

OPEN DETERMINATION

Appeal No: SC/20/2002

SPECIAL IMMIGRATION APPEALS COMMISSION

**Date of Hearing:** 15 December 2003

**Date Determination notified :** 27 January 2004

Before:

The Honourable Mr Justice Collins (Chairman)

Mr J Barnes

Mr J Daly

**P**

**APPELLANT**

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

For the Appellant: Mr B Emmerson QC, Mr D Friedman

For the Respondent: Mr I Burnett QC, Mr J Glasson

Special Advocate: Mr N Blake QC

**OPEN JUDGMENT**

1. The appellant is an Algerian national. He arrived in the United Kingdom on 18 February 1999. He came from Afghanistan via Abu Dhabi and had apparently travelled on a false French passport. This he had managed to dispose of before he reached immigration control where he applied for asylum. A report from the immigration officer who dealt with him at the airport notes

that he was a double amputee, his left arm having been amputated at the wrist and the right just below the elbow. He was walking with the aid of a crutch because he had an infected skin graft on his leg. This meant he should see a doctor but did not need immediate hospitalisation: that at any rate was the view of the Port Medical Inspector who examined him.

2. His asylum claim was refused on 27 February 2001. He was then in custody, having been arrested on 15 February 2001. He was charged with possession of articles for suspected terrorist purposes, conspiracy to defraud and conspiracy to make false instruments. The charges were in the end not proceeded with and he was released on 17 May 2001. He was detained following the issue of a certificate under s.21 of the 2001 Act on 14 January 2003. The reasons given for its issue were:-

“You are an associate of Algerian extremists engaged in active support for various international terrorist groups, including nationals associated with Usama Bin Laden. Your activities on behalf of these nationals include the supply of false documents”.

At the same time, the respondent issued a certificate under s.33 of the 2001 Act and a decision to make a deportation order based on the same reasons. On 16 January 2003 the appellant lodged appeals against the various decisions.

3. The appellant had appealed against the refusal of his asylum claim but that appeal had not been heard by the time he was detained in January 2003. Since the respondent in deciding to use the power to detain in the 2001 Act has concluded that “it is unlikely that he will be able to deport [the appellant] to Algeria, because he could not be satisfied that [the appellant’s] right to freedom from inhuman and degrading treatment could have been guaranteed there”, the appeal against refusal of asylum has become somewhat academic since a human rights appeal would be likely to succeed.
4. The appellant has submitted a statement dated 28 July 2003 following service upon him of the open material relied on by the respondent. That statement is a robust denial of the allegations made against him and an assertion that he has not been involved in nor has he had knowledge of any terrorist activities. By the time his appeal was due to be heard, the Commission had given its judgment in a number of appeals by those who had been detained under the 2001 Act when it came into force in December 2001. One of those judgments was lengthy and detailed and was intended to deal with all points of law which had been raised in the various appeals and to give the Commission’s conclusions on the significance of a number of groups or organisations which were alleged by the respondent to be involved in international terrorism. We have relied on that judgment. No information put before us suggests that any of the conclusions reached in it are or may be wrong. In addition, we have not found it necessary to consider separately the appeals against the decision to make a deportation order or to certify under s.33 since, if we were to allow the appeal against the certification under s.21 of the Act, the other appeals would be bound to succeed as well.

5. When the appeal was called on, the appellant was not present. Mr. Emmerson QC told us that he had decided not to attend or to take any part in the appeal. He was, said Mr. Emmerson, a genuine refugee, a member of no organisation or group and not involved in terrorism or in advocating terrorism. He had no knowledge of any planned terrorist attacks and could not understand why the accusations had been made against him. He had seen none of the underlying material and had no means of challenging it. In effect, he could do no more than assert that it could not justify the conclusion that he was an international terrorist within the meaning of the Act since he was not. He had had read to him the decisions of the Commission in the previous appeals. Given the relevance which was placed on the closed material and the statutory test applicable, he felt that the result was a foregone conclusion. He did not wish by participating in the appeal to give an impression which would be false that he could deal with the matters which were being relied on against him. He had no confidence in the proceedings. Accordingly, he would take no active part in them beyond the statement which Mr. Emmerson made on his behalf.
6. He did not withdraw his appeal. While we appreciate the handicap under which he and indeed all the appellants labour, we wish to make it clear that no appeal is a foregone conclusion. We have to and we do consider the evidence put before us, whether open or closed, with care because we recognise that the result is detention for an unspecified period without trial. While we recognise that the special advocate has a difficult task when he has and can obtain no instructions on closed material, he is able to test evidence from the Security Services and to draw our attention to material which assists the appellant's case.
7. Mr Blake, QC, the special advocate, did just that in this case. He, in our view rightly, regarded it as his responsibility because he represented the interests of the appellant, to question witness D and to make appropriate submissions. Some of those we considered to have weight. We wish to make it clear that we do not take his activities as in any way compromising the appellant's view that he did not want by participating to give the impression that he accepted the fairness of the proceedings. Mr Blake was very properly recognising that it must be in the appellant's interest so long as he did not abandon his appeal to try to draw out any material favourable to his case and to persuade us to allow his appeal or, at least, to release him from detention. Mr Blake put forward a powerful contention that, even if we were persuaded that the certification was proper, it was not necessary that the appellant should be detained and that he could therefore be released on bail subject to suitable conditions.
8. The essence of the case against the appellant is that since his arrival in the United Kingdom he has been closely involved with a network of extremists formerly led by Abu Doha. In particular, it is said that he has provided what is described as 'logistical support' to the network and has in particular been involved in the supply of false documentation and the use of credit card fraud and other activities to raise money for it. He gave support, it is said, to the cell in Frankfurt which had planned an attack on the Christmas Market in Strasbourg in 2000 and, more recently, had provided material support to at least two terrorist cells which were planning chemical and

biological attacks in the United Kingdom. All this the appellant denies.

9. Abu Doha himself is an Algerian who had been in Afghanistan before coming to this country in about May 1999. By September 1999 he was acting as the point of contact and reference for individuals wishing to undertake training in Afghanistan and by November 1999 was co-ordinating support for Arab Mujaheddin in Chechnya. He was, as are those with him, involved in criminal activity, mainly in the form of credit card fraud, to fund their activities. He was arrested in February 2001, following an extradition request from the United States government, resulting from the arrest of Ahmed Ressaym who was in possession of a quantity of explosives which were intended to be used to cause explosions at Los Angeles airport. Abu Doha had helped to train Ressaym in Afghanistan. There was also evidence linking Abu Doha with those who were eventually convicted of the Strasbourg Christmas Market plot.
10. Abu Doha's arrest did not mark the end of the Abu Doha Group. Others took his place and those who had been involved with him remained active: some of those are named in the amended Open Statement at paragraph 16. All save one are detained under the provisions of the 2001 Act and their appeals have been dismissed.
11. In the judgment in Ajouaou and others v SSHD, the Commission (in what has become known as the 'Generic judgment') has considered the Abu Doha Group. Since the matter most relied on against the appellant is his involvement with that Group, whose existence as we have said remained in being despite the arrest of its eponymous founder, it is desirable that we quote what was said about it. At paragraph 294, this is said:

“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 too is controlled or influenced by people outside the United Kingdom.”
12. Although he has lived at various addresses in this country, the appellant has spent a great deal of his time at the Finsbury Park Mosque. In his statement, he has said this was because there were available communal facilities and people who would help him with his physical needs. He was not, he said, concerned with those people's activities and was unaware of any involvement by any of them in terrorism. He consorted with them because they were from the same background, namely Algeria, spoke the same language and held the same religious beliefs. One of the matters relied on against him is an allegation that in June 2001 he was demonstrating his antipathy to the West and his support for terrorist attacks against United Kingdom interests in a meeting at the Mosque. He denies that he was at any such meeting or ever expressed any such sentiments and asserts that the Security Forces must have made a mistake and identified the wrong person. We would only note that his physical condition does mean that he is easily identifiable. The

allegations themselves are reported in the Italian newspaper 'La Stampa' because threats had been aimed at the G8 Summit to be held in Genoa and their main author was Abu Hamza whose pronouncements at the Mosque have from time to time been inflammatory and an encouragement to violence and terrorism. In addition, the Mosque was searched in January 2003 and material was found which evidenced the risk of chemical attack. There is no doubt that the Mosque was frequented by many Islamic extremists when the appellant was spending much time there. That does not of course of itself mean that he was doing anything to support those who were involved in terrorist activities, but it does suggest at the very least a sympathy with the brand of Islamic extremism which was being preached at the Mosque. It also suggests that he was likely to be aware of the sympathies of those who were involved in terrorism unless they were always extremely careful to ensure that he was not told anything which might arouse his suspicions on that score. This we would have regarded as highly improbable. The Closed material we have seen makes it impossible to believe.

13. In his asylum claim, the appellant said that his injuries had been caused in a bomb explosion in Algeria and this had caused him to decide to leave Algeria and to seek asylum. That incident had occurred in 1997 but he had not left until January 1999 because he could not afford to do so. He stated that he had gone to Tunis and thence to Damascus and finally Islamabad. He left there on 18 February 1999, having been provided with a forged French passport, and flew to London via Abu Dhabi. One of his reasons for coming to the United Kingdom was to obtain medical treatment. However, it is to be noted that when interviewed in connection with his asylum claim a year after his arrival he admitted that he had not received any treatment.
14. He was, as we have said, arrested in February 2001 with others and charged with a number of offences. When his home address was searched, there were found some 40 blank French driving licences, identity cards and passports, a credit card reader, laminators and an embossing machine. There was also a map of Frankfurt with a German phone book, which has some significance in the light of the alleged support of the terrorist cell in Frankfurt which was plotting the Strasbourg Christmas Market attack. Thus there was powerful evidence that he had been involved in fraudulent use of credit cards and other documents. He does not in his statement appear to deny that he was involved in obtaining money by credit card fraud and in supplying and acquiring false identification documents including passports. He says that those were

“part of society ... Within refugee communities false documentation is standard currency ... Credit card fraud is widespread ... It is unfortunately especially extensive within the Algerian community since so many individuals have ... involved themselves in fraud as an easily accessible economic activity which allows many not just to supplement their existence, but which much more importantly allows them to send money home to relatives without any income, work or support in Algeria.”

There is ample evidence to support his involvement in such fraudulent activities. The case against him is that he was doing it to raise money to further terrorist causes and to support those involved in terrorism. The material we have seen and considered, most of it closed, satisfies us

that that case is made out.

15. The prosecution against him was abandoned. He claims that the evidence against some of his co-defendants in respect of involvement in fraud was more substantial but they have not been detained. Some were not religious and did not share the appellant's views of the correct approach to and interpretation of the teachings of the Koran. This, he says, shows that the fraud could not have been a vehicle for support of terrorism. But the point is what use was made of the proceeds of fraud by the individuals who profited from it. Some may have been involved for different reasons than others. And the abandonment of the prosecution does not mean that it was accepted that he was not involved in fraud or terrorism at that time.
16. We are well aware of the difficulties in the appellant's path in not being able to deal with closed material. We are equally aware of Mr Blake's difficulties in that he had had no instructions from the appellant and no information beyond the appellant's statement. We have given very careful consideration to the evidence which has been put before us and have tried with Mr Blake's help to give appropriate weight to all that might be said to assist his case. In the end, we are entirely satisfied that the case against him is made out. We have no doubt that there is indeed a reasonable suspicion that he is a terrorist within the meaning of s.21 and a reasonable belief that his presence in the United Kingdom is a risk to national security. Thus the certificate was properly issued.
17. We have carefully considered whether his detention is proportionate and necessary. It so happens that this judgment was drafted when the report of the Privy Councillor Review Committee was available. Mr Blake had raised before us an argument that even if we were satisfied that the certificate was properly issued we should declare that detention was unnecessary and that the danger from him could be adequately removed by granting bail with stringent conditions. The power of the Commission to take this course is recognised in paragraph 27 of the generic judgment. Suffice it to say that we are satisfied that in this appellant's case no conditions whether involving tagging or restrictions on the use of phones could remove the danger which he represents. His disability has not hitherto stopped his activities and we are sure that he would find ways to continue to support and to assist the terrorist cause.
18. We should deal with one other matter which is of less importance. The respondent has asserted that the appellant comes within all three of the paragraphs of s.21(2). It is said he was concerned in the preparation of acts of international terrorism in relation to the Frankfurt cell and the Strasbourg Christmas Market attack. There is ample material to create a reasonable suspicion that he was doing things which he intended should support that cell in its purpose, but we do not think that it goes so far as to support a reasonable suspicion that he was concerned in preparation within the meaning of s.21(2)(a). We are satisfied that he gave active support and assistance to the Doha Group, knowing that it was for the purpose of furthering terrorist activities by members of that Group. Having regard to the nature of the Doha Group, it may be said that such support and assistance is itself sufficient to mean that he should be regarded as a member of that Group. We see the force of that and it is clear that there is a degree of overlap between s.21(2)(b) and s.21

(21)(c). In one sense it is immaterial since he can properly be certified and detained whether he falls within (b) or (c). But we think that his activities are more properly to be regarded as falling within (c).

19. In the circumstances the appeals are dismissed.

MR JUSTICE COLLINS