Appeal Number: SC/29/2004

IN THE SPECIAL IMMIGRATION APPEALS COMMISSION

Field House
Breams Buildings
London
EC4A 1WR

Date of Judgment: 19th May 2006

Before :

THE HONOURABLE MR JUSTICE NEWMAN

mr A Mackey

mr C R SMITH

- -

Between :

MK	Appellant
- and -	
Secretary of State for the Home Department	Respondent

- -

For the Appellant Ms N ROGERS (instructed by Birnberg

Peirce & Partners)

For the Respondent Mr S WILKEN (instructed by Treasury Solicitor)

Special Advocates Mr A NICOL QC and Miss D ROSE (instructed by Treasury Solicitor)

- -

OPEN JUDGMENT ON THE APPEAL

MR JUSTICE NEWMAN :

1. the appellant appeals against a decision to deport him on national security grounds. In the exercise of his powers under section 3(5) of the Immigration Act 1971, the Secretary of State deemed his deportation to be "conducive to the public good".

2. [MK] was born on 6th July 1973 in Algeria. He moved to France and obtained French nationality and a French passport. He arrived in the United Kingdom in 1992. His mother is resident in France. In August 1995 the Home Office informed the appellant that the Secretary of State was not satisfied that he was lawfully resident in the United Kingdom, but he has nevertheless remained here. It is the Secretary of State's case that between at least 1999 to the present date, he has sustained a close relationship with twelve or more Islamic extremists and has acted so as to support and further the ends of terrorism. It is the Secretary of State's case that his association with prominent extremists cannot be explained, as the appellant seeks to do, on the basis he is a sociable man who fraternises with his Muslim brothers. On the contrary, it is said the common thread which has sealed the associations and puts them in true context is their mutual adherence to the aims and objects of the Abu Doha group. After the initial disintegration of the group in 2001, it is said it reformed under fresh leadership and, in turn, the appellant became a trusted associate of each of the leaders who succeeded to control the group's activities.

3. The broad nature of the allegations against the appellant are that:-

   (1) He was a prominent member of the Abu Doha group, having a significant role in the group including providing tangible support which enhanced its activities;

   (2) He continued to engage in support activity for the network of extremists operating in the United Kingdom until his detention in September 2004; further

   (3) That on occasions, after his release on bail, he breached conditions of his bail prohibiting him, in particular, from pre-arranging meetings and going outside the limit area in which he was permitted to move.

4. It is specifically alleged that he:-

   (1) Underwent military training in Afghanistan at a terrorist training camp;

   (2) Travelled to Pakistan and Afghanistan for terrorist purposes;

   (3) Has been a member of and associated with and thereby supported a network of extremists operating in the UK who have provided logistical support to terrorists in Afghanistan, Algeria and Chechnya;

   (4) Has been a member of and associated with and thereby supported a network of extremists operating in the UK who have obtained funds to support terrorist activities, including those involved with the ricin plot in the United Kingdom and in the plots to bomb the Los Angeles airport and the Strasbourg Christmas market.

   (5) Has engaged in fraudulent activity and has close links with those in raising funds for

extremist or terrorist activities;

(6) Has used his passport or allowed his passport to be used for extremist activities;

(7) Was personally known to and trusted by Abu Doha himself and that he was a close associate of a senior member of the Abu Doha Group, [S], as well as Islamic extremists, Kadre and Kadouri. Kadre took over leadership of the group after Abu Doha's detention in 2001;

(8) In addition to the above, the members of the Abu Doha group at various times and under various revived forms has included: [A], [I], [B], [K], [G], [Q], [P], [X] and Ghazi. The appellant has associated with each of them.

5. It is accepted that if the Commission was satisfied that the appellant was a member of the Abu Doha group or that his association with Islamic extremists connected with the Abu Doha group includes providing support to them, his appeal must fail unless his deportation is barred under Community law. It is accepted that the Open Generic Determination of SIAC which stated that the Abu Doha group "falls within the Act, has links to Al Qaeda and is a very important part of the emergency" has prevailing validity. SIAC, by reference to the closed material at that stage, confirmed the importance of the Abu Doha group and the informal groups which overlapped it, which provided support for terrorist groups. It follows that the principal issue on this appeal is whether the allegations which we have summarised above have been established to the satisfaction of the Commission.

6. The appellant submits that:

(1) the respondent has not established that the appellant poses a real and serious threat to the interests of public security. It is accepted that the principles governing the determination of this issue are set out in the House of Lords decision of Rehman v Secretary of State for the Home Department [2003] 1 AC 153;

(2) the decision to deport is contrary to Community law because it is not proportionate;

(3) even if the appellant poses a real and serious threat to the interests of public security, the United Kingdom owes a duty of comity towards the Member States of the EU to prosecute the appellant.

The Appellant's Evidence

7. The appellant has made two witness statements, has given oral evidence, been cross examined and has called his wife as a witness in support of his case. Put shortly, he states that, although born a Muslim, it became meaningful to him and he became a devoted follower in the middle 1990's, that he regularly attends the Finsbury Park mosque and that, as a result, inevitably he has met people at the Finsbury Park mosque who the Secretary of State has identified as being extremists. However, his association with them has nothing to do with any extremism on their part, which he is not in a position, in relation to any of them, to either assert or confirm to exist. He is, essentially, simply a sociable man, who regards all

Algerians as Muslim brothers and converses and associates with them.

8. The Secretary of State's case that the appellant has associated with various extremists for terrorist purposes has received responses from the appellant at the various times when it has been raised. On 20th September 2001, after the unprecedented atrocities in the United States of America, the appellant was interviewed by the police. He was asked a number of questions, including a number of questions about an associate of his called [S].

   [S]

9. [S] is an Algerian extremist, who was the subject of an International Arrest Warrant issued in France on 18th August 2000 pertaining to his alleged involvement in support of a group which mounted attacks in France between 1996 and 1998. [S] trained with Abu Doha in Afghanistan in 1998. His appeal against a deportation order and the certification of him under the Anti Terrorism, Crime and Security Act 2001 was dismissed by SIAC in July 2004. SIAC concluded:

   > "We accept the, unchallenged, evidence within that material, [the open material] and for the reasons set out above, we are satisfied upon the basis of that material alone that there are substantial grounds for believing that [S] was a senior and trusted figure in the Abu Doha group in the UK and in other terrorist networks linked to Al Qaida, and that he played a significant role in their terrorist activities."

   He has been extradited to France.

10. [S] was detained in Wormwood Scrubs between November 1998 and February 1999. A redacted report based on information from the prison is included in the open material. The appellant has admitted visiting [S] in prison. According to the detailed Note of the interview which took place on 20th September 2001, when asked about the visit:

    > "[MK] said that he was acquainted with [S's] wife and she asked him to take some new clothes for [S] to the prison. [MK] had agreed to do her a favour. He insisted that he did not know Abu [S] well and furthermore had not visited him since he had moved to HMP Bellmarsh".

11. The appellant was interviewed again on 1st November 2001 and was asked about his relationship with [S]. According to the written record of the interview, his "story this time differed from his last explanation for the prison visit. He said that he had been asked by someone (he would reveal the name) to go to the prison to deliver clothes for [S]". As he "was the only person with an identity card, he agreed to apply for the visitor's permit". He also denied knowing [S] through [S's] wife and stated that they had only recently married. He stated that he had not visited again and had not had further contact with him. The note also records that he stated he prayed at several mosques and was therefore regularly in contact with many "extremists" Muslims.

12. In his first witness statement the appellant denied having changed his account and stated this:

> "This person is not a close acquaintance or associate of mine. I do not even consider him to be a friend. Basically in around a date I heard people at the mosque talking about the fact that this Algerian man, who turned out to be [S], was in prison. People were talking about trying to get a visit to [S], so that he could be taken some clothes. I know that a lot of Algerians in London used false documents and it will be hard for such people to get a prison visit. So I said I did not mind going to see him. I did not go "at the request of his wife" and I did not say so to the people who interviewed me. I know that I would not have said this because I know that at that time, Mr[S] was not married. I consider it my duty as a Muslim to help a fellow Muslim, and this is the main reason I agreed to go to see Mr[S]. I was told that Mr [S] was in Wormwood Scrubs and that he had been convicted of some offence relating to false documents. I went no more than twice to see Mr [S] during his first period of imprisonment."

13. He then went on to add, as the Commission have concluded, because he realised there was a risk that records of other visits existed:

> "I would like to say that Mr [S] is not the only Algerian person I have visited in prison. I have made visits to other people in Brixton, Rochester and Wandsworth. I have made perhaps up to ten such visits over the course of several years. With the exception of one person, all these visits were made on the same basis as my visit to Mr [S], that is the people I visited were not friends of mine, they are simply my brothers in Islam. In almost every case I would hear about them being in prison from people at the mosque and I would volunteer to visit them".

14. [S] was in prison from the 5th November 1998 until he was released on 4th February 1999. Subsequently he married. In his first statement the appellant recorded that he saw [S] from time to time in the street, around the mosque "but never went out of his way or make arrangements to meet him". He heard about his wedding, but was not invited to the wedding, but:

> "decided it would be nice to go and congratulate him, so I found out his address from someone in the community and I went round to his house, with Elizabeth [the appellant's wife] to congratulate him and his wife, but we were not invited into his house" .

15. [S] was arrested for a second time and, having heard about it at the mosque, the appellant says "he felt sorry for his wife; because as I understand it they had not been married for a long time before Mr [S] was arrested", so he decided to take his wife to see Mrs [S]. Mrs [S] was pregnant and her husband had been taken from her and so he told her to come and live with the appellant and his wife. This was not to be taken as a sign of a close relationship with Mr S. He acted out of concern for a fellow Muslim and not because a close relationship existed between them.

16. The appellant's wife confirmed his account of the visit to congratulate Mr and Mrs [S] and their subsequent visit which led to Tatiana [S] coming to stay with them.

17. The appellant accepted that he had contact with [S's] brother, "at a time when Social Services were attempting to take Mrs [S's] son from her". His account (first witness statement) was that he met him at

the mosque, gave him his telephone number and invited him to call if he required help. Thereafter he accompanied him to see a solicitor and also attended the High Court on "one of the two days" Mr [S's] case was being heard. When cross examined on this episode, the appellant was less than co-operative. He maintained he knew the brother as [S] and when asked whether he had done anything else to help "the brother" replied: "What do you mean, did I do anything else for the brother?

> Q. That strikes me as a lot to do for someone who you do not regard as a friend.
>
> A. I don't know if you know what I've done to other people. If you know about [S] it's because you got something about [S], that's why you bring it to the case".
>
> Shortly before this exchange he had been asked [S's] brother's name, to which he replied:
>
> "You should know about it".
>
> Q. "What's his brother's name?"
>
> A. "[S]".
>
> Q. "His first name".
>
> A. "I know him as [S]".
>
> Q. "You know him as [S], do you?"
>
> A. "Yes."

Abu Doha

18. On 20th September 2001, when asked about his contact with Abu Doha, the appellant "denied having more than a nodding acquaintance with him". He stated that it was inevitable that he had "regular contacts with Algerians, some of whom were extremist and some involved in politics, but he insisted he did not share their radical views". He insisted that he and many of his associates were not happy with the way, for example Abu Hamza, preached. It attracted media attention and drew unwelcome attention to the mosque where he wished to pray in peace.

19. In his first witness statement, the appellant stated:

> "This man I do not even consider to be an acquaintance of any kind. He may be a fellow Algerian, and of course he is a brother in Islam, but if he holds radical views, they are certainly not views I share. To be clear, I think a radical view would be a view that is all right to kill innocent people in pursuit of a cause. I do not think that killing innocent people can ever be justified whatever the cause."

20. Until after conclusion of the hearing the Secretary of State had maintained an allegation that the appellant had permitted Abu Doha to use a "false" passport in the name of [MK] and thus permitted Abu Doha to enter Ireland claiming political asylum in 1997 and that subsequently Abu Doha had entered the Netherlands using a forged passport in the name of [MK] in 1998. The appellant denied any knowledge of such action by Abu Doha. From the outset he has resolutely denied any conduct on his part which contributed to or enabled Abu Doha to so conduct himself. Having regard to material drawn to the attention of counsel for the Secretary of State, this allegation has been withdrawn, but, as we shall relate, the appellant provided an article from Time magazine which claimed that Abu Doha was also known as Rachid [K].

21. Under cross examination the appellant was asked whether he knew what Abu Doha "does". He replied "no". He stated that he could not say whether he engaged in terrorist activities or not. He denied any knowledge that Abu Doha had formed a group operating under the name of Abu Doha.

22. Abu Doha, it is said, is a senior Islamist extremist with links to high-ranking international terrorist planners. It is alleged that between 1999-2001 he established an active network of Islamists within the UK, who assisted him in providing extensive logistical support to terrorists in Afghanistan, Chechnya and Algeria and facilitating the travel of individuals to terrorist training camps. Further details of his alleged activities appear from the Time magazine article (see paragraph 52 below).

23. In his second witness statement, the appellant had responded to the case that he was an associate of the following, each being alleged members and associates of the Abu Doha group:- Mohammed Ghazi, Mohammed Merguerba, [Q], Rabah Kadre, [A], [P], [B], [K], [G], Karim Kadouri, [I] and [X].

24. The appellant:-

    (1) admitted knowing of Abu Doha, but denied knowing him;

    As to others, he:

    (2) admitted associating with members of the Algerian community "before and after the arrests of Abu Doha and [S]";

    (3) admitted being a friend of Mohammed Ghazi and staying with him "on occasions". The appellant was at Ghazi's flat when Ghazi was arrested on 9th November 2002. The appellant was also arrested. As to that occasion, at paragraph 13 (second witness statement), he stated:

        "... I had been staying him (sic) for one night when I was arrested ... I had an argument with Elizabeth and wanted to cool down away from her";

    (4) accepted he knew Ghazi was tried for fraud and knew [Q], a co-defendant with Ghazi, because he had used Ghazi's house;

    (5) admitted meeting Merguerba at the mosque, but denied being an associate;

(6) admitted that Rabah Kadre was "a long-standing friend whom I knew even before I became a practising Muslim";

(7) admitted he had met [A], but only because they had been on the same wing at HMP Woodhill;

(8) admitted seeing [P] at the mosque, but did not "consider him a friend or associate". He added: "I know very little about him";

(9) as to [B], [K] and [G], he stated he did not recognise their names;

(10) as to Karim Kadouri, he observed:

> "... I find the statement that Karim Kadouri as an extremist rather bizarre. As far as I am aware, Karim Kadouri is not under any control order, or facing any particular legal proceedings or openly accused of being a terrorist"

and added, ".. he is a person known to me for a long time".

25. The Commission acknowledges that someone in the appellant's position, being a person accused of being involved in terrorism, as he maintains, falsely, and contesting a prospect of deportation, is likely to be hostile to the proceedings but, that said, the Commission observed characteristics on the part of the appellant other than mere hostility. On more than one occasion he demonstrated a marked reluctance to volunteer any information and adopted a truculent response to avoid disclosure. One line of retort, designed to avoid answering a question, was to suggest that the Secretary of State already possessed or was likely to possess the information he was being asked to give. The terms in which he admitted facts was deliberately framed so as to avoid the case against him, rather than to admit what he knew. For example of Abu Doha:

> "I might know him if I saw his face. I might know him from the mosque but that doesn't mean I know him as you think I know him. That's a different issue".
>
> When asked "You never talked to him socially?"
>
> A. "I might talk to everyone".
>
> Q. "You might talk to everyone?" Have you ever talked to him socially to talk about your lives?"
>
> A. "No".

26. The appellant was aware, prior to giving his evidence, that it was alleged he had breached his bail conditions restricting him from contact through pre-arranged meetings or having visitors at home. The

Commission has concluded he assumed that the Secretary of State had information to that effect. For that reason he volunteered information and made admissions about contact with certain named people, which he had not hitherto disclosed and which was contrary to the thrust of the account he had given. But his determination to limit his answers can be seen from the exchanges in connection with [A] and [P].

27. Whereas from the content of his witness statement it would have been possible to infer that, having met [A] in prison, thereafter there might have been some limited contact ("I consider him as other Muslims and am courteous towards him"), in cross examination he volunteered that he had been in contact with him after coming out of prison, that [A] had left his telephone number "at home". That he had been in contact "many times". As soon as he was alerted to his failure to mention this in his witness statement, the appellant's attitude changed. When asked again:

    "You have contacted him on many occasions?"

    He replied:

    "Not many, many. I contacted him a few times. A couple of times".

    He was asked:

    "Why didn't you tell your solicitors this?"

    He replied:

    "It wasn't addressed to me, that question".

[P]

28. The appellant was asked: "No contact with him?".

    A. "No contact with him".

    Q. "Have you spoken to him?"

    A. "I have spoken to him on the phone".

    Q. "How often?"

    A. "Several times".

    Q. "Was that speaking to him on the phone before you gave this statement on 18 January?"

    A. "I can't remember."

Q. "But you can remember speaking to him?"

A. "Yes."

Q. "How often did you speak to him?"

A. "I don't know."

Q. "For a long time?"

A. "I don't recall that."

> It was put to him that his statement that he knew very little about [P] must, in the circumstances, be wrong. He replied: "Little about him". "What do you mean by 'little about him'? When reminded that this was his statement, his attitude changed: "You got it in front of you. That's the statement I gave to you".

Q. "Is there anything about the statement 'I know very little about him' that you want to alter?"

A. "Little, in what way? I know a little about him. I know him as an Algerian person. I know him as a normal Muslim person. I know him ..... from the mosque".

Addresses connected with the appellant

29. His current address is ... He was seen by the police at the address on 20th September 2001, although his wife, initially denied he lived there. Her explanation for that response is that she was afraid she might be maltreated by the police. Following the 9/11 attacks she had heard various stories of maltreatment which were circulating in the Muslim community. Her evidence in connection with the question of how much time the appellant spent at 2 Drapers Road was not clear. In her first statement, having referred to their Muslim ceremony of marriage in about 1997, she stated: "I should explain [M] always retained a separate address, although he spent a lot of time at my address and would definitely spend some portion of each day at my address". When dealing with December 2000 when the Secretary of State alleges the appellant travelled to Pakistan, she stated (para 21):

> "He still had his own address at that time, but he spent the majority of his time at my place...".

30. By the time of her second statement she stated : "[M] has been living with me on a full-time basis for several years". She was questioned in cross examination about the tenor of her two statements and when pressed about her attitude to giving evidence:

> "Q. "When your solicitor was taking this statement, if she did not ask you precisely, you

did not tell her?"

A. "No".

Q. "Is that how you normally deal with giving people information? If they don't ask, they don't get told?"

A. "Yes."

31. It was suggested that since the appellant had retained another address, he did not live with her on a full-time basis.

A. "Several years, yes. He was living with me for several years. A couple of years, not several years?"

Q. "A couple of years?"

A. "Yes."

She was next asked about her knowledge of the appellant's other addresses:

"Outside the house, I do not know, and I didn't ask him of his address because I did not think it was appropriate. It was not really any of my business".

32. She confirmed the appellant's evidence that there had been an argument in November 2002 which led to him being at Mohammed Ghazi's flat when the police raided and arrested him, but she maintained that it had been only for one night. In his oral evidence, the appellant contradicted his own written account that he was there only for one night. He had told the police the row was on 4th November. He was arrested on 9th November. The appellant accepted he had been there a "couple of times" and that he had used the address "before". Later, when he was shown a letter from the store, Ikea, dated 4th October 2004, addressed to him, he admitted he was "having mail sent to him at Worcester Road". Then, when pressed, admitted: "After Mohammed was arrested, I took his room as my room".

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33. In his second witness statement the appellant stated that he lived there for about 3-4 months, including September 2000, and that [I] was living there. Although there were other Algerian men living there, he could not recall their names. He added:

"A lot of people used to come and go from the house. I did not make it my business to find out who they were or what their business was. So long as they did not disturb me, I had no problem with them being there. I used to spend quite a lot of time away from the flat at the house of my partner (now my wife) Elizabeth Abina".

This attitude is hardly consistent with his avowed adherence to "politeness" or being sociable in the Muslim brotherhood, which he has forcefully urged upon the Commission as an explanation for being in contact with so many Algerians.

34. His explanation in oral evidence for knowing only [I] (page 35) was:-

> "... we, as Algerian community, used to live all as you know the Algerian community is. So I was sharing a room in the same flat".

When pressed as to why it was only [I's] name he remembered, he said:

> "Their names, because their names been mentioned. His name has been mentioned on the statement ...".

Passports

35. From the outset, the appellant denied that his passport had been used, at least to his knowledge, by Abu Doha or anyone else. The Secretary of State has now withdrawn the allegation that the passport was used by Abu Doha and reliance upon the event as directly connecting the appellant to Abu Doha. The case which remains under this heading is whether the "loss" of three passports, which the appellant admits, gives rise to suspicion that he has used his passport for extremist activities and/or permitted his passports to be used by others for extremist activities. We are bound to say that it seems remarkable that someone in the appellant's position, namely a non-British national resident here, albeit a French national with an ID card, should have lost three passports and should have chosen not to obtain a current replacement. Nor has his evidence about the precise circumstances impressed us. He told the French authorities that he lost his second passport in the street, but has insisted to us that, in truth, it was stolen from his jacket whilst he was at the mosque. He admitted that he knew there had been thefts from the mosques, but nevertheless he had left his jacket with the passport in the pocket. We do not find his evidence in connection with his loss of passports credible. We are highly suspicious of this part of the case.

36. He maintained the replacement was left at his mother's home in France. Even accepting such to have occurred, we cannot believe that he would not have taken steps to collect it or have it sent to him. We are not impressed by his explanation that he was content to travel on his ID card.

37. We have to say that this unsatisfactory evidence, taken on its own, has not led us to conclude that it has been made out that the appellant used his passport for extremist activities or permitted his passport to be used by others for extremist activities. The full impact of his dishonesty in this regard will be assessed along with the other evidence in the open case. We shall also consider it in connection with the closed material. We will consider whether we are able to accept that his association with all those we have listed above is, as he has maintained, wholly innocent and, according to our conclusion, consider what impact that has on his unsatisfactory evidence in connection with his passports.

38. We turn to the balance of the evidence on association, principally, as it appeared from the witness statements.

Ghazi

39. As to Mohammed Ghazi, the appellant stated he was a friend of his. That he was not an "extremist so far as I am aware". He agreed that he had spent a lot of time with Mohammed Ghazi and that they were good friends doing normal things together, staying on occasions with each other and, for example, staying with him on one night when he was arrested at his home in November 2002. On that occasion the appellant stated:

> "I had had an argument with Elizabeth and wanted to cool down away from her. Mohammed Ghazi may well have been involved in fraud, although I don't know about it, but I am sure he is not involved in terrorist related activities. He is mild mannered and, as far as I am aware, does not hurt any one".

40. Under cross examination about being in Mohammed Ghazi's house in November 2002 when the latter was arrested and his residence thereafter, the appellant agreed that he had stayed at Mohammed Ghazi's flat, not simply for the one night, because of a row with his wife or girlfriend, but for a number of nights. Indeed, further, he accepted that in October 2004 he was using the address of Mohammed Ghazi as his own address, there being a letter in the material from Ikea dated 4th October 2004 to him at that address. He stated that he took Mohammed's room as his own room. We have to consider whether his unconvincing and evasive answers about where he lived and why he lived with numerous Algerian extremists can be reconciled with his assertion of innocent association and ignorance of their activities.

[Q]

41. The appellant stated that [Q] was a co-defendant with Mohammed Ghazi in the fraud trial which he faced. He used the same house as Mohammed Ghazi and that is how the appellant says he came to know him. They used to go out together, but did not discuss politics or religion.

Merguerba

42. The appellant admitted that he would recognise Merguerba if he saw him and that he may have spoken to him at the mosque, but only out of politeness as he does to all his fellow Muslim brothers, but he denies he is an associate of Mohammed Merguerba.

Kadre

43. The appellant stated that he believed Kadre was in prison. He used to see him at the mosque, at a cafe and they may have even watched football together. He would consider him to be a long-standing friend who he had known even before he became a practising Muslim, but he did not remember discussing politics or religion with him or hear him express any extremist views.

44. The appellant was asked "Are you still in contact with Mr Kadre?"

> MK: "Yes, he contacted me at home".

Q. "How often are you in contact with him?"

A. "If he comes down to the mosque where I pray. If not, I don't have contact with him. I don't have his home number".

Q. "You don't mention that in your statement either."

A. "I wasn't asked that".

[A]

45. The appellant stated that, prior to meeting him on the same wing at Woodhill Prison, he did not know him, but this account changed. He admitted to the Commission that since being on bail, he had been in contact with him (see paragraph 27).

[P]

46. As to [P], the appellant stated that he had seen him at the mosque and in Finsbury Park, but he did not consider him a friend or associate but, because he is disabled, everybody knows him and tries to help him. The appellant said he knew very little about him. As can be seen from paragraph 28 above, this account changed.

47. As to [B], [K] and [G], the appellant stated that:

"they might be people I would recognise if I saw them in person. They might attend the mosque or have been in local cafes where other Algerians go. However, they are not associates or friends of mine".

Kadouri

48. As to this, the appellant stated that he finds the statement to the effect that Karim Kadouri is an extremist, rather bizarre.

"As far as I am aware, Karim Kadouri is not under any control order, or facing any particular legal proceedings or openly accused of being a terrorist".

This was not the only occasion in the course of the hearing when he demonstrated having detailed knowledge of the legal status of extremists. When counsel and solicitors for the Secretary of State were unsure whether [S] had been removed from the UK, the appellant confidently volunteered that he had been removed to France. His information proved to be correct.

He stated "Kadouri is a person known to me for a long time and I have spent time with him in the past. He has had mental health problems and I don't think he is very well", but,

as far as he was aware, he does not hold extremist views.

Breach of Bail Conditions

49. On the basis of the evidence considered by the Commission in Closed session, we concluded that the appellant had breached his bail conditions by going outside the area to which the order restricts him and by pre-arranging meetings. In giving judgment on that issue, we observed:

> "It has to be said that in the course of the evidence he gave in the substantive appeal, he was not a witness who indicated that he was prepared to say anything more than that which he was obliged to say. Indeed, when asked questions by Mr Wilken to volunteer information, his demeanour was confrontational. In the bail hearing, his demeanour was a little different."

50. Although we have concluded he deliberately breached his bail conditions and in the course thereof maintained contact with extremists, we consider we should ask ourselves whether, putting aside that conclusion, we can accept the explanation which has been pressed upon us for the extent and breadth of his association with the persons named by the Secretary of State.

51. Abu Doha is, as we have already recorded, alleged to be a senior Islamic extremist. The appellant's pleas of ignorance about anything in connection with Abu Doha are disingenuous. As it was thought to suit him and in an attempt to provide an explanation for any use to which his passport might have been put, he exhibited a column from Time magazine for February 2002 with this explanation:

> "My wife has found a Time magazine outside which mentions that Abu Doha uses the name [K], and I think this is what may have caused the confusion".

52. The article is to the following effect:

> "LOGISTICS
>
> Uncovering the London Link
>
> Abu Doha, who also goes by the names of Amar Makhlulif, Rachid Boukhalfa and Rachid [K], is suspected of having been one of Ouassini Cherifi's key London contacts. An Algerian, he came to Britain in 1999 after allegedly being involved with an al-Qaeda training camp in Afghanistan. Doha is suspected of being the mastermind behind the foiled millennium bomb attack on Los Angeles airport on Dec. 31, 1999.
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> Arrested at London's Heathrow Airport last February, he is in custody fighting extradition to the U.S., where he was indicted in August for conspiracy to commit terrorist acts and providing money, safe houses and other material support to terrorists. He is alleged to have been the handler of fellow Algerian Ahmed Ressam, an operative living in Montreal who was arrested in December 1999 while trying to cross the U.S.-Canadian border in a rental car filled with homemade explosives; in April, Ressam was convicted of plotting to blow

up lax on New Year's Eve. Italian antiterrorist police believe Abu Doha was also a key al-Qaeda link to terrorist cells in Europe involved in planning attacks like the thwarted attempt on the Cathedral and Christmas market in Strasbourg in 2000.

Phone calls intercepted by Italian police indicate that Abu Doha was in touch from London with an al-Qaeda cell in Milan. European investigators believe the reach and influence of Doha's suspected planning, fund raising and support activities were formidable."

53. [I], [K] and [Q] are detained pending deportation. [P], having been detained, has been released on bail and [B] has been granted bail in principle. [G] and [A] are bailed under strict conditions pending deportation. [S] has been extradited after court proceedings. We are very conscious of the limits which must be set on drawing conclusions from mere association, but we have found the appellant's restrictive approach to divulging information about these people wholly unconvincing. We make no greater assumption in respect of those whose cases are to be heard than that some grounds can be taken to exist for the Secretary of State's conclusion that they present a threat to national security as is evidenced by the acceptance that the Open Generic Determination of SIAC in connection with the Abu Doha group has continuing validity (see paragraph 5 above). The appellant has provided the article which itself points to some basis for this conclusion in respect of Abu Doha. His explanation that he meets people at the mosque, talks to them, sometimes without knowing their names and really knows nothing about them is incredible. He attended the High Court proceedings in connection with [S's] extradition. We do not accept that in the course of the frequent conversations he now admits having with [A] and [P], for example, he learned nothing and simply spoke socially. The relationships are unexplained by him because he was determined not to admit what underlined their regular contact.

54. When the appellant was arrested in November 2002 he was asked about many telephone numbers and names referred to on pieces of paper found in his car. By way of example "YACIN 07990614839",

Q. "Whose Yacin?"

A. "Probably an old friend".

Q. "Do you recall him as being an old friend?"

A. "Old friend, yes".

Q. "He is?"

A. "Mmm"

Q. "And where did you know Yacin from?"

A. "From London, I mean, know him from the, even if I do know the name I may not know the real person because you can find plenty Yacin, plenty in your ...".

Another example:

Q. "Do you know a Rachid?"

A. "Rachid, I know plenty Rachid, yes!"

Yet another:

Q. "Toufik?"

A. "Mmm".

Q. "... is that an unusual name, sir?"

A. "No, it's, you can find many Toufik in everywhere, there's many people Toufik, yes".

55. The police had found a passport photograph:

Q. "Who's that, sir?"

A. "I think an old friend, he was friend".

Q. "You think it's an old friend..."

A. "Mmm".

Q. "And do you remember his name?"

A. "No".

Q. "You don't?"

A. "No."

Q. "Would you recall why would have a passport photo of ..?".

A. "It's not a friend of mine, it not a friend of mine. The pictures that was found under the unit was a long time ago, its pictures probably lost and I even remember ...".

Q. "Do you, do you think you've seen that photograph before?"

A. "No. The person, I never see the person before".

Q. "Oh, you've never seen the person before?"

A. "No".

Q. "So you are not sure if it even belongs to you?"

A. "No".

Q. "Is that what you are saying?"

A. "Yes."

56. Having considered all the open material, including, in particular, the note of interviews in September 2001, the transcripts of interviews in November 2002, his oral and written evidence before the Commission, we have reached the firm conclusion that the appellant's association with the persons listed by the Secretary of State has not been innocent. The appellant has had frequent opportunities to give a credible explanation for his association and contact with various persons who are suspected Muslim extremists. He has deliberately avoided giving an explanation. His attempts to suggest he does not know them or, if he does, not their full name, or, if he does know them, that he knows nothing about them or could be mistaken, are blatant evasion.

57. In truth, the Commission is substantially in the dark as to what the appellant has done with his time within the United Kingdom for about ten years or more. He has not worked for any sustained period of time. Nevertheless he has owned a car, a scooter, has travelled to France, maintained a flat or residence in addition to spending time at ..., where he could have lived full-time. His whereabouts and activities, when they have become apparent, call into question his real motives and activities. We note, in particular, his contact with [S] and being at Ghazi's flat when the latter was arrested, his continued use of the flat at Worcester Road until 2004 and his use of Flat 9 Wessex House, where he admitted many Algerians resided from time to time. His admission to knowing [I] and no one else who stayed there is wholly unconvincing. We reject his account and explanation (and that of his wife) for their association with the [Ss]. In our judgment, the appellant was closely connected to [S], a person found by the Commission to be a threat to national security and a person who the appellant knew was an alleged extremist. The appellant attended the High Court when the case was determined.

58. Before the commencement of final submissions the appellant, through counsel, requested that he be allowed to make a statement. Exceptionally, the Commission permitted him to do so. He stated:

> "I just want to say to the Commission that I've done my best to co-operate with my case and I believe I tell the truth. I've told the truth to the Commission today and last time I was here. I maybe no understand the questions from the ... Secretary of State. Maybe I not understand the questions. In the circumstances, if you want to ask those questions now I am prepared to answer them".
>
> The Commission observed to Ms Rogers that he appeared to be offering to give further evidence. She stated that she did "... not believe that would be fruitful now".

59. We have no doubt that he understood all the questions. He impressed us as a man of shrewd intelligence,

but headstrong and positively keen to take on the authorities, so long as it was on his own terms. He had decided to adopt a particular line of response to questions about his associates, but the formula strained our credulity. It comprised seeking refuge from the allegations relating to his association with extremists behind a blanket explanation that the associations derived from the generosity which he wished to show to Muslim brothers. The explanation might have served for one or two associates, but it was too thin to cover twelve or more and, as we have remarked, was unevenly shown, for example, to the residents of Flat 9 Wessex House. Further, despite his attention to them, he was left singularly uninformed about all the persons he had associated with. His attempt to establish the existence of a normal family life at ... involving his "full-time residence" there was put into question by the evidence of his wife that he maintained a residence elsewhere throughout the relevant period of time. The evidence that his separate residence involved Ghazi's flat and a period at Flat 9 Wessex House (a house shared by Algerian extremists) only served to increase the likelihood that he has an adherent to groups of extremists. His attempt to limit the damage this evidence presented, for example, by suggesting that his presence at 10 Worcester Avenue in November 2002 was only for one night proved impossible to sustain once he exhibited the letter from Ikea which placed him there in 2004.

60. He was still using 10 Worcester Avenue as his address in October 2004. This was a property used by [Q] as well as Ghazi. His explanation in cross examination for having it as his address in 2004 was "After Mohammed [Ghazi] was arrested, I took his room as my own room". Despite having admitted in a written statement that he knew [Q] and went out with him because they shared 10 Worcester Avenue (see paragraph 41 above), when cross examined, he answered as follows:

    Q. "When you stayed at Worcester Road, was [Q] there in 2002?"

    A. "No, he was in prison I think".

    Q. "So you did not see him when you were staying there?"

    A. "No. I might saw him, I might not have saw him".

    Q. "Can you remember?"

    A. "No".

    Q. "You don't remember how often you saw him?"

    A. "I don't remember how often I saw him".

    Q. And you don't remember how often when you were in town with Mohammed Ghazi how often Mr [Q] came along?"

    A. I don't remember those things".

61. At most times the appellant resolutely resisted giving a clear spontaneous response to questions for

which his formula was inadequate. From time to time when he obviously felt he had to say something he would immediately seek to qualify it, sometimes even contradicting the answer he had just given. He never elaborated. He never explained why he needed to have a room or accommodation at various houses where, as it now transpires, suspected extremists also stayed.

62. Where the staged general response was not sufficient he could also employ aggression. When pressed about his knowledge and connection with [S] he threatened:

> "If this continue then I'm going stop asking or answering any of the questions because you keep going round in circles ... I'll give my statement to you. The thing is there and, as I say to the court today, I am not hiding anything. I said what I said in the statement. There is people which is I know from a long time. I'm not going deny them. I'm not going to say I don't know them. If other people knows me or maybe I've been spied by the woman to ... I spoke to them in the street or maybe I had a coffee with people and the coffee that's a different issue. But to go in circle asking me about names and if I know them, try to bring it to the court like I'm a big person and that's - I'm not going to answer any of these questions. If you could move on please".

63. His volatility at times made him aggressive; at other times, uninformative, non committal and then seemingly co-operative. Importantly, as can be seen from the statement we have set out above, he was acutely aware that he had to persuade the Commission that he was telling the truth and was aware that he had not answered questions: "... now I am prepared to answer them".

Submissions on behalf of the appellant

64. Ms Rogers submitted that:

> (1) on the open case there was no evidence that the appellant was a present threat to the interest of national security;
>
> (2) if the determination of present threat was made wholly by reference to the closed material that would call into question whether the appellant had had a right to defend himself;
>
> (3) the appellant had attempted to engage with the specific allegations which had been made against him and should be given credit for that attempt;
>
> (4) his demeanour was to be explained by his frustration with the system which meant that he did not know the basis for the allegations which were being made against him;
>
> (5) measures cannot be adopted which are partial in that they are more stringent and restrictive of nationals of other Member States than they are on nationals of the Member State applying the measures; and
>
> (6) the deportation order must be proportionate and, to meet that requirement, the

appellant should be prosecuted or put under a control order in the United Kingdom and not deported to France.

65. We reject the submissions at (1) - (4) of the previous paragraph. The open material established that, throughout the period from November 1998 until his arrest in September 2004 and, on his own admission thereafter whilst on bail, the appellant had been in continuous association with a number of Muslim extremists.

66. It is true that the open case against the appellant contains a number of allegations which, whilst specific enough in their terms, are based on the closed material. We acknowledge that the process of withholding material from an appellant and his lawyer is likely to cause frustration and a perception that unfairness is occurring, but an appellant is not prevented from engaging with the case which is presented against him and from giving a full and honest account of his own conduct. We have taken some examples from his evidence in order to avoid repeating the transcript. The appellant's engagement was obviously on his own terms and the Commission reject the contention that he set out to be candid and to tell the truth.

67. We have concluded that it has been established on the open material:

(1) that in the absence of a satisfactory explanation as to why the appellant associated with [S] from 1998 and with other extremists thereafter, until his arrest in September 2004, and, on his own admission, thereafter whilst on bail, the only likely explanation is that he is an adherent to the extreme Muslim ideology and a committed associate of suspected terrorists;

(2) his association with [S] "a senior and trusted figure in the Abu Doha group" necessarily gives rise to a real risk that he was a member of that group and has, since its break up, been a member or associate of the group in its subsequent formation(s);

(3) as a result, we have concluded that there is a real risk that his passports have been used by extremists for the purposes of travel and the furtherance of international terrorism. We accept the effect of the evidence that a person with a valid passport who associates with extremists and suspected terrorists can provide valuable assistance to the furtherance of terrorist activities;

(4) we have noted that the appellant's association and commitment has extended over a number of years. His energetic involvement with extremists has continued in the face of knowledge by him that he was of interest to the authorities. He was questioned twice in 2001, the property at 2 Drapers Road was searched in September 2002, he was arrested and questioned in November 2002 and was detained in September 2004 and then, although on strict bail conditions, he was in contact with extremists. For the purpose of our present assessment we put out of our mind that, on the basis of the closed material, we have concluded he breached the conditions of his bail and reach our present assessment paying regard to the one admitted occasion of breach (the first). It is his admitted conduct on bail which bears out his headstrong determination to do things on his own terms. He breached the bail condition, as he admitted, requiring him to report within days of his release. His response to that, as we have pointed out in our judgment on withdrawing bail, gives cause

for alarm. We have concluded that he has been determined to be seen to be challenging the authorities in order to demonstrate his credentials among his associates. We find this a troubling aspect, particularly when assessing the present risk he presents to national security interests. We believe he has demonstrated a sufficiently strong commitment to extremist Muslim causes to give rise to a real risk he is potentially dangerous.

68. There is nothing in the closed material which undermines the Secretary of State's case as we have concluded it to have been established on the open material, nor anything which supports the appellant's case. However, we should clarify the respects in which the Secretary of State's case, as advanced by him, has not been established on the open material. We shall do it by reference to paragraphs 3 and 4 of this judgment.

69. As to the allegation in paragraph 3(1) above

We have not been able to conclude on the open material that he "was a prominent member of the Abu Doha group". For the reasons we have given above, we are satisfied that, on the open material alone, there are substantial grounds for believing he was a member of the group as originally formed and as subsequently reconstituted. We have not been able to conclude what precise role he played nor precisely what activities he engaged in, but we have concluded that there are substantial grounds for believing he used or allowed his passport to be used for activities connected with the "group", that he had links with and associates with active extremists and that it can be inferred from his long residence in the United Kingdom that he acted as a link man and supporter for extremists in the United Kingdom. There is no evidence in the open material which establishes that he travelled, using his passport, for terrorist activities. However, according to our approach in paragraph 37 above, we have considered the impact of our conclusions on the character of his association with extremists along with our conclusions on his evidence in this regard. We are satisfied that one of the reasons why he achieved membership of and sustained such a long association with a group of extremists was the use to which he could put his passport.

As to 3(2)

Our conclusion in 3(1) applies.

As to 3(3)

The open material has not enabled us to reach this conclusion.

70. As to the allegations in sub-paragraphs 4(1) - 4(5), the open material has not enabled us to reach conclusions on these paragraphs, save to the extent that our conclusions set out in paragraph 69 above bear upon part of the content of these allegations. Save for his association with Ghazi and [Q], there has been no evidence to connect him with fraudulent fund raising. Use of his passport by others with his consent would have been fraudulent.

71. As to 4(6): see conclusion above in connection with 3(1).

72. As to 4(7) and (8)

> Save that we have not been able to conclude how close or trusted an associate he was of Abu Doha, we have concluded that there are substantial grounds for believing these allegations to be true.

EU LAW

73. The appellant is an EU national. Regulation 23(3)(b) of the Immigration European Economic Area Regulations entitles the Secretary of State to remove the appellant on the basis of public policy, public security and public health. The Regulations track EU Directive, 64/221/EEC on the Coordination of Special Measures Concerning the Movement and Residence of Foreign Nationals.

74. Ms Rogers did not submit that the power to deport an EU foreign national on grounds of public policy, public security and public health did not exist. She emphasised that under European law a specific appraisal of the interests to be protected had to be carried out, in particular, with a view to identifying sufficient justification for derogating from the fundamental principle of freedom of movement. She drew attention to R v Bouchereau Case C.30/77 [1977] ECR 1999, in particular paragraph 35:

> "In so far as it may justify certain restrictions on the free movement of persons subject to Community law, recourse by a national authority to the concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society."

75. Next she drew attention to Adoui v Belgian State and City of Liege and Cornuaille v Belgian State Case C-115 and 116/81 [1982] ECR 1665. The nationals involved were French believed to be engaged in prostitution. The subject matter touched on the scale of values which the State had imposed upon the activity of prostitution through repressive measures and it brought into question whether Belgium applied a uniform scale. At paragraph 7 the court stated:

> "the reservations contained in Articles 48 and 56 of the EEC Treaty permit Member States to adopt, with respect to the nationals of other Member States and on the grounds specified in those provisions, in particular grounds justified by the requirements of public policy, measures which they cannot apply to their own nationals, inasmuch as they have no authority to expel the latter from the national territory or to deny them access thereto. Although that difference of treatment, which bears upon the nature of the measures available, must therefore be allowed, it must nevertheless be stressed that, in a Member State, the authority empowered to adopt such measures must not base the exercise of its powers on assessments of certain conduct which would have the effect of applying an arbitrary distinction to the detriment of nationals of other Member States."

Ministre de L'Interieur v Olazabal Case C-100/01 25th April 2002

76. Ms Rogers placed reliance upon the Opinion of the Advocate General in the above case. The issue was whether Mr Olazabal, who had been convicted in France of an offence in connection with terrorism and upon release moved to the Pyrenees-Atlantiques region close to Basque Country, could, by decree, be prohibited from residing in a number of French regions. At paragraph 37 of the Opinion it is observed:

> "On the basis of Adoui and Cornuaille, which it considers overruled the previous judgment in Van Duyn [Van Duyn v Home Office [1974] ECR 1337], the Commission therefore takes the view that a Member State may not impose partial prohibitions on residence on nationals of other Member States if the national rules do not provide for the adoption of restrictive measures or other concrete measures to combat the conduct in issue in respect of their own nationals in the same situation."

77. In the Commission's judgment it is clear that, although a development in law may have occurred in relation to conduct, it is still clearly established that in relation to the nature of measures which may be adopted under international law a state can take a measure which cannot be adopted in respect of its own nationals, namely to deport, without the Member State being in breach of European law (see paragraph 42 of the Opinion).

Proportionality

78. In the course of an argument which clearly echoed the judgment of the House of Lords in A v Secretary of State for the Home Department [2005] 1 WLR 87, Ms Rogers submitted that the deportation of the appellant had to be appropriate for securing the attainment of the objective being pursued. She pointed out that if the appellant is deported to France he could be at liberty and the question arises as to whether the objective of protecting national security can be said to be attained.

79. The Commission has considered the speeches in the case of A v Secretary of State for the Home Department with great care. It notes that Lord Bingham concluded (paragraph 44) that SIAC had erred in law in concluding that:

> "... there is an advantage to the UK in the removal of a potential terrorist from circulation in the UK because he cannot operate actively in the UK whilst he is either not in the country or not at liberty;
>
> (2) that the removal of potential terrorists from their UK communities disrupts the organisation of terrorist activities."
>
> In particular, Lord Bingham reasoned:
>
> "The first reason does not explain why the measures are directed only to foreign nationals. The second reason no doubt has some validity, but is subject to the same weakness. The third reason does not explain why a terrorist, if a serious threat to the UK, ceases to be so on the French side of the English Channel or elsewhere".

80. Lord Hope (paragraph 125) referred to the evidence on the topic from the Secretary of State which:

> "... acknowledged that a person removed to another country could re-engage in terrorist activity and might continue to be involved in acts of terrorism or the organisation of such acts from the country to which he was removed and that those acts might be directed against the United Kingdom. But he said [he, being the witness MrWhalley] that there was evidence to suggest, and that the Security Service so advised, that the steps which had been taken in the United Kingdom since 11 September 2001, including the measures under challenge, had had a significant effect in making it more difficult to operate here".
>
> Later at paragraph 133 he observed in connection with proportionality:
>
> "There is also the point that foreign nationals who present the same threat are permitted, if they can safely do so, to leave the country at any time".

81. The Commission has accorded due weight to such statements and has considered whether they require it to conclude that the deportation of the appellant to France will not sufficiently attain the objective of protecting national security. The Commission considers that its task is to decide the issue on the basis of the evidence and material available on this appeal. Further, it is not clear to us that their Lordships, despite the apparent breadth of their conclusions, had in mind that in individual cases where the UK has decided to deport a suspected terrorist, the decision was likely to be disproportionate because it could not be shown objectively as likely to attain the objective of protecting national security. In our judgment, the issue of proportionality must be decided on the facts of individual cases. We note that their Lordships were concerned with a factually defined emergency presented by a group of non-nationals and an issue of discrimination based upon evidence that a number of nationals presented the same risk. We reject the suggestion that the right to deport non-nationals who are suspected of terrorism has been circumscribed by their Lordships on the evidence in that case.

82. On the contrary, on the basis of the material before the Commission in this case and in the generic judgments of SIAC and, in particular, in connection with the Abu Doha group, the Commission considers that it would be absurd to conclude that the group has not been significantly undermined by measures taken against members of the group. For example, we accept that the extradition of [S] to France significantly reduced the threat to national security from the Abu Doha group not just in the United Kingdom, but in Europe and probably elsewhere. Because of the character of the material before their Lordships they may have assumed that terrorists, when acting in a group, can readily organise the group's activities even when its members are located in different countries. According to material before the Commission, the conclusion is not supportable.

83. A need to travel gives rise to the need for documents to effect the travel and it is extensive. These needs represent impediments to the ease with which an organisation can function. The occasions of travel give rise to risks of detection and provide opportunities for the Security Service to investigate, monitor activity and, where possible, secure arrests. It was [S's] travel on false documents which led to his arrests. Ghazi and [Q] were arrested in connection with credit card frauds committed in order to raise funds. The Commission is satisfied that far greater cohesion and effectiveness will be available to a group if members can associate closely together in the same country.

84. Terrorists groups operate having their own level of security. Trust among members of a group is a column of strength for the group's activities and trust is built up over a period of time, not instantaneously. The removal of a member weakens the column.

85. In our judgment it is false to assume that the concept of proportionality sets a threshold for the effectiveness of the measure which is to be determined, not by reference to the individual against whom the measure is taken, but according to a wider objective involving the conduct of many others involved in terrorism. Or, more than that, that a decision to deport has to be shown to be well nigh a final "deathblow" to a particular group or causes or terrorism generally. In our judgment the removal of individuals can be seen to have a significant effect in reducing a threat to national security which is presented by others who may remain. We have firmly concluded that in order for measures taken against terrorism to be effective and proportionate, they do not have to have to carry an expectation that a threat will be substantially eliminated. In our judgment, it is proportionate to seek to disrupt present terrorist activity and thereby reduce a particular source of threat to national security and we are unpersuaded generally, and certainly so far as this appellant is concerned, that removal to France will be ineffective to disrupt his activities and those of his associates.

86. We are satisfied that the removal of the appellant to France will effectively disrupt the pursuits of terrorism which have benefited from years of his support and association. Since we have concluded that there are substantial grounds for believing that he is driven by a commitment to extremism, his continued presence here will be a future threat. His presence and resilience, whilst here, have given him a unique opportunity to become an established contact for innumerable associates and to have credentials as a credible and reliable supporter of extremism.

87. Ms Rogers submitted that, on the assumption that the Secretary of State's case against the appellant is correct, since at least two associates, including [S], have been deported to France, it can be seen that to deport him will merely facilitate further association. We disagree. There is no ground for assuming that the appellant will be able to successfully re-establish himself in France under different conditions. It will be a matter for the French authorities, informed as they will be of the reason for his deportation, to consider what measures are appropriate to restrain or monitor his activities. We note that [S] was the subject of an International Arrest Warrant in France. We have no information as to the current whereabouts of [S].

88. Next she submitted that comity required that he should be prosecuted here before being deported to France. In our judgment comity gives rise to no such requirement. The United Kingdom's right to deport is not circumscribed by a prior need to prosecute. Nor does the Framework Decision of 13th June 2002 on combating terrorism (2002/475/JNA), as Ms Rogers suggested, support such a conclusion. True, it requires measures to be put in place, but, if in place, as they are in the United Kingdom, there is no prior requirement which arises out of their introduction to prosecute before deporting an EU national. We reject the submission that one can spell out of the Framework Decision a new feature or factor affecting proportionality in EU deportation cases. In this regard, MsRogers submitted that there was sufficient uncertainty to merit the Commission making a reference to the ECJ.

89. The Commission has not been addressed on the considerations which may have been taken into account and which have led to the appellant not being prosecuted. The prohibition on using Security Service

information is well known and in cases such as this, will be relevant. There is no evidence that any agreement has been reached with the authorities in France about what should happen to him when he is deported. Further, it is obvious that he can only be deported to France if the authorities there are prepared to accept him. Although we have no information so far as the appellant is concerned, there may be telling reasons why comity would be met by deportation. European law has not, in our judgment, advanced to a position in terrorist cases, where an absence of a prosecution can be regarded as a breach of European law. The issue which Ms Rogers has raised gives rise to no need for a reference to the ECJ. The answer is clear and the application of community law "leaves no scope for any reasonable doubt" ex parte Else [1993] QB 534. Further, it being a question of proportionality, it is for the Member State to determine.

Control Order

90. It was submitted that the interests of national security could be met by making the appellant subject to a control order. We unhesitatingly reject the submission. As the Commission has previously observed, control orders, like the bail conditions imposed in this case, are incapable of restricting a determined extremist from associating with other extremists. Control orders constructed to bring about the equivalent of house arrest pose legal considerations of some complexity which at some stage and in other circumstances may have to be resolved.

Article 8 ECHR

91. Article 8 issues have been raised by the evidence, but Miss Rogers did not develop any detailed argument on the matter. In our judgment the balance to be struck between protecting national security by deportation and the family life of the appellant falls firmly in favour of such interference being justified. The removal of the family to France, where the appellant's mother resides, cannot be regarded as significantly disrupting the life of the appellant. No impediment to his wife and her daughter moving to France has been made out.

Closed Judgment

92. Although we have concluded that on the open material the Secretary of State has established a factual basis that deportation would be in the interests of national security, we have not, on the open material, been able to reach our conclusions in connection with all the allegations he advanced. Rule 47(4) of the Rules requires us to serve a Closed Judgment if this Open Judgment does not contain the full reasons for our decision. Having regard to the significance and gravity of the allegations which depend upon the closed material and the extent of the argument advanced in connection with the material, we have concluded that there is a need for a Closed Judgment on the outstanding allegations made by the Secretary of State.

93. Having considered the open and closed material, we conclude as follows on the allegations. We repeat our conclusions on paragraphs 3(1) and 3(2) (paragraph 69 above). Paragraph 3(3) has been established. A factual basis has been established for all the allegations in paragraphs 4(1) - 4(4) above. As to paragraph 4(5), we have not concluded that it has been established that he engaged in fraudulent activity other than in connection with the use of his passport. Paragraphs 4(6) - 4(8) inclusive have been established.