

SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,
Brems Buildings
London
EC4A 1WR

Monday, 20th March 2006

BEFORE:

THE HONOURABLE MR JUSTICE NEWMAN

IN THE MATTER OF AN APPLICATION FOR BAIL

BETWEEN:

DD
Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondents

MR D FRIEDMAN (instructed by The Rights Partnership) and Ms S HARRISON (instructed by Messrs Tyndalwoods)

MR T EICKE (instructed by Treasury Solicitor) appeared on behalf of the Respondents.

MR A NICOL (instructed by Treasury Solicitor) appeared as Special Advocate.

DECISION

MR JUSTICE NEWMAN:

1. The Commission has seen and read the statement of Mr Frederick Abrahams put in by the appellant. In particular, it has paid regard to paragraph 4 of that statement, the contents of which have not been contested by the Secretary of State.
2. The Commission has also considered with care paragraph 4 of the second witness statement of Edward Anthony Oakden. In particular, Mr Oakden speaks of the United Kingdom and Libya, by their Governments, having reached, in principle, agreement on monitoring of assurances. He refers to officials who visited Libya at the beginning of February. It will be remembered that this hearing was adjourned from a hearing on 1st February. He speaks, therefore, of a visit at the beginning of February to discuss specimen terms of reference with both the Libyan Government and those who will be involved in monitoring.
3. The Commission has carefully considered the content of that paragraph and proceeds today upon the basis that there will be more than one body in the make-up of the monitoring body. It will, as the Commission understands, probably be more appropriately described as a monitoring group.
4. This is an adjourned bail application. The Commission adjourned the application on 1st February 2006 for the following reason (see transcript of the hearing page 61, between lines 33 to 39, where it is stated that the Commission is not prepared to give a reasoned judgment as to why it is suggesting that the matter can be adjourned for six weeks, save that the Commission is prepared to say that the underlying reason for the proposal is that the Secretary of State should have that period of time to meet one of your submissions, which the Commission regarded as a relevant factor in its decision on bail). The relevant factor was confirmed as one which the Commission had in mind at page 58, lines 9 to 13, "The Commission has concluded that the Secretary of State's position in relation to the safety to return issues ought to be clarified as soon as it possibly can and it is a matter to which attention should be given".
5. The objections to bail in this case are both on grounds of risk of absconding and a risk to national security, the former, nevertheless, represents the principal objection. It is said that on the material which is before the Commission it is clear that a substantial risk that this appellant will abscond has been made out and it is submitted, too, that as a result he will be a continuing risk to national and international security from whichever country to which he manages to make good his escape.
6. It is submitted that bail conditions are not capable of sufficiently reducing the risk of him absconding.
7. We have heard submissions on 1st February as to the merits of the objections to bail and, of course, the merits in connection with the grant of bail and submissions on the particular facts of this case. Having regard to the time constraints upon which the Commission is presently operating, it is not proposed to deal with those now but they will be dealt with in a reserve judgment.

8. We should state now for reasons of fairness, as far as we are able, so that everybody knows how we have proceeded today.

1. We regard the Secretary of State's case in the appeal, which has been advanced against the deportation order, as a case in which he has good prospects of success, save for the aspect of safety on return about which we wish to say something more specific, not because we are of the view that he does not have good prospects of success in that regard, but because it requires special consideration at this stage because of the way in which the argument has been very helpfully advanced by Mr Friedman, supported by Mr Nicol, the Special Advocate, for which argument has identified how important it is in cases such as this that the Commission's consideration extend to all aspects of the appellate process in relation to these matters.

2. On the material we have seen we are satisfied that there is a substantial risk of his absconding. We are satisfied that, having regard to the risk on return so far as he personally is concerned, by that phrase we do not include risk of human rights abuses, but the risk on return, that he may face some form of proceeding or some form of action by the authorities. We consider that the appellant is likely to view the option of absconding in order to avoid his return to Libya as a pressing need.

9. We will say briefly some words about safety on return. On 1st February Mr Eicke, counsel for the Secretary of State, was without specific instructions on the detail of the arrangements which were then the matter of ongoing negotiation and consideration with the Libyan authorities and entities. Mr Friedman produced material which strongly suggested that the monitoring group for ensuring compliance with the memorandum of understanding and the personal assurances which it was intended to obtain was to be the body which, for convenience, we will call the Gaddafi Foundation. Today he has repeated the submission he then made that that being the position the Secretary of State's case in respect of safety on return was doomed to failure and, it being doomed to failure, there should be bail.

10. Had it been the Commission's conclusion today that the Secretary of State's case on safety on return was doomed to failure, obviously very significant issues would have arisen in relation to the continued detention of this appellant. As it happens we are not satisfied on the material that we have now been provided with that the safety on return issue is doomed to failure. We are of the view that plainly there are issues which will arise and will have to be determined by the Commission, but, on the facts as we have heard them, we do not believe that it would be proper for the Commission to, in effect, take what would be a summary view of the chances of the case on safety on return being made out by the Secretary of State in the context of a hearing such as that which we have had. We are of the view that it is a matter that it is proper, appropriate and necessary for the Commission to consider in the context of the facts in the appeal.

11. We are of the view that the matter is one for the Commission on the appeal, because the Commission now has before it material shedding more light on the nature and character of the monitoring group, as

the Commission would refer to it, which it is hoped will be finalised by Easter, namely within the next three to four weeks.

12. The reason why the Commission, therefore, has concluded that the matter is still open and open for the Commission on the appeal can be briefly stated, therefore. We have seen the statement of Mr Frederick Abrahams put in by the appellant, and in particular paragraph 4 of that statement, the contents of which have not been contested by the Secretary of State. In addition, the Commission has considered carefully the terms of paragraph 4 of the second statement of Edward Anthony Oakden, where he refers to a visit to Libya at the beginning of February, therefore a visit overlapping and proceeding after the hearing on 1st February to which we have already referred, which was a visit by officials for the purpose of furthering the agreement, in principle, on the monitoring of assurances which had already been reached. The statement refers to the discussion of specimen terms of reference with both the Libyan Government and those who will be involved in monitoring. From the terms of that paragraph of the statement, this Commission proceeds upon the basis that there will be more than one body in the make-up of the monitoring body itself and it is for that reason that the Commission has suggested that it can be more appropriately described as a monitoring group.

13. For those reasons which deal with the essential arguments that have been advanced today, and for the reasons which will descend to some more of the particular facts in a judgment subsequently to be given, this application for bail is refused.
