that he could help other people. His children were asking him what was stopping him from getting his nationality. 'I said ask, and I answer but I can't do anything'. The interview ended at 14.05. It is not clear when it began.

67. On 26 April 2016, the Secretary of State sent the Appellant a transcript of the interview. He was asked to confirm that it was accurate by signing the foot of each page. He was also asked to add, on a separate piece of paper, anything which he considered should be amended. He was asked to reply by 13 May 2016. We note that each page of the interview transcript is signed with what looks like the Appellant's signature.

The Appellant's additions to the transcript of the interview

68. The Appellant sent an undated letter to the Secretary of State with his comments on the transcript. He said that on reading the transcript he had noticed that he had misunderstood a few questions. There were other things he wanted to clarify. English was not his first language, 'As you may be aware'.
- a. He misunderstood question 10 on page 8 (whether he knew that Saudis were entering Bosnia via Croatia for the purpose of jihad). He was not aware of this.
 - b. He said that money did not go to Bosnia. Money was only being used to fund refugees in Croatia. Only small amounts went to Bosnia to specific families who were recommended to the head office in Riyadh by him; then they provided materials that could be used, instead of giving them cash (question 6 on page 9).
 - c. He had seen nothing about money going to EMD (question 3 on page 10).
 - d. He was in a trusted position for donations. But he did not see any funds appear on statements for the purpose of EMD (question 5 on page 10). He had very little power in Bosnia. His only job was advice. The reason he could not get a job with them [sc Al Haramain] again after he arrived in Bosnia was that he was more liberal and outspoken in his views and they were more conservative.
 - e. No funds were sent to Bosnia. All funds were sent to the Croatian bank (question 6 on page 10).
 - f. The person came to him in Croatia and he had to give him the report and then refer to Saudi Arabia (again, only a very little amount of money was provided for spending on materials for the refugees) (question 1, page 11).

- g. He was not aware of links to EMD. He only heard that money was given to the Bosnian Muslim government via the minister of charity and endowments (question 5 on page 11). After being tortured in Egypt and living under restrictions in Saudi Arabia, Croatia seemed better than anywhere else. He wanted to do humanitarian work after being stripped of his humanity in Egypt. He had to leave Croatia eventually because the war extended to near Zagreb. He had a wife and child and needed to be safer. They did not live just in Zenica 'for the time I was in Bosnia after returning'. There was a lot of moving around. While he was waiting for an answer from the charity, his wife and her family were being funded by them as refugees. While they kept him waiting for an answer, he looked into working for another charity. They kept him on edge. Though he wasn't employed, people who previously knew him from the charity came to him for advice.
- h. They [sc Al Haramain] did not support him and his family with cash, but in kind (question 14, page 7). His Bosnian citizenship was taken away from him because he had no documents to travel back to Bosnia to renew it when he was supposed to. His wife's uncle recommended that he renew it.
- i. He clarified an answer between pages 16 and 17 about an encounter he had had with a Jewish man at the YMCA. The point of it was that names can be misleading.
- j. He concluded by saying that he did not want to be linked with any groups which endorse and enforce a strictly conservative way of life and are ignorant of modern views, education and freedom of speech.

The decision letter

69. The Secretary of State refused the application in a long letter dated 8 November 2016. That is at tab 18 in the OPEN bundle. As we have observed, that letter was written by Ms Critchley. The letter started with an uncontentious recitation of the legal framework for the grant of nationality. That introduction notes that serious doubts will be cast on a person's good character if they have been involved in or associated with, or supported, or supported groups whose purpose or methods consist of, war crimes, crimes against humanity or genocide terrorism or other actions which are considered not to be conducive to the public good. A precautionary approach is adopted. Involvement in international crimes through membership of Al Haramain was a relevant consideration in principle. The Appellant's work for Al Haramain formed an integral part of his asylum claim, and information about it had been provided in a number of ways.

70. The Secretary of State then noted various pieces of information submitted by the Appellant in the asylum process. We have already referred to some of these in our account of the background, above. The source of each piece of information is given in a footnote. A wide range of sources is referred to, including the Appellant's post-interview letter correcting the interview transcript (footnotes 22 and 46). It was not suggested in argument that any of these references is inaccurate.
71. The Secretary of State had considered the Appellant's application and information previously submitted by him in line with Chapter 18 of the Nationality Policy Guidance and Casework Instructions. The salient provisions were referred to. To satisfy the Secretary of State that a person was of good character on balance of probabilities, applicants must answer all questions asked of them during the process honestly and in full. The Nationality Staff Instructions (Volume 2, paragraph 7) says that information about an applicant will be considered against information from reputable sources on war crimes and crimes against humanity in the country concerned, and where relevant, on the groups in which the applicant has been involved. If those sources provide sufficient evidence of responsibility for, or close association with, war crimes, or crimes against humanity, the application should be refused.
72. The Secretary of State concluded that the Appellant worked as chief accountant for Al Haramain in Zagreb in Croatia for two and a half years during the civil war. He was closely involved in passing funds from Saudi Arabia, via Croatia, to Bosnia. It was his own evidence that he was personally responsible for all of the funds that came into the charity in Croatia and how it was spent. He received £100,000 at one time and was responsible for keeping an account of all that money. In order to see how his role affected the assessment of his character it was necessary to examine Al Haramain's activities while he worked for it.
73. Ms Critchley then considered the available information from 'reputable sources'. She said that the full background about Islamic charities in Bosnia and Croatia was in Annex A of the letter. She referred to the findings about Al Haramain in The 9-11 Commission Report on Terrorism Financing. She noted its close links to funding of EMD, as found by the ICTY, the ECtHR and the UN. She observed that Al Haramain was not listed by the UN until 2002, but said that the evidence on which that listing was based must have been before then. There were clear and significant links between Al Haramain, EMD and Al Qaeda. Against that background, his work for Al Haramain had to be considered against the relevant policy.
74. The Secretary of State noted the Appellant's claims that he was unaware of any link with EMD. Those claims were inconsistent with the Appellant's own evidence and with the objective evidence in Annex A. In the light of the objective knowledge that Al Haramain

financed EMD, and the Appellant's evidence that he was responsible for all of Al Haramain's funds in Croatia, it was not accepted that the Appellant did not know that money was being provided to EMD. Ms Critchley bore in mind that Al Haramain did not only provide funds for EMD and Al Qaeda and that it was therefore likely that not all Al Haramain staff may have known this. But his position in Al Haramain was 'not insignificant'. He was the chief accountant in Croatia and personally responsible for all the money which passed through the charity: a significant sum. At the very least, he was aware of the funding of EMD, if not personally responsible.

75. The Secretary of State noted the Appellant's role in passing funds from Saudi Arabia to Bosnia. Despite his denials that he knew any people who were linked to Al Qaeda, the Secretary of State considered that the Appellant was part of the apparatus by which funds were delivered to Al Qaeda in Bosnia. This conclusion was supported by research which showed that the Appellant was named in Bosnian investigations into people linked to Al Qaeda's activities in Bosnia. The document naming him is among evidence held at the ICTY. There is no doubt that he is the person named on the list; the name, passport number and date of birth are accurate. His inclusion on the list supported the finding that the Appellant was aware of and enabled funding of EMD. The Secretary of State did not accept the Appellant's account of how he lost his Bosnian citizenship (that it lapsed because he did not renew it). There was evidence that his citizenship had been revoked: his name was on the list referred to in Annex A.
76. The Secretary of State also took into account that he had travelled on a Bosnian passport from which he had removed pages, and his explanation for this (that it would stop his removal to Bosnia). She considered that he had done this to deceive, as it prevented the United Kingdom authorities from clarifying his movements before he came to the United Kingdom. This was of particular concern given his conflicting statements about whether or not he travelled to Iraq and Jordan in the early 1990s.
77. He was the chief accountant of a charity which provided funds to EMD and to Al Qaeda at a time when they committed significant international crimes. His actions contributed to helping EDM and Al Qaeda in carrying out those crimes. Ms Critchley was satisfied that the Appellant's actions constituted involvement for the purposes of paragraph 8.5 of Volume 2 of the Nationality Staff Instructions. She applied the balance of probabilities test. She took into account his actions since arriving in the United Kingdom, his character references, his work in the community and that he had no criminal record. Those were outweighed by the finding that he had provided support for organisations who committed international crimes and terrorism. It was also significant that, despite 'the wealth of evidence' about Al

Haramain and its links to EMD and Al Qaeda, that the Appellant denied knowledge of those links.

78. The Secretary of State had also certified the decision to refuse the Appellant's application for naturalisation, pursuant to section 2D(2) of the Special Immigration Appeals Commission Act 1997 ('the 1997 Act'). It was open to the Appellant to apply to the Commission to set the decision aside.
79. The OPEN redacted minute of the decision refers to the interview in relation to the Appellant's work for Al Haramain and its links to EMD. The interview record and files were sent to RAIT, who recommended refusal based on this OPEN information. Ms Critchley considered this and concluded that the Appellant did not meet the good character requirement on account of his work for Al Haramain and its links to EMD. She agreed with the recommendation. She had done a further consideration [redacted passage] 'strong grounds for refusal'. Accordingly she had set out a new consideration in the refusal letter [redacted passage]. She had included in the refusal letter a paragraph certifying the decision under the 1997 Act.

The disclosure pursuant to rule 38 of the Special Immigration Appeals Commission (Procedure) Rules 2003

80. After a CLOSED hearing pursuant to rule 38 of the Rules, on 13 October 2017, the Secretary of State disclosed to the Appellant that she considered that he was a member of EMD. She took no issue with the fact that it is the Appellant's evidence (or, we would suggest, more accurately, case, since he has not given evidence to her or to us) that between January 1996 and December 1997 he was in Zenica, Bosnia, and that she noted that in December 1997, he arrived in the United Kingdom and claimed asylum.

The legal framework

81. There is no dispute about the relevant legal principles, and we summarise them briefly. Section 6(1) of the British Nationality Act 1981 ('the 1981 Act') gives the Secretary of State a power, if she thinks fit, to grant a certificate of naturalisation to a person who applies for one if she is satisfied that he meets the requirements of Schedule 1. Paragraph (1)(b) of Schedule 1 requires that the applicant be 'of good character'. The burden of proof is on the applicant to show that he is of good character. The test is essentially subjective (per Stanley Burnton LJ in paragraph 31 of *Secretary of State for the Home Department v SK (Sri Lanka)* [2012] EWCA Civ 16. Naturalisation is a privilege, not a right. The Secretary of State is entitled to set a high standard. The Commission's approach to challenges to refusals of

naturalisation is set out in the decision of the Commission in *AHK v Secretary of State for the Home Department* (SN/2/3/4 and 5/2014).

82. Where the Secretary of State certifies a decision pursuant to section 2D of the 1997 Act, the applicant can apply to the Commission to set the decision aside. In deciding whether to set the decision aside, the Commission must 'apply the principles which would be applied in judicial review proceedings'.
83. The parties referred us to several cases on fairness. They agreed that whether late disclosure of a material part of the Secretary of State's case pursuant to rule 38 will make the decision-making process unfair is a question of fact in every case.

The Appellant's case and our conclusions about it

84. The Appellant's argument has two main parts.
85. First, he argues that the decision was procedurally unfair because the late disclosure shows that he was deprived of an opportunity to make representations to influence the decision maker on the question of his alleged membership of EMD. The Appellant applied, after that disclosure, to add a ground of appeal based on procedural unfairness. He relies on the disclosure made by the Secretary of State on 13 October 2017. The Appellant says that this is the first time he was told of this allegation. It is not made in the decision dated 8 November 2016 (or in the earlier decision in 2009). It is said that until October 2017 the Appellant believed that the case against him was based on his work for Al Haramain in Bosnia. He had given instructions to his solicitor to that effect. In this context, Mr Gray drew our attention to a position statement drafted by the Appellant's solicitor, dated 30 June 2017, in which he asked the Secretary of State to clarify whether she accused the Appellant of being a member of EMD. Be that as it may, we note that, in any event, Mr Jacobs does not suggest that the Appellant was entitled to be told anything more than the bare allegation.
86. The Appellant relies on paragraphs 22-24 of *AQH v Secretary of State for the Home Department* SN/26/2015 in which the Commission held that it was procedurally unfair not to tell the Appellant the reason why his application had been refused. The Appellant's argument in that case was that the allegation that he was considered to be an Islamist terrorist should have been disclosed to him before the decision was made, or to his solicitors when they wrote and asked for the reasons for the decision, rather than being disclosed a month or so before the hearing. The Commission held that the allegation should have been disclosed to him after he applied for naturalisation and before the Secretary of State refused the application. He also relies on *ZG and SA v Secretary of State for the Home Department* SN/23 and 24/2015.

87. The Appellant contends that he should have been given a reasonable opportunity to address that allegation and that the decision is unfair because he was not given that chance. He refers to *R v Secretary of State for the Home Department ex p Doody* [1994] 1 AC 531 at p 560, at paragraph (5), and *Bank Mellat v HM Treasury (No 2)* [2014] AC 700 at paragraphs 31 and 33.
88. He further contends that the disclosure pursuant to rule 38 has been inadequate, because he cannot see any rational basis for the allegation that he was a member of EMD. He refers to paragraphs 28 and 29 of the judgment of the Divisional Court in *AHK v Secretary of State for the Home Department*.
89. We will say more about this argument, below.
90. The Appellant describes his second main argument as a substantive challenge based the Secretary of State's failure in making her decision to take into account material considerations 'properly or at all' (skeleton argument, paragraph 4). It is a settled principle of public law that if a consideration is legally material, the weight to be given to that consideration is a matter for the decision maker, not for the reviewing court. We are therefore concerned in this review only with the question whether the considerations relied on by the Appellant are legally relevant, and, if so, with whether the Secretary of State took them into account, not with the weight which she gave to them.
91. The Appellant argues that the Appellant's statements in his interview do not rationally support the Secretary of State's conclusion that the branches of Al Haramain in Zenica and Zagreb were linked, and that there is no other evidence to that effect. It is not correct that the Appellant said in his interview that all funds provided to the office in Zenica had to be approved by the Appellant's office in Zagreb, contrary to the assertion to that effect in the decision letter. C51 of the interview has to be read in the context of the Appellant's later answers; English is not his first language. The Secretary of State was unreasonable to rely on this assertion.
92. The Secretary of State was also unreasonable to decide that there was any link between Al Haramain in Croatia and the activities of EMD in Bosnia. She has adduced no evidence about that. There is no rational basis for the decision that an accountant working for Al Haramain in Croatia knew about, or was complicit in, funding of EMD by Al Haramain in Bosnia.
93. It is convenient for us to consider these two arguments together. We have summarised the Appellant's interview at some length, above.
94. We deal first, however, with a broad criticism of the Secretary of State's approach to the Appellant's answers in the interview. It was suggested that the Secretary of State should

have made allowances for the fact that the English is not the Appellant's first language and, not, therefore, have taken some of his answers at face value. We reject that suggestion. The Appellant was given every opportunity at the start of the interview to object to its being conducted in English. He said that 'of course' he was content to be interviewed in English. He is an educated man who studied for four years at university. He had by 2016 been living in England for nearly 20 years. He was told that he must tell the interviewer if he did not understand a question. He was given an opportunity to clarify things at the end of the interview. Ms Critchley was, moreover, careful in the course of the interview to highlight her difficulties with the Appellant's account, in order to enable him to understand what she was driving at.

95. The question for us on this aspect of the case is not whether the Appellant in fact understood the questions he was being asked and in fact intended to give the answers which he did, but whether the Secretary of State was reasonably entitled to consider that he did understand the questions and did intend to give those answers. We consider that she was. We further consider, as we have already indicated, that the question for us is not what meaning the Appellant actually intended to convey by his answers to the questions in interview, but rather, how those answers could reasonably be interpreted by the decision maker. We take into account in this regard that the decision maker was also the interviewer.
96. It is clear from the footnotes in the decision that the Secretary of State took into account the Appellant's comments on the interview. What weight she gave them was a matter for her, not for us. Those comments did not oblige her to accept the Appellant's glosses on his answers in interview, or his (ex post facto) qualification that English was not his first language. She was entitled to give those comments as little weight as she saw fit.
97. We turn then to the arguments that the Secretary of State misunderstood the Appellant's case about what he knew, and that the Secretary of State had failed to distinguish between the separate branches of Al Haramain in Croatia and in Bosnia. It was also argued that the Secretary of State had confused the Appellant's accounts of his role for Al Haramain in Croatia and of his role for Al Haramain in Bosnia. We have to some extent already anticipated this point in our summary of, and commentary on, the Appellant's interview. We bear in mind that the Appellant told Ms Critchley that after Dayton, the Croatian operations of Al Haramain were transferred to Bosnia. He also said that the Croatian branch of Al Haramain was the 'Europe office', and that when he was in Croatia he did the accounting for the 'post' in Bosnia. We note that the Appellant was cagey about his links with Al Haramain once he moved to Bosnia, and anxious to distance himself from having worked for Al Haramain in Bosnia, while having to explain why Al Haramain supported him and his family

there. We take into account both that EMD disbanded after the Dayton Accord and that, despite that, the objective evidence shows that many former fighters settled in Zenica. We further note that the objective evidence on which Ms Critchley relied does not always distinguish between branches of Al Haramain but refers to Al Haramain's activities as a whole. We also note that there is much material in the interview the reasonable interpretation of which is that the Appellant as accountant in Croatia knew what funds were going from Saudi Arabia to Al Haramain in Bosnia (see paragraphs 33-35, 39, 40, 44, 45 and 50, above).

98. We consider, in the light of the objective evidence that Al Haramain in Bosnia funded EMD, that the Secretary of State was reasonably entitled to conclude that the Appellant must, in his role as accountant for Al Haramain in Croatia, have been 'closely involved' in passing funds from Saudi Arabia to Bosnia via Croatia, to reject his claims that he did not know of any links between Al Haramain and EMD, and (given his senior position) that he did not know funds were being given to EMD, and in the light of that, to conclude that the Appellant was at the very least aware of that funding of EMD, if not personally responsible for it.
99. The Appellant further argued that the Secretary of State had failed to take into account material considerations. It is said that Al Haramain in Croatia was never 'a designated organisation', and did not feature in the war crimes trials about EMD. It is said that the proscribed status of the Bosnia branch supports the Appellant's case that Al Haramain in Croatia was organised as a separate entity from Al Haramain in Bosnia. We do not consider that there is any great force in this argument, as the Appellant's evidence in his interview was that after Dayton, the activities of Al Haramain in Croatia were transferred to 'the main country', ie Bosnia. There would have been no point, in 2002, in designating a defunct branch of Al Haramain. We do not consider, therefore that the Secretary of State was required to give any weight to this point, which is said to be a distinction between Al Haramain in Croatia and Bosnia. Further points are made (see, eg, paragraph 25(iv) of the Appellant's skeleton argument) which are attacks on the weight given by the Secretary of State to various factors. We say no more about those.
100. The Appellant's next argument is that the Secretary of State's conclusion that the Appellant was a member of EMD is irrational, in the light of the statement in the briefing note (an OPEN document) that there was no evidence that the Appellant was a member of EMD. We cannot take this point any further in our OPEN judgment.
101. The Appellant also takes issue with the Secretary of State's treatment of the MF letter. It is said that this is an 'over-simplified account' of the Appellant's background and was apparently prepared for a housing application. 'The incorrect information in relation to

working in Bosnia in 1993 was not endorsed by the Appellant'. We have described the background to this letter above. We consider, in the light of that background, that the Secretary of State was entitled to take into account the contents of the letter, and give them such weight as she considered appropriate. The letter was, after all, submitted by the Appellant in the course of his asylum claim and was not qualified in any way.

102. The Appellant then argues that the Secretary of State was unreasonable in taking into account information that the Appellant's Bosnian citizenship was revoked because he was suspected of being involved in, or having links to, terrorism. It is suggested that all the document shows is that the Appellant was a citizen of an 'Afro-Asian country' who had settled in Bosnia. The document itself, it is said, does not assert that he did not obtain his citizenship properly and does not conflict with his account that he obtained Bosnian citizenship through his Bosnian wife with help from her uncle. We reject that submission. We consider that the Secretary of State was entitled to take the document into account as supporting her conclusion that the Appellant's citizenship had been revoked, rather than having lapsed, as she explained in the decision letter.
103. The final point taken in the skeleton argument is that the Secretary of State acted unreasonably and in a way which was procedurally unfair in re-taking her decision under the version of Annex D which was in force in 2016. We pressed Mr Jacobs about this in his oral argument. We think that he accepted that there was nothing in the consent order which required the Secretary of State to re-consider the application under an earlier version of Annex D, or which otherwise displaced the general rule in public law, which is that when a decision maker reconsiders a decision, he does so in the light of the facts and law as at the date of the reconsideration, and not in the light of the facts or law at the date of the initial consideration.
104. We return to the argument about procedure. We consider, first, whether there was any unfairness in the way in which the Secretary of State reached her decision about the Appellant's work for Al Haramain. We accept Mr Gray's submission that the redacted Minute of the decision shows, on balance of probabilities, that the Secretary of State would have refused the application on the basis of the allegations about the Appellant's work for Al Haramain alone. One consequence of this conclusion is that even if the Secretary of State acted unfairly in relation to the EMD allegation, that does not affect the outcome of this review, because the Secretary of State was entitled to refuse the application on the basis of the Al Haramain allegation alone, provided that she acted fairly in relation to the Al Haramain allegation.

105. We have rejected the challenges to the reasonableness of the Secretary of State's decision that the Appellant, as chief accountant for Al Haramain in Croatia was aware of, if not personally responsible for, the funding of EMD. For reasons which are similar to our reasons for rejecting those challenges, we also conclude that, on balance of probabilities, the Appellant was aware of, if not personally responsible for, that funding. Our conclusion rests on what seems to us to be the most plausible interpretation of his answers in his interview, and the objective evidence about Al Haramain's funding for EMD.
106. In the light of that conclusion, we do not consider that there was any unfairness in the process. In the light of that conclusion, the Appellant knew, when he applied for naturalisation, that his activities as chief accountant for Al Haramain were material to his application and that he should have disclosed them to the Secretary of State. This conclusion is independent of the exchanges in the interview. But those exchanges are a freestanding basis for concluding that the Secretary of State did not act unfairly in refusing the application because of those activities. Those exchanges must have made it clear to the Appellant what the Secretary of State was interested in in this regard and why, and gave the Appellant a full and fair opportunity to rebut her concerns. These conclusions are enough to dispose of both of Appellant's procedural and substantive arguments on the Al Haramain allegation, and therefore, to dispose of this application for a review, since it is clear that the Secretary of State would have refused the Appellant's application for naturalisation on the basis of the Al Haramain allegation alone.
107. We should, nonetheless, say something about the allegation that the Appellant was a member of EMD. We cannot say much about this in our OPEN judgment, but we should consider the argument that, in so far as the decision was based on this allegation, it was flawed because the Appellant was not asked directly in the interview whether he was a member of EMD. This is relevant in two ways, potentially: first because it is said that the decision maker recognised that he should be asked this question, and second, because it was unfair not to put the Appellant on notice that the Secretary of State might take this into account in making her decision. We have referred to the interview at some length. We do not consider that the advice in the briefing note required Ms Critchley, as a matter of law, to ask the direct question. The note was just that; an internal document to remind her what information she was looking for. We consider that in the light of the interview as a whole, the Appellant was given a fair opportunity to comment on the suggestion that he had links with EMD, and on the question why the Bosnian Government might consider that he was a terrorist. He cannot have been in any genuine doubt that this was a question in which the Secretary of State was interested, and he had a full opportunity to comment on the suggestion that he was a terrorist. We consider it likely that it was for this reason that the

June 2017 position statement asked for clarification about whether the Secretary of State was alleging that the Appellant was a member of EMD.

108. If, therefore, it had been necessary for us to decide this question, we would have held that the disclosure of the EMD allegation in the rule 38 process did not make this decision unfair.

Relief

109. We heard some oral submissions about whether section 31(2A) of the Senior Courts Act 1981 applies to proceedings in the Commission. We also gave the parties time in which to make further written submissions on this issue. We are grateful to them for their submissions. In the event, it is unnecessary for us to decide this issue, in the light of our rejection of the Appellant's two challenges to this decision. We would indicate, nonetheless, provisionally, at any rate, that we found the reasoning of Singh J (as he then was) in paragraph 55-65 of *MWH v Secretary of State for the Home Department* SN/57/2015 compelling. It is supported to a limited extent by the briefer reasoning of Dove J in paragraph 41 of *Save Our Greenhills Community Group v Secretary of State for Communities and Local Government* [2016] EWHC 1929 (Admin).

Conclusion

110. For those reasons we dismiss this application for a statutory review.