Appeal Number: SC/13/2002

Date of Judgement: 02/07/2004

SPECIAL IMMIGRATION APPEALS COMMISSION

Before :

THE HONOURABLE MR JUSTICE SULLIVAN

Mr J Latter

Mr J Daly

Between :

'I' - Appellant

- and -

Secretary of State for the Home Department - Respondent

For the Appellant **Ms G Pierce**

For the Respondent **Mr S Catchpole QC**

Mr T Eicke

Special Advocate **Mr I Macdonald QC**

Mr J Johnson

OPEN JUDGMENT

The honourable mr justice sullivan:

Introduction

1. I (who is known under a number of names) is a citizen of Algeria. He appeals under section 2 of the **Special Immigration Appeals Commission Act 1997** ('the 1997 Act') against the

Respondent's decision to make a deportation order against him, and under section 25 of the **Anti Terrorism, Crime and Security Act 2001** ('the 2001 Act') against the Respondent's decision to certify him as a suspected international terrorist. Both of those decisions were made on the 22 nd April 2002. On that date the Respondent also issued a certificate under section 33 of the 2001 Act that I is not entitled to the protection of Article 33(1) of the **Refugee Convention** because Article 1(F) or 33(2) applies to him (whether or not he would be entitled to protection if that article did not apply) and his removal from the United Kingdom would be conducive to the public good.

History

2. I claims to have arrived in the UK clandestinely on 5th February 1995. He claimed asylum in the UK on 6th February 1995. His application was still outstanding when the Immigration and Nationality Directorate wrote to his then representatives on 16th September 1999 to say that his asylum application could qualify under the measures announced by the Government to process the backlog of asylum cases. His representatives replied that they were having difficulties in contacting him and requested an extension of time.

3. On 15th April 2000, a letter dated 4th April 2000 was received from new representatives asking whether I would qualify under the Government's backlog clearance measures. A completed questionnaire was forwarded by these representatives on 11th May 2000. I's asylum claim was refused on 17th May 2000 but he was granted exceptional leave to remain in the UK until 17th May 2004, in accordance with the backlog clearance measures. I applied for a Home Office travel document which was issued on 8th December 2000. On the 23rd April 2002, following the decisions referred to in paragraph 1 (above) I was detained under the 2001 Act.

4. The certificates under sections 21 and 33 of the 2001 Act were issued by the Respondent for the following reasons:

"You undertake a range of support activities including fund raising on behalf of various international terrorist groups including networks associated with Usama Bin Laden. Your activities on behalf of these groups include fund raising and the maintenance of support activities"

For the same reasons the Respondent deemed it conducive to the public good to make a deportation order against I for reasons of national security.

5. I appealed against the Respondent's decisions by a Notice of Appeal dated 26th April 2002. His grounds of appeal were as follows:

"1. The relevant provisions of the 2001 Act are incompatible with Articles 5 and 6 of the European Convention on Human Rights, and the derogation is incompatible with Article 15

2. The circumstances of the Appellant's continued detention are violative of Article 3 ECHR.

3. (a) There are no reasonable grounds for the belief and / or suspicion that the Appellant's presence in the United Kingdom is a risk to national security and / or that he is an international terrorist – section 25 (2)(a).

(b) In fact on the merits, the Appellant is not such a person; so that there is some other reason as to why the Certificate should not have been issued – section 25 (2)(b).

4. The Secretary of State has erroneously certified that the Appellant is not entitled to the protection of Article 33(1) of the Refugee Convention because Article 1(F) or Article 33(2) apply to him.

5. The Appellant's deportation is not in the interests of national security and the decision to deport him should be accordingly overturned.

6. The decision to deport the Appellant is in breach of the UN Convention 1951 and / or Articles 2 and / or 3 of ECHR.

7. The decisions to deport the Appellant and certify him are in breach of the Appellant's and his family's right to respect for family and private life – Article 8 ECHR."

6. Pursuant to rule 10 of the Special Immigration Appeals Commission (Procedure) Rules 1998 ('the 1998 Rules') the Respondent lodged and served an Open Statement setting out the grounds for his decision that I should be detained under the 2001 Act, and the evidence that would be relied upon in support of those grounds, supported by a Statement of Security Service Witness D.

7. The full text of I's statement dated 30th September 2003 is as follows:

"I make this statement in response to the accusation made against me by the Secretary of State.

I wish to register my protest that everything that is being said and done to me is unjust, unfair, wrong, misconceived, discriminatory and for political purposes.

I am not a terrorist. I do not have any intention of involving myself in this activity nor have I been involved."

8. The Respondent's First Open Statement was updated by a Second Open Statement, supported by a Statement of Security Service Witness H, pursuant to rule 37 of the Special Immigration Appeals Commission Rules 2003 ('the Rules'). Both Open Statements were amended following the procedure set out in rule 38 of the Rules. Pursuant to rule 37 the Respondent also produced an updated Open Generic Statement – April 2004, supported by a Statement of Security Service Witness J. I's

immigration history was set out in a Witness Statement of Ms Rankin, a Higher Executive Officer in the Immigration and Nationality Directorate of the Home Office.

9. The Respondent's Skeleton Argument summarised the Open Case against I as follows:

(1) I had received mujahideen training in Afghanistan in 1998 and during 1999 and had expertise in the manufacture of electrical explosives.

(2) He returned to the UK in April 2000, and aligned himself with and was a senior member of the Abu Doha group in the UK. He was associated with a flat in Wessex House, London W19, an address that was used as a safe house by Abu Doha and his associates.

(3) I played an active role in facilitating and assisting with the travel of Islamists to and from the UK.

(4) I was involved in the supply of cloned and / or stolen credit/bank cards and false documentation (including travel documentation) to Abu Doha and the networks associated with him and extreme Islamists. He continued with these activities after leaving London and relocating to Leicester following the arrest of Abu Doha and several of his associates in February 2001.

(5) I was an associate of a number of other extreme Islamists many of whom had either been convicted for terrorist offences, were awaiting trial for terrorist offences, had been linked to disrupted terrorist attacks both in the UK and overseas and / or were themselves detained under the 2001 Act. His association with these individuals was consistent with I himself being part of the networks who posed the threat giving rise to the present public emergency.

(6) The networks within which I operated were still engaged in active terrorist support and planning. I would resume his various activities in support of those international terrorist groups if he were at liberty in the UK.

10. I did not amplify his Statement (para. 7 above) nor did he attend the hearing of his appeal. Ms Pierce, who appeared on his behalf, explained that I did not wish to actively participate in the hearing. He did not wish to withdraw his appeal, and wished it to be considered. She submitted that I should not have been certified under the 2001 Act, there being no reasonable grounds for suspecting that he was a terrorist. He was not a threat to the security of the UK and never had been. The material relied upon by the Respondent was wrong, there was no evidence in support of the open material, and the procedures under the 2001 Act did not make provision for a fair appeal. Ms Pierce explained that her instructions were not to engage with the facts or to examine the Respondent's witnesses who were tendered for cross-examination, but to convey I's view that he was being detained not because he was suspected of being a terrorist, but because he was a Muslim and a foreigner. He considered that the statutory framework was "unfair, unjust, and steeped in racism"

The Open Case – Discussion and Conclusions

11. We recognise the difficulties faced by an Appellant who sees only the open material, and can understand I's perception that the procedures are unfair. However, each appeal will turn upon its own particular facts. There may be cases where the open material relied upon by the Respondent is very general in nature and consists in the main of unsupported assertions. In such a case an Appellant may have real difficulties in getting to grips with the case made against him and have a justified sense of grievance. We are satisfied that this is not such a case. The amended First and Second Open Statements are not simply a series of general assertions, they contain a great deal of detailed information: names, dates, addresses, documents, etc. Together with the Respondent's Skeleton Argument they gave I a very full picture of the case that he had to meet.

12. I is in the best position to give an account of his whereabouts and activities since he claimed asylum in the UK in 1995. He has chosen not to do so. While we do not think it appropriate to draw any adverse inference from the fact that, beyond a bare denial, I has not chosen to respond to the detailed open material relied upon by the Respondent, we have to determine this appeal on the evidence, and we are left with the position that there has been no effective challenge to that open material.

13. In these circumstances it is unnecessary to rehearse the detail of the Respondent's case against I, the summary set out above (para. 9) will suffice. From many pieces of supporting evidence we draw attention to just two particular matters, because in each example the starting point has been established beyond any reasonable doubt in criminal proceedings in the UK. Firstly, I pleaded guilty at Leicester Crown Court on 10th July 2003 to conspiracy to defraud and was sentenced to 3-½ years imprisonment, together with 6 months consecutive for other offences not relevant for present purposes.

14. Following his arrest on terrorist charges on 17th January 2002 I's home in Leicester was searched. The recovered equipment included a credit card reader-writer with 300 credit card numbers stored in it. Other recovered equipment could be used to produce false documentation. The terrorist charges were not pursued, but I was charged on 29th August 2002 with six counts alleging dishonesty of various kinds including conspiracy to defraud. He pleaded guilty to conspiracy to defraud, the Crown submitted that the figure realised was £250,000, and the remaining counts were left on the file. Having recited these matters the Respondent's Skeleton Argument says:

"The Security Service…assesses that the equipment would have been used to produce forms of false documentation and that the money raised from credit card fraud would go to the Islamist cause, including terrorism activity. This is consistent with the other material referred to in the evidence showing I's links with the Abu Doha network and other extremists."

15. In her submissions Ms Pierce did engage with the detail in one respect: she pointed out that the First Open Statement said that "the Police estimated that the fraud associated with [the 300 credit card numbers] amounted to £800,000", and contrasted this with the £250,000 relied upon by the prosecution in the Crown Court. We do not regard this difference as sinister. It is not in the least unusual

for early Police estimates of the sums obtained as a result of fraudulent activity to be significantly reduced when the prosecution, having regard to the criminal burden of proof, is considering what case can properly be advanced before the Crown Court. But this criticism of the difference between the two figures misses the point in any event. What is significant for the purposes of this appeal is not whether I fraudulently obtained £800,000 or £250,000, but that we can be sure that his gains were measured in hundreds of thousands, rather than hundreds of pounds.

16. I has not chosen to answer the obvious question posed by the open material: was he a "straightforward" fraudster operating for personal gain, or was he, as assessed by the Security Service, generating funds for the purpose of supporting terrorist groups such as Abu Doha? Absent any alternative explanation, the conclusion drawn by the Security Service is not merely the most probable explanation, it is irresistible in the light of the open evidence as a whole.

17. Secondly, in relation to the Respondent's case that I was associated with a number of (named) Islamist extremists who were involved in terrorism, one of those alleged associates was Abu Abdullah who was convicted, together with his associate Benmerzouga, of fundraising and recruiting for the purposes of terrorism on 2nd April 2003, when each of them was sentenced to eleven years imprisonment. The Respondent's Open Skeleton Argument explained that the Security Service's assessment that I was a close associate of Abu Abdullah was supported by the fact that:

(a) during a surveillance operation on 31st July to 1st August 2001 (prior to Abu Abdullah's arrest) I was observed talking from the footpath outside Abu Abdullah's home to an unseen person at a first floor window. Abu Abdullah was then observed leaving the property shortly thereafter.

(b)Following Abu Abdullah's arrest, I was reported as taking Abu Abdullah's wife to HMP Woodhill on prison visits.

18. I thus had a fair opportunity to deny, or provide an innocent explanation for, this alleged association with a convicted terrorist, but he has chosen not to do so. While we do not draw any adverse inference from his silence on this point, absent any explanation, the only inference that can reasonably be drawn from the remainder of the open material is that I was associating with Abu Abdullah, and was not doing so upon some innocent basis, but as a fellow terrorist,

19. We have considered the detailed material relating to I in the amended First and Second Open Statements against the background of the material contained in the Amended Open Generic Statement – April 2004, and in the light of the Commission's decision dated 29th October 2003 in **Ajouaou and A, B, C and D** ('the generic judgement'). We made it clear during both the open and the closed hearings that while we would regard the Commission's conclusions in the generic judgement as persuasive, we would not treat them as binding upon us. We realise that the generic judgement is subject to appeal, but Ms Pierce did not invite us to depart from it and, subject to our conclusions in response to the submissions made by the Special Advocate (see paras. 28 – below) we see no reason to disagree with either the Respondent's assessments contained in the Amended Open Generic Statement – April 2004,

or the Commission's conclusions in the generic judgement. Given the nature and purpose of the generic judgement and the need for consistency in decision making it would be most undesirable if different constitutions of the Commission reached different conclusions on substantially the same generic material.

20. We need not repeat those generic assessments and conclusions, save in respect of two matters; the Commission's conclusions in respect of Al Qa'eda and the Abu Doha group

"130. In order to understand the true scope of the terrorist activities to which the public emergency and the derogation relate it is necessary to understand the structure, if such it can be described, of Al Qa'eda. The Respondent submitted that a good summary was set out in the letter of 19th September 2002 from the Chairman of the Security Council Committee established pursuant to Resolution 1297 of 1999 concerning Afghanistan and addressed to the President of the Security Council. It says:

4. …the image that emerges of [Al Qa'eda] is that of a series of loosely connected operational and support cells. These cells are operating, or are established in at least 40 countries. They are well entrenched in Europe, the Middle East, North Africa, North America and many parts of Asia.

5. Despite having lost its physical base and training facilities in Afghanistan, [Al Qa'eda] continues to pose a significant international threat. This is in part due to its loose worldwide structure and its ability to work with, and from within, militant Islamic groups in numerous countries. Many of these extremist elements look to [Usama Bin Laden] and his Shura Majilis, a sort of 'supreme council' for inspiration, and sometimes also for financial and logistic support.

6. The shape and structure of [Al Qa'eda] and the absence of any centralised tightly knit command and control system makes it extremely difficult to identify and scrutinise its individual members and component entities. Its global network and links with various like-minded radical groups enables it to operate discreetly and simultaneously in many different areas. [Al Qa'eda] cells or elements operating under its banner often form coalitions with local radical or splinter groups for specific purposes…

7. [Al Qa'eda] has sought to link itself to the aspirations of different radical groups ranging from traditional nationalist Islamic organisations to multi-national, multi-ethnic ones. It has sought to preach a general 'common cause' which paints a 'common enemy' on which these groups should focus. Unlike almost any other terrorist organisation or movement, [Al Qa'eda] is able to motivate its followers and sympathisers to transcend their individual political, national and religious factional beliefs…

131. The Respondent emphasised the importance of individuals in the distinct, even formal, network. Some of the parts of the Al Qa'eda network may be described as terrorist groups. But some may be networks, rather than distinct groups, operating within a loosely co-ordinated series of networks. Some individuals may have closer or more distant degrees of connection with identified groups to the extent that individuals in the Al Qa'eda network may be non-aligned extremists and may not consider themselves to be members or indeed allied to any particular group. It is important, we accept, not to

confine attention to a structure which is not really present and not to ignore the effectiveness for terrorist operations and the pursuit of the Al Qa'eda objectives of what are properly described as loosely co-ordinated and overlapping networks. They appear to have in common as individuals, according to the Respondent's submissions which we accept, that they:

…are outside their country of origin, active within the extremist community and are willing and able to fulfil, on their own initiative or under direction, ideologically motivated extremist acts that are supportive of or contribute directly to Al Qa'eda's global terrorist agenda.

132. The connections between the individuals have often been formed during fighting of jihads, or in training camps in Afghanistan, or through contacts with extremist clerics. We accept the Respondent's case that:

The loyalties, associations, and activities, which contribute to the collective efforts of the loosely-overlapping networks are at least as important as the particular affiliations of an individual to a particular movement or group."

The Abu Doha Group

"294. There is ample evidence to support the conclusion that this group falls within the Act, has links to Al Qa'eda and is a very important part of the emergency. It is not a group with an exclusive membership; its members or supporters or some of them may form part of other networks or groups, as well. It is the paradigm group, loosely co-ordinated but overlapping with other groups or cells of North African, principally, Algerian, extremists. It may overlap with groups centred around Abu Qatada or around Beghal. It too is controlled or influenced by people outside the United Kingdom."

21. We have to consider the evidence, both open and closed, as a whole. Thus far in this judgement we have confined our attention to the open material. We accept the, unchallenged, evidence within that material, and for the reasons set out above, we are satisfied upon the basis of that material that there are ample grounds for believing that I was not merely a member of the Abu Doha group in the UK, but a senior and very active member of that group. Applying the test contained in section 25(2) of the 2001 Act, subject to the submissions made by the Special Advocate (below paras. 25 - 42), there are reasonable grounds for a belief or suspicion of the kind referred to in section 21(1)(a) and (b), and no other reason has been advanced as to why the certificates should not have been issued.

22. For the sake of completeness, we note that insofar as I's Grounds of Appeal (para. 5 above) relate to the substance of the Respondent's case against him, they add nothing to the bare denial contained in his Statement. Insofar as they relate to the fairness of the procedures under the 2001 Act generally, and the extent to which the Act is incompatible with the European Convention on Human Rights, those arguments were considered, and rejected, in the derogation proceedings, and the decision of the Court of Appeal in **A, X and Y and Others v. Secretary of State for the Home Department [2002] EWCA Civ. 1502, [2003] 2 WLR 564** ('the derogation decision') is binding upon us, although

we are aware that the appeal to the House of Lords is due to be heard in October.

23. It has not been suggested on behalf of I that his appeal under the 1997 Act against the Deportation Order raises any separate or distinct issues in addition to those raised in his appeal against the decision to certify him as a suspected international terrorist under the 2001 Act. Article 8 of the ECHR is mentioned in I's Grounds of Appeal, but the point has not been further developed. I has not given any details of his private or family life so it is not possible to assess the extent of any likely interference. There is, however, nothing in the material before us which suggests that any interference might be disproportionate bearing in mind the need to protect national security.

24. It follows that upon consideration of the open material the appeals must be dismissed.

The Closed Material – Discussion and Conclusions

25. The closed material is extensive. In this Open Judgement we merely record our conclusion that it confirms the assessments in the open material. The Special Advocate, Mr Macdonald QC did not submit to the contrary. It therefore reinforces the, already powerful, case against the Appellant upon the basis of that material. Even if a detailed discussion of the closed material had been possible in this judgement, it would have been unnecessary since Mr McDonald did not feel able to challenge the main plank of the Respondent's case against I: that he was a senior member of Abu Doha.

26. Apart from the submission that circumstances in relation to the Abu Doha group and Al Qa'eda had changed since the generic judgement (see para. 29 below), the closed material was used to challenge the picture painted in the open material in only two, relatively minor, respects. The Amended First Open Statement contended that I's expertise in explosives and his instruction in the use of them continued to be well regarded. The first challenge related to the extent to which I had acted as an instructor, the fact that he had been an instructor in Afghanistan was not challenged. The second challenge related to I's association with the flat in Wessex House: was this association a separate factor which "enhanced" his importance as a member of Abu Doha, or did it merely reflect that importance? Whichever way these questions are answered, it is plain that these issues are merely matters of emphasis which do not detract from the open case against the Appellant.

27. The standard of proof prescribed by section 25(2) of the 2001 Act is relatively low: are there reasonable grounds for belief or suspicion. As explained above, we are satisfied that this low threshold is easily crossed on the basis of the open material alone. If the totality of the evidence, both open and closed, is considered, we are left in no doubt that I was a senior member of Abu Doha, and active in its cause in the manner described in the Respondent's evidence.

Changed Circumstances

28. For the purpose of this submission Mr Macdonald was prepared to assume (but not concede) that:

i) I was correctly certified at the time of certification upon the basis of his membership of, and activities within the Abu Doha group; and

ii) The conclusions in the generic judgement relating to Al Qa'eda and the Abu Doha group (para. 20 above) were correct upon the basis of the material placed before the Commission in 2003.

29. He submitted that these conclusions in the generic judgement were no longer correct in the light of changed circumstances, as follows:

i) The manner in which Al Qa'eda operated had radically changed. It no longer operated from a 'centralised command' that directed the conduct of a loose network of diverse groups. That there had been such a change was acknowledged by the Respondent in the Open Generic Statement, paragraph 11.5 of which says:

"Since late 2003, it has become increasingly apparent that the core of Al Qaida has become fragmented and its capability degraded through the death and capture of key individuals. Communication from the centre is assessed to be increasingly difficult."

There was therefore no 'organisational link' between Al Qa'eda and any group of which I was a member.

ii) In any event, the Abu Doha group no longer existed in any recognisable form. Abu Doha himself was in custody, as were most of the principal members of his group (some of them being detained under the 2001 Act).

30. It was further submitted that since the 2001 Act deprives individuals of their liberty it should be strictly construed. If the Commission was not satisfied that there was a reasonable belief / suspicion that I was 'an operational international terrorist' at the time of the hearing, his appeal under the 2001 Act had to be allowed. Mr Macdonald conceded that there were difficulties with an over literal application of this test. By definition, an Appellant to the Commission will be in detention, and will have been in detention for some time before his appeal can be heard. Whilst in detention his activities as an 'operational' international terrorist will have been severely curtailed, if not prevented.

31. As Mr Catchpole QC pointed out on behalf of the Respondent, an Appellant may continue to be 'a member of or belong to an international terrorist group' for the purposes of section 21(2)(b) even though he is prevented by detention from being active in its cause. To the extent that certification is based on paragraph (c) in subsection 21(2), that a person has links with an international terrorist group, an Appellant's ability to give support or assistance within the scope of subsection (4) will be severely disrupted, if not prevented altogether, by detention. In the light of these considerations Mr Macdonald accepted that in reaching a view for the purposes of section 25(2) of the 2001 Act the Commission must address the questions posed by paragraphs (a) and (b) in the subsection on a 'but for the fact that the suspect has been detained' basis. In our view, detention has not caused I to cease to be a senior member

of Abu Doha. That he has not been active in its cause since April 2002 is solely due to the fact that he has been detained.

32. The principal submission (para. 29 above) is based upon a number of misconceptions. In summarising 'the structure if such it can be described of Al Qa'eda' the Commission did not proceed upon the basis that there was a 'centralised command' with 'organisational links' between it and other groups, quite the reverse. In paragraph 132 of the generic judgement (para. 20 above) the Commission set out extracts from the letter dated 19th September 2002 from the Chairman of the Security Council Committee established pursuant to Resolution 1267 of 1999:

"The shape and structure of [Al Qaida] and the absence of any centralised tightly knit command and control system makes it extremely difficult to identify its individual members and component entities." (emphasis added)

33. In paragraph 131 the Commission emphasised the importance of 'not confining attention to a structure which is not really present' and said that the effectiveness for terrorist operations 'of what are properly described as loosely co-ordinated and overlapping networks' should not be ignored; see also paragraph 132 of the generic judgement. Given the nature of these networks Mr Catchpole rightly submitted that undue emphasis should not be placed upon 'labels': the 'Abu Doha Group', the 'Beghal Group' etc. Such labels are convenient for operational purposes, and for the purposes of exposition in a judgement, but they should not obscure the reality: if an individual, such as Abu Doha, around whom a particular group has coalesced, is killed or imprisoned, that does not mean the end of the 'Abu Doha Group'. The individuals comprising the group will adapt to changed circumstances and continue to operate (perhaps with new recruits and / or under the leadership of another individual) as part of the loosely co-ordinated network described by the Commission.

34. In any event, the submission summarised in paragraph 29 (above) was not supported by the evidence. Security Service witness J told us that the Commission's description of Al Qa'eda in paragraphs 130 – 132 of the generic judgement (para. 20 above) required very little change in the light of events since 2003. The disruption to the core of Al Qa'eda, mentioned in paragraph 5 of the letter dated 19th September 2002 had continued but the networks associated with Al Qa'eda still had the ability to carry out terrorist attacks.

35. Witness J suggested that a useful description of Al Qa'eda was contained in a UN Report, The Second Report of the Monitoring Group on sanctions against Al Qa'eda, the Taliban and their associates and associated entities. Under the sub-heading 'Al-Qaida – A Global Network and an Ideology' the Group said:

"5. In its last report the Group painted an image of al-Qaida being more than just a loose network of like-minded Islamic extremist groups. Al-Qaida also has to be seen as an ideology, to which many young Muslims are being drawn. Subsequent events have confirmed this perspective, which must be viewed with great concern. A synopsis of the terrorist attacks, allegedly linked with the al-Qaida

network, which have taken place since the Group's last report is attached at Appendix I. More and more of these attacks are being carried out by suicide bombers. This is another disturbing trend."

"11. Co-ordinated, multiple attacks, involving suicide bombers bear the hallmarks of the contemporary al-Qaida network. It is important that the international community sees the al-Qaida network for what it is, no matter how defined – as a network movement, loose affiliation and / or ideology. One should not seek to differentiate between its associated groups, elements and individual supporters. Too often the Group reads or hears that this or that individual or entity '…is not al-Qaida!' To adopt this approach to the network or the ideology demonstrates a failure to recognise the true nature of the threat with which the international community has to deal."

36. It is necessary to set the passage from paragraph 11.5 of the Open Generic Statement relied upon by Mr Macdonald (para. 29 above) in context. Paragraph 11.5 continues:

"11.5 …Although this fragmentation is changing the appearance of Al Qaida and the overlapping networks of groups and individuals to which is it linked, they are assessed to continue to pose a very significant threat to the UK. Al Qaida's influence remains. The ideology espoused by Bin Laden has spread to other groups, and the tactical and technical expertise within Al Qaida and the associated groups and networks is also being spread. Al Qaida's intent is still lethal, and the desire to inflict mass casualties remains. For some groups and networks this may include the desire to use suicide tactics and CBRN devices. Committed members of the networks expect to die or be captured. Although Al Qaida as a unitary force may have been fragmented, the personal links between individuals remain as significant as ever."

In addition paragraph 11.7 states:

"11.7 Despite the apparent disruption to the core Al Qaida organisation, and the evolving appearance of the associated overlapping groups and networks, Bin Laden and Al Zawahiri remain alive and able to inspire jihadists through their media pronouncements. The groups and networks remain committed to this cause and continue to develop and spread the skills and capabilities to carry out terrorist operations. Successful attacks, such as Madrid and Istanbul inspire the networks, and may be perceived by them as demonstrating that the methods espoused by Bin Lade can bring success. Consequently, the threat to the UK from Al Qaida and its associated groups and networks remains as high as at any time since the 11 September 2001 attacks."

This material was not challenged.

37. Turning to the Abu Doha Group, Security Service Witness K stated that the Commission's conclusions in paragraph 294 of the generic judgement did not require amendment. Although most of the principal members of the group (including Abu Doha himself) were in custody (having been convicted, awaiting trial or extradition, or detained under the Act), some were still at large, in the UK or elsewhere, and the remnants of the Abu Doha group included a number of lesser figures who were

associated with each other and with other terrorist groups. Since Abu Doha was not a group with an exclusive membership there could be other members who had not yet been identified by the Security Services, there could also be 'sleepers' who had not, as yet, been active. Although the group might now operate in smaller cells, and coalesce around different individuals in response to the detentions of senior figures and the activities of the Security Service, the description in paragraph 294 of the generic judgement was still accurate.

38. We accept the evidence of witnesses J and K, which was not seriously challenged. While the core of Al Qa'eda has become fragmented and its capability has been degraded, and the Security Service has had considerable success in disrupting the activities of the Abu Doha Group, the resilience of the loosely co-ordinated series of networks described in the generic judgement, and their ability to regroup and reposition themselves in response to disruption by the Security Services mean that the Commission's conclusions in the generic judgement are still valid. Al Qa'eda and the Abu Doha group have both been severely damaged, but they have not been defeated, and they continue to be a very serious threat to the security of the UK.

Unfairness

39. Finally, Mr Macdonald submitted that if the Crown had wished to detain I for funding terrorism through credit card fraud it could and should have conducted the criminal proceedings against him (paras. 13 – 16 above) upon that basis. It was conceded that the double jeopardy rule did not apply, but it was contended that it was unfair and oppressive to rely on the credit card fraud to detain I after the date when he would normally be released on parole. This constituted some 'other reason' within the meaning of section 25(2)(b) of the 2001 Act why the certificate should not have been issued. Alternatively, the credit card fraud should not be taken into account when considering the appeal.

40. We do not accept these submissions. As explained above (para. 15), the fact that I pleaded guilty means that we can be sure that he engaged in credit card fraud on a substantial scale. That could be proved by the Crown to the criminal standard of proof upon the basis of admissible evidence that could be disclosed in criminal proceedings. Section 25(2)(b) is concerned with 'other reasons' as at the date of certification (para. 27, generic judgement). I was arrested on terrorist charges on 17th January 2002. Following the search of his home he was released on police bail on 24th January 2002. He was not charged until 29th August 2002 (para. 14 above), after certification on 22nd April 2002.

41. The Respondent explained in paragraph 8 of his First Open Statement that he had considered whether there was any other measure that could be taken to protect the UK from I's presence. His conclusion that "I cannot be prosecuted because the case against him is based on intelligence, disclosure of which in open court would cause damage to national security. Other intelligence might not be admissible in criminal proceedings as it is based on intercept" was not challenged. We do not accept that it is unfair or oppressive for the Respondent to say (in effect): "I can be sure that you committed fraud, and I reasonably suspect that you did so for the purpose of supporting terrorism."

42. We accept that detention under the 2001 Act should not be used as an 'easy option' where a detainee could be prosecuted for terrorist offences, but we are satisfied that it is not being used in that way in the present case. As noted above (para. 16) the open material in support of the Security Service assessment that I was not engaging in fraud for personal gain, but in order to generate funds for the purpose of supporting terrorism is extensive and unchallenged, but we understand and accept the Respondent's view that disclosure of the closed material (insofar as that material would have been admissible in criminal proceedings) would have caused damage to national security. Upon the basis of that material (which could not have been placed before a criminal court) together with the open material we have no doubt that the Security Service assessment as to why I engaged in credit card fraud was correct.

No Need for a Closed Judgement

43. Rule 47(4) of the Rules requires us to serve a Closed Judgement upon the Respondent and the Special Advocate if this Open Judgement does not contain the full reasons for our decision. We do not consider that a closed judgement is necessary. Apart from the differences of emphasis referred to in paragraph 26 (above) there was no challenge to the contents of the closed material, so there are no disputes that need to be resolved in a closed judgement. While Mr Macdonald referred to a limited number of extracts from the closed material in support of his submission that circumstances had changed (para. 29 above), and Mr Catchpole referred to other passages in his reply, the submission that the Commission's conclusions in relation to Al Qa'eda and the Abu Doha group have been overtaken by changed circumstances can properly be dealt with in an open judgement by reference to open material (paras. 32 – 38 above). There was no real dispute as to what had occurred since 2003, the issue is whether the circumstances as they now exist in 2004 are such as to cast doubt on the Commission's conclusions in the generic judgement. For the reasons set out above we are satisfied that the Commission's conclusions in relation to Al Qa'eda and the Abu Doha Group still hold good.

Conclusion

44. For the reasons set out above I's appeals are dismissed.

The Honourable Mr Justice Sullivan