

Appeal No: SC/3/2002

Date of Judgment: 29th October 2003

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

The Honourable Mr Justice Collins

Mr J Freeman

Mr J Chester

Mahmoud Suliman Ahmed Abu Rideh

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

For the Appellant: Mr B Emmerson QC, Mr R Hussain

Instructed by: Birnberg Peirce & Partners

Special Advocate: Mr N Blake QC, Mr M Hoskins

Instructed by: Mr S Trueman, Treasury Solicitor

For the Respondent: Mr W Williams QC, Mr R Tam

Instructed by: Ms L Smith, Treasury Solicitor

Mahmoud Suliman Ahmed Abu Rideh

1. The Appellant, who is now 32 years old, was born in Jordan to stateless Palestinian parents

registered with UNRWA. He had been brought up in a camp and his family had been subjected to persecution by the Israelis: one of his brothers had been killed by Israeli soldiers. His father had been mentally ill and the family dependent on rations provided by the UN. He himself has his own mental problems: indeed, he has since July 2002 been held in Broadmoor Hospital having been transferred there from Belmarsh Prison. He has real difficulties in handling stress and finds it necessary to spend time on his own in the dark. He told us that he knew that he had always been regarded in the communities in which he had lived as somewhat crazy.

2. We have had placed before us a number of reports from consultant psychiatrists and from a consultant clinical psychologist which deal with his condition. We have taken them into consideration in assessing the evidence given before us by the Appellant. As will become clear, there are discrepancies in the accounts given in the proceedings before us and in those he gave when he sought asylum following his arrival in the United Kingdom in January 1995. Such discrepancies are clearly relevant in deciding upon the Appellant's credibility, but Mr Emmerson QC on his behalf submits that his mental state should persuade us that it would be unfair to hold them against him. His mental state is also relevant, submits Mr Emmerson, in considering some of the wilder assertions made by the Appellant (for example, that the GIA were agents of the Israelis, French and Americans who were ensuring that Muslims should kill each other). In addition, he was not likely to be trusted by any terrorist and so there was no risk that, if released, he would pose a threat to national security.

3. A number of points have been raised which are common to this and the other appeals by those certified under section 21 of the Anti-terrorism, Crime and Security Act 2001. Not all are relevant to each appeal, but it is unnecessary to repeat here the points which are material. We have seen and have considered the full and detailed judgment of the panel presided over by the Chairman (Ouseley J) on those various points and are content to adopt them since we agree with the conclusions.

4. As we have already indicated, the Appellant (who is also known as Abu Rasmi) came to the United Kingdom in January 1995 and claimed asylum. He presented a Jordanian passport issued in Amman on 27th June 1991. It contained a number of Pakistan visas, the first of which was issued on 28th August 1991, and a number of apparent entries into Pakistan, commencing on 7th September 1991. He had come from Bangkok and the passport contained a tourist visa issued by the Thai embassy in Islamabad in December 1994. He said that he had been imprisoned in Jordan "because I pray and am religious" in 1990/1991. He had returned to Jordan in July 1993 on a forged passport, had got married there but had again been imprisoned in 1993. He was released by the efforts of his wife's family and he and she left for Pakistan. He was unable to stay in Pakistan. He asserted in addition that he had been sentenced to 3 years imprisonment in Jordan in absentia because of his involvement in the forged passport. He also said that he had been at schools in the Javash Camp until 1990 and then between 1991 and 1992 had continued his education at the Islamic University in Islamabad. Between 1992 and 1994 he had (save for his trip to Jordan when he got married) been involved in helping Afghan refugees and orphans.

5. His asylum claim was refused in late 1996. Essentially, it was said that he had fabricated

details of his arrests and detention and that his account of how his passport had been renewed was not credible. Formal refusal came on 19 February 1997. He appealed to an adjudicator. Before the appeal was heard, the Secretary of State decided that he would recognise that the Appellant was a refugee and on 10th November 1998 he was granted “indefinite leave to enter the United Kingdom as a refugee recognised under the [1951 Convention]”. This change of heart seems to have been based on the fact that the Appellant was registered by UNRWA. Quite why that should have rendered him a refugee here is not clear to us, but we do not need to go into that. We do, however, note that in Paragraph 4 of the amended open statement, it is said:

“[The Appellant] ... was refused political asylum in 1997. On appeal, Abu Rideh was granted indefinite leave to remain in the UK.”

This is not entirely accurate since the appeal was withdrawn and he was granted refugee status by the Secretary of State. While not central to any issue arising in this appeal, it is a matter of concern that such an error should have occurred.

6. On 17th December 2001 the Secretary of State issued certificates under sections 21 and 33 of the 2001 Act. The covering letters stated that the reasons for certifying were:

“You are an active supporter of various international terrorist groups, including those with links to Osama Bin Laden’s terrorist network. Your activities on their behalf include fund raising”.

On 18th December 2001, the Secretary of State decided to make a deportation order relying on the same reasons. On 19th December the Appellant was detained. He appeals against his certification under section 21 of the 2001 Act and against the decision to make a deportation order. It is accepted that the certification under section 21 is what is really in issue in this appeal. If the Appellant were to succeed in persuading us to cancel the certificate, it would follow that the detention could not be supported since it is accepted that the Appellant cannot be returned to any country. In any event, if the Commission was persuaded that the section 21 certificate should be cancelled, it is difficult to see how it would not be persuaded that the basis of the decision to deport (which is the same) was not made out. We have therefore concentrated on the section 21 certificate and the appeal against it under section 25 of the 2001 Act.

7. We are acutely aware that the open material relied on against the Appellant is very general and that the case depends in the main upon assertions which are largely unsupported. The central allegation is that he has been involved in fund raising and distribution of those funds for terrorist groups with links to Al Qa’eda. It is also said that he has procured false documents and helped facilitate the movement of jihad volunteers to training camps in Afghanistan. He is said to be closely involved with senior extremists and associates of Osama Bin Laden both in the United Kingdom and overseas. His case is and has always been that he is concerned and concerned only with welfare projects, in particular a school in Afghanistan for the children of Arab speakers there and projects such as construction of wells and provision of food to communities in Afghanistan. He has also raised money for refugees from

Chechnya. Any contact with so-called extremists has been in that context and he had no reason to believe that they were terrorists or were interested in terrorism.

8. We recognise the real difficulties that the Appellant has in making this appeal. We have made appropriate allowances for those difficulties and for his mental problems. We note Mr Emmerson's concerns that there has been gross oversimplification by the Security Service of the situation which is, he submits, highly complex and a tendency to assume that any devout Muslim who believed that the way of life practised by the Taliban in Afghanistan was the true way to follow must be suspect. We note, too, that initially the Respondent asserted that all the Appellant's fund raising activities were for the purpose of assisting terrorism and that it was only when evidence was produced by the Appellant to show that there were legitimate charitable objectives that he accepted that at least some money was raised for those purposes. Insofar as connections with named individuals are relied on, we bear in mind that some of them, who are alleged to be involved in terrorism, have appeals pending (for example, Abu Hamza who is named in this appeal) and that allegations against others have not been tested nor have alleged links been able to be explained.

9. We are mindful that it is only if the Appellant's activities fall within the scope of the derogation can he properly be certified. It must therefore be established that he supported or assisted an international terrorist group and that in giving any such support or assistance he was aware that the group was an international terrorist group. When we say established we mean that we must be persuaded that the material before us, both open and closed, produces a reasonable suspicion that the Appellant has been giving relevant support and assistance and that it is reasonable to believe that his presence in the United Kingdom is a risk to national security. In this case, we are asked to consider section 25(2)(b) on the basis that, even if persuaded that there are reasonable grounds for the belief and suspicion, it would be disproportionate because of his mental condition to uphold the certificate. It is correctly recognised that in these cases the whole reason for certifying is the perceived need to detain. However, it is possible for the Commission to grant bail if persuaded that certification was justified but to detain was disproportionate. That in our view would be the correct way for us to deal with the matter rather than to use section 25(2)(b), although we recognise that there might be a case for its use if, for example, the individual might technically come within section 21(1) but his involvement was in reality so slight as to render certification unnecessary. Such cases would be very rare, since section 21(1)(a) requires a reasonable belief that the person's presence in the United Kingdom is a risk to national security.

10. The Appellant relied on a statement of 18th October 2002 and on the evidence which he gave before us. He also called a witness, Abdul Khalimah, who knew him and spoke to his kindness and his philanthropic nature. We gathered that Mr Khalimah had been present at the hearing of the appeal and had volunteered to give evidence on the Appellant's behalf. Mr Khalimah told us that he had advised the Appellant to stop his activities in connection with the school in Afghanistan because they might be misunderstood. The Appellant's reply had been that, if he were doing anything illegal, he would take care to do it under cover, and not on public view. Mr Khalimah said he would not have given evidence for the Appellant if he had regarded him as an extremist.

11. In his statement, the Appellant said that he had great enthusiasm for helping others and described his work on behalf of an organisation in Pakistan called the Islamic Services Bureau (or Charity). He used to travel round Afghanistan, disguised as a beggar, with large sums of money hidden in a plaster cast on his leg. He was good at raising money for the various charitable projects with which he was concerned by approaching worshippers at various mosques. In 2000, he went to Pakistan and was informed that there was a need for schools in Afghanistan, especially for the children of Arab speakers, said to be refugees. This was the school he managed to set up at a cost of £20,000. There was no political involvement: indeed, it was largely because of Osama Bin Laden's and Al Qa'eda lack of interest in education that the need for the school existed. In addition, he was visited by a Canadian priest, Father Dilman for whom he raised money to help fund an orphanage.

12. He referred to his bank accounts, saying he had two personal and one business, all at the Midland Bank. There were no banks in Afghanistan and money changers charged a high percentage. Accordingly, he would entrust cash to travellers, either directly or through banks in other countries. Some £100,000 had passed through "the bank" since 1999. Apart from the school already referred to, which was destroyed by allied bombing in October 2001, the Appellant said "we" had set up 20 schools, mainly in Kabul, each for 70 girls and Father Dilman had set up a further 100 for boys and girls. His father-in-law was still in Jordan and he had transferred some money for Afghanistan to a friend in Korea, although why and for what purpose was unclear.

13. Those he visited in prison he had not known previously. His wife knew the wife of one detainee, a man called Hani Yousef, and he had thereafter helped wives of others by giving them lifts to enable them to visit their husbands. He was involved with Abu Hamza in relief work. He regarded him as sincere but indiscreet and was not involved with him in any unlawful way. He had never been challenged by the security service or by anyone in authority about his activities, but he was aware that he had been under surveillance.

14. He was assisted by an interpreter in giving his evidence, although he lapsed into English from time to time. He had never been a mujahid in Afghanistan: he could not have been since he was in prison in Jordan between 1988 and 1992. He confirmed his background and experiences in the camp. He gave details of his charitable work, producing literature and photographs to confirm it.

15. The Respondent had produced a summary of a police report into the Appellant's bank accounts. This was inadequate and the full report (with some slight redactions) was put in at the hearing. There were four accounts. The first was a joint account with his wife at the Arab Bank in Park Lane. He sought to explain the sum of £20,000 which had gone to Korea and been repaid via his father-in-law. £8,000 of that had gone to set up a launderette to raise further funds and £12,000 directly to the school. The second was an account at the Wimbledon branch of HSBC (formerly Midland). This was his "working-account" into which his benefits were paid. The third, at the same bank, was used very little, some £3,000 having gone through it between September and November 2001. The fourth, again at the same branch, was entitled "Islamic Services Bureau – Treasurer's Account", with the Appellant and his wife a signatory. Somewhat bizarrely, the police had included his Visa/Mastercard account. This

showed payment for a satellite phone for Father Dilman (confirmed by the number of the phone in the literature produced). Between June and September 1999 there were payments in Jordan and Saudi Arabia covering a time when he and his wife went in what he initially told us was his Hadj, but on, on questioning, was said to have been the Umra.

16. He said that he had told Abu Hamza of his opposition to terrorism and had at one stage fallen out with him because he was too extreme. But he cooperated with him in relation to charitable work only. Apart from father Dilman, he was reluctant to name any helpers in Afghanistan, but eventually gave two names. He would refer problems about the school to one of them, Abu Hassan, or to Father Dilman. When asked to explain his comment in his statement that among fathers at the school were “some of the world’s most wanted men”, he said he could not and his comment had been guesswork. In the end, the only name he could think of was Mohammed Salah whom the media had reported as wanted over the EIJ operation in Albania. He had not heard of Al Qa’eda until after 11th September 2001. He denied that he had ever provided false documents for anyone.

17. He was referred to the letter refusing his asylum claim, in which it was recorded that he had been in Pakistan between 1991 and 1993 (as his passport seemed to confirm). He told us he had not seen the letter before. He also denied that he had returned to Jordan, as he had then said, on a false Iraqi passport: that was only an allegation. It was clear that he had not been telling the truth, although he did say he had been in prison between 1988 and 1992, but in Israel, not Jordan.

18. Four reports on his mental condition were put before us. Dr Payne, a consultant at Broadmoor, thought that, although he had a personality disorder and emotional instability, he was not mentally ill and required no treatment. This view was confirmed by another psychiatrist at Broadmoor, Dr Murray, in a report of April 2003. Dr. Parrott, a psychiatrist instructed by the Appellant, in a report of 11th May 2003, thought that he did suffer from a “schizo-affective state” with possible psychiatric features and post traumatic stress disorder. He needed treatment in the form of anti depressants and low-dose anti-psychotics. Professor Robbins, a consultant clinical psychologist, thought in June 2002 that he was “no longer able to make rational decisions with regard to himself” and his long standing problems of PTSD and depression required treatment. Professor Robbins saw him when he was still in Belmarsh. There is no doubt that imprisonment in Belmarsh had seriously affected his mental health and, whether or not he now strictly requires treatment, he would undoubtedly suffer a relapse if returned to prison. But it is equally clear that he is capable of giving the sort of assistance he is alleged to have given and that his mental condition will not affect that capability.

19. Mr Tam made three main submissions. The Appellant’s passport and his immigration file showed that he could not be telling the truth when he denied visiting Pakistan before 1994 and he was not imprisoned (if at all) before that date. He has not in his statement disclosed the existence of the Arab Bank account through which £30,000 had passed in a year. Of that sum, only about 40% on the Appellant’s own evidence was for his family purposes. As a married man with five children living on state benefits it was difficult to see where the money had come from. Finally, he had told lies about false documentation for himself, concealing that he had got a false Iraqi passport.

20. Mr Emmerson accepted, as he had to, the unreliability of the Appellant's evidence about his movements in the 1990s, but asked us not to hold it against him because of his mental state. We do not accept that we can do that. The lies were a deliberate attempt to rebut the allegation that he had been a mujahid in Afghanistan, saying he spent three years in a Jordanian prison. There was an overstatement by the police of the amount involved through the bank account. This we accept, but there was still a substantial sum of money going through them. And Mr Emmerson submitted that the allegation was that he had provided false documents for others not for himself. Thus his false Iraq passport was not material. It does however show an ability to obtain a false passport. Mr Emmerson attacked the reliability of the intelligence relied on against the Appellant since it was only belatedly accepted that he had been involved in genuine charitable work and that some of the money going through his account and raised by him was for such purposes. We recognise the danger that all activities by one who is under suspicion may be regarded as themselves suspicious and that there may not be a fair consideration of all material to see whether it truly does support the suspicion. We have considered all the material, in particular that which is closed, with that danger in mind.

21. As we have said, the open evidence taken in isolation cannot provide the reasons why we are dismissing this appeal and we sympathise with Mr Emmerson's concerns that he had a most difficult task. We were not impressed with the Appellant as a witness, even making all allowances for his mental state and the difficulties under which he was labouring. He was often evasive and vague and has admittedly told lies in relation to his movements in the 1990s. His explanations about some of the transactions recorded in the bank accounts we have found difficult to follow or to accept. We should say that we do not consider that the Respondent's case is significantly advanced by what has been said about the Appellant's involvement with Algeria or Chechnya; the case depends essentially on the evidence about the Appellant's dealings with Afghanistan and with terrorists known to have links with Al Qa'eda.

22. It is clear that the Appellant was a very successful fundraiser and, more importantly, that he was able to get the money to Afghanistan. Whatever his problems, he was able to and was relied on to provide an efficient service. His explanations both of who were the well known terrorists whose children were at the school and of the various of the more substantial payments shown in the bank accounts are unsatisfactory. He was vague where, having regard to the allegations made against him, we would have expected some detail.

23. We have made all allowance for the Appellant's psychiatric problems and for his inability to deal specifically with matters which are covered in the closed material. We have had, too, to consider the reliability of Witness B and the material which has been used to base the certification of the Appellant. There can be no doubt that there is a real and continuing threat from Al Qa'eda and those who support its aims. In considering the derogation issue, the Commission was satisfied that there was a public emergency threatening the life of the nation. Nothing has occurred since July 2002 to change that view: indeed, incidents since then have shown that the terrorist activities of those extremists who believe in Osama Bin Laden's approach continue. However much it is suggested that his beliefs as expressed before us in the danger from Jews and the attempts by the West to destroy Muslims are delusions, they are delusions shared, it seems, by others. A group is formed by more than one person with a common

aim. Al Qa'eda is an amorphous body and assistance to any, whether individuals or groups, who are themselves involved with it will suffice to justify certification.

24. We have considered all the evidence critically. The closed material confirms our view that the certification in this case was correct. There is both a reasonable belief that the Appellant's presence in the United Kingdom is a risk to national security and a reasonable suspicion that he is a terrorist within the meaning of section 21 of the 2001 Act. This appeal is accordingly dismissed.