

Ref TRS/159/06

SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,  
Breems Buildings  
London  
EC4A 1WR

Monday, 10<sup>th</sup> April 2006

BEFORE:

THE HONOURABLE MR JUSTICE OUSELEY  
MR A JORDAN  
MR E J MITCHELL

SC/51/2006

IN THE MATTER OF A BAIL APPLICATION

BETWEEN:

OO  
Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT  
Respondents

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MR DANNY FRIEDMAN (instructed by Messrs Birnberg Peirce) appeared on behalf of the Appellant.  
MR LISA GIOVANNETTI (instructed by the Treasury Solicitor) appeared for the Secretary of State.  
MS J FARBY (instructed by the Treasury Solicitor) appeared as Special Advocate

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DECISION

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## MR JUSTICE OUSELEY:

1. The bail applicant is a Jordanian national who arrived in the UK in 1997, followed by his wife who is now a British citizen, as are their eight children, the youngest of whom, aged 16, 11 and 9, live at home.
2. The applicant was arrested on 26<sup>th</sup> January 2006, the Secretary of State giving Notice of Intention to Deport him to Jordan. He was taken to Belmarsh.
3. The issue before the Commission on the bail application is whether there is a real risk that the applicant would abscond, focusing in particular on the period pending the resolution of his appeal, and, secondly, whether he absconded or not, whether his presence outside detention would constitute a risk to national security which could not satisfactorily be controlled by bail conditions of whatever stringency.
4. A particular point relied on by the advocate was his health condition. It was agreed that he is a seriously ill man with a variety of conditions, including Type 2 diabetes which is insulin and diet controlled, he has had strokes and transient ischaemic accidents.
5. There were various incidents which, nonetheless, following reasonable recovery by 6<sup>th</sup> December 2005, left him independent in movement. But there appears to have been a significant deterioration before his arrest as a result of events in December 2005, although they were not dealt with by or reported to a doctor according to any evidence that we have.
6. As we see the medical evidence: first, the total picture is of an unsatisfactory diet and inadequate self-care or family care before the arrest, which may have affected his ability to cope with arrest and detention without the family comforts to which he had been used; secondly, he had an adjustment disorder, perhaps not surprisingly, on his arrest and detention; thirdly, his position is stabilised now and has been for some few weeks in terms of weight loss, acceptance of a wider and more appropriate dietary range, his acceptance of medication and the availability of occupational therapy and physiotherapy. There was no challenge to the conclusions of Dr Lobleby, who said in his statement that he would conclude that, although the applicant's situation has proved a challenge to deal with, his dedicated medical nursing and paramedical staff have coped well. His renal function is stable, his diabetes tolerably well controlled, especially now he has begun to comply fully with his treatment plan, and his activities of daily living are adequately cared for. It may not be ideal that he is kept in custody, but that is a judgment for the court. Apart from the obvious lack of input from his family, it is hard to see in what way his day-to-day care is substandard as compared to his previous setting in the family home and, in particular, Dr Lobleby can see no evidence that the care of his diabetes is less satisfactory than it had been in his previous situation.
7. Though we accept that he misses and would benefit from the personal sense of well-being that he derives from his family's devoted attention to him, to which he has become habituated, the medical

situation does not provide of itself a compelling reason for the grant of bail, although it is an important part of the background to the consideration of the application, in particular for a reason to which we will come in a moment.

8. However, we do not see the potential need for further kidney treatment, maybe in two years or so, as sufficient to alter that judgment.

### **Abscond risk**

9. We accept that at present it is unlikely, contrary to what the Secretary of State submits, that the applicant would abscond before the determination of his appeal, although the impact, if Othman were to lose his appeal, is unpredictable on the way in which that risk would be assessed.

10. With regard to his health needs, the extent of provision for him by the family and the family ties themselves would encourage him to stay, although he does not always follow what are objectively his own best medical interests. It is obvious that his article 8 case would be harmed were he to abscond, albeit that, if the national security case is as strong as the Secretary of State contends, the applicant's article 8 case may not weigh very heavily in the end.

11. But there is one further reason why, at least at present, the applicant would be unlikely to abscond and that is related to the national security factors. That is the extent to which he could, and in our judgment would, carry on his activities, hampered only to some extent by conditions imposed, but a long way from being effectively precluded from carrying on the activities relied on by the Secretary of State.

12. So far as the national security case is concerned, the closed case, if accepted, is very much stronger than appears in the open and remains so notwithstanding Ms Farby's careful submissions. Even the most stringent realistic bail conditions could not be close to being as effective as detention in controlling that risk, if the Secretary of State's case is accepted.

13. We recognise that, if the appeal succeeds, control order type conditions are all that would be available to the Secretary of State, but at present, and on the assumption that the Secretary of State's national security case can be largely made out and so deportation is a prospect and detention is lawful, it is right that that degree of risk to the national security, which his activities pose, should not be run. Accordingly, bail is refused.