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Appeal No: SC/1/2002

Date of Judgment: 28 February 2005

**SPECIAL IMMIGRATION APPEALS COMMISSION**

Before:

The Honourable Mr Justice Ouseley

Mr G Warr

Mr J Daly

**A - APPELLANT**

and

Secretary of State for the Home Department - RESPONDENT

For the Appellant:Mr B Emmerson QC

Instructed by:Gareth Peirce, Birnberg Pierce & Partners

Special Advocate:Ms Whipple

Instructed by:Mr S Trueman, Treasury Solicitor

For the Respondent:Mr T Eicke

Instructed by:Ms S Nasser, Treasury Solicitor

## SECOND REVIEW OPEN JUDGMENT

1. This is the open determination on the second review of the certificate issued by the Secretary of State for the Home Department in the case of A under section 21(1) of the Anti-Terrorism, Crime and Security Act 2001.
2. An oral hearing of the review had been requested in part so as to examine the consequences for the continued force of the certificate of the House of Lords decision in the derogation appeal. The submissions which drew on that decision in the end went to the request for bail which had been made so as to coincide with the review hearing and to the terms upon which bail should be granted. No open submissions on behalf of A were addressed specifically to the continuance of the certificate and no material was provided in open on his behalf for the specific purposes of the review.
3. An oral hearing of the review had also been requested by the Special Advocate so as to enable her to challenge certain assessments made by the Secretary of State. We heard closed evidence which was cross-examined by her. She cross-examined to some effect on those points but could not and did not submit that the certificate should be revoked. Rather, her point was that any consideration of bail or its terms or any future action should be informed by the position as revealed.
4. At present, the Secretary of State has decided not to oppose the grant of bail to A; the Commission has ruled upon the extent of the powers under section 24 to impose conditions which amount to house arrest and concluded, in an open part of its bail judgment in the case of P and A that section 24 does permit such conditions to be imposed. The Secretary of State has however proposed that less restrictive, but still strict, terms should be imposed. The setting of the precise terms of bail remains to be done by SIAC. The review of the certificate should nonetheless proceed. The timetable for the resolution of the review has been delayed by the need for an oral hearing linked to the bail application, after consideration of the effect of the House of Lords decision.
5. Since the first review of the certificate by a panel chaired by the Chairman of SIAC on 2<sup>nd</sup> July 2004, the GSPC leader, Sahraoui, has been killed by the Algerian military, and he has been replaced by a bomb-maker who announced his support for the alliance between the GSPC and Al Qa'eda which his predecessor had also supported.
6. The Secretary of State said that although there had been a number of arrests of A's contacts and associates, a sufficient number remained at large for him to re-involve himself with terrorist support activities. His support was for the wider jihadist agenda, rather than for any particular cause in a particular location.
7. Although some of the new material which the Secretary of State relied on for that comment, was

dealt with in closed and was not supported before us by the evidence which was said to support it, it is clear that the assessments which underlay the principal and first review judgments remain sound and that the certificate should continue in force. The fact that bail will shortly be granted, on terms which are likely to be strict, does not mean that the justification for the certificate has been reduced or reduced significantly.

MR JUSTICE OUSELEY

CHAIRMAN