

Appeal No: SC/12/2002

Date of Judgment: 29th October 2003

SPECIAL IMMIGRATION APPEALS COMMISSION

Before

The Honourable Mr Justice Collins

Mr C M G Ockelton

Mr J Daly

H

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 R Scannell, Ms P Whipple

Instructed by: Mr S Trueman, Treasury Solicitor

For the Respondent: Mr W Williams QC, Mr J Swift

Instructed by: Ms L Smith, Treasury Solicitor

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1. We have used the name in which H was certified, which is also the name in which he appeared before the Commission. It is not suggested that the name Rachid which was that on the false passport he was using to enter the United Kingdom in August 1993 was ever his true name.

2. The Appellant is Algerian, having been born in Western Algeria in November 1972. Like many (indeed, the majority) of Algerians he supported the FIS. In 1991, he left Algeria in order, he said, to involve himself in “desperately needed voluntary work” in Afghanistan. He had been swayed by an impressive speaker who visited the university at which he was studying to be a teacher and who asked in particular for doctors, nurses and teachers to come to help stabilise the country which had been ravaged by the war with Russia. He went and taught Arabic in a refugee camp run by Sayef, now one of the leaders of the Northern Alliance and hardly a supporter of Al Qa’eda, which was in any event unheard of then.

3. It is suggested that when in Afghanistan he worked for the Mujahaddin and was provided with weapons training by them and was indeed injured during an engagement between them and the Afghan Government. Reliance is placed upon what he said in his asylum interview. The Appellant, who gave evidence before us, told us that it was necessary for everyone to have some knowledge of at least how to work a Kalashnikov for self protection. He had never been involved in military fighting, and his injury had occurred when the flame from a rocket fired by an Afghan too close to

where he was burnt him. We do not think that what he said in his asylum interview (and witness A confirmed that there was nothing else) is sufficient to enable an inference to be drawn that he had gone to Afghanistan to be trained by or that he had fought with the Mujahaddin. We do not doubt that his sympathies lay with those who eventually formed the Taliban, but that is not of itself sufficient to give rise to a reasonable suspicion that he had been an active fighter.

4. The Appellant came to the United Kingdom in August 1993 and claimed asylum since, having been in Afghanistan and being a supporter of the FIS, he would be liable to persecution if he returned to Algeria. On 11th April 1994, he was granted leave to remain in the United Kingdom for four years and, eventually, on 12th August 2000 he was granted indefinite leave to remain on the basis that he was to be regarded as a refugee. The 2001 Act came into force in December 2001, but the Appellant was not certified or detained until 22nd April 2002. In his statement, he expresses bewilderment that he should be considered a risk to national security at all, but greater bewilderment that he should have been detained in April 2002 rather than December 2001. The answer to the delay in certifying lies, according to witness A, in the loss of one of his files and the view that it would be wrong to proceed against him in its absence. We see no reason to reject that evidence although we are bound to express some concern that someone who was considered and, as we have concluded, correctly considered to be a danger to national security should have been left at large because a file had gone missing.

5. The reasons given for his certification both under section 21 and section 33 of the 2001 Act and for the simultaneous decision to make a deportation order against him are:

“You are an active supporter of the Salafist Group for Call and Combat (GSPC), which is designated a proscribed organisation under Part 2 of the Terrorism Act 2000 and has links to Osama Bin Laden’s terrorist network. Your activities on behalf of the group include fundraising and distribution of propaganda.”

Before us, this was developed and the activities relied on were propaganda through the publication Al-Anser, fundraising through card frauds and the buying and selling of cars and involvement in false documentation. All of this is vigorously denied by the Appellant. He says that in 1996 he stopped help to Algeria because he “could not discover who was doing what or for what reason” and had not since then been involved with Algeria at all (save for contact with his family there). He denies that he has ever been involved with the GSPC.

6. We recognise that support for membership of the GIA is not of itself something which can justify the relevant suspicion or belief since there is no link between the GIA and Al Qa’eda. However, it does, if established, show a willingness to support acts of terrorism and many of the individuals who were active in the GIA continued their activities in the GSPC. The GSPC did have a link with Al Qa’eda and, although originally what became the GSPC split from the GIA because of the GIA’s support of indiscriminate killing of women and children, the GSPC came to support the approach of “brother” Bin Laden. We have considered in the appeal of G and need not repeat here the argument that in its Communiqué 16, issued shortly after 9/11, the GSPC expressed a lack of support for those actions. The argument is not in our view supported by the document relied on and the lack of any subsequent disapproval once it had become clear that Osama Bin Laden had indeed been behind the events of 9/11 is significant.

7. The Appellant has been arrested but released without charge on four occasions. Three of those were in relation to credit card fraud, the fourth in May 1998 pursuant to the Prevention of Terrorism Act. This latter arrest led to compensation for false arrest because the Commissioner of Police felt that he would be unable to rely on sufficient material to discharge the burden of proof which lay upon him. It did not help his defence (although it was not directly applicable in the Appellant’s case) that Section 16A of the Act, which was used to charge some of those arrested, was not then in force. At the address of Hocine Ben Abdel Hafid were found forged identify cards and a

substantial sum in dollars and at the address of Rechachi's there was a total of £6,650, mainly in French francs, for which he could give no satisfactory account. Also at his address was found a machine capable of cloning credit cards. These two were associates of the Appellant. We must also bear in mind that we are concerned not with proof but with reasonable suspicion and belief and that we have, in the closed material, access to more information than could properly have been made public in a civil action before a court of law. This does not mean that we apply guilt by association, but the nature and closeness of any association is relevant and may properly give rise to reasonable suspicion or belief.

8. The Appellant is adamant that he was never involved in any fraud. His first arrest was in November 1996 when he had been seen in Debenhams in Staines allegedly with one Tadjouri who was arrested for using a doctored credit card in a false name. He was, he says, acquitted after the judge saw the video tape from the CCTV camera, since it did not show that the Appellant had been in company with Tadjouri as had been alleged. In his evidence, he said that he did not know why he had been acquitted since it had happened when Tadjouri pleaded guilty and he was told by his legal advisors that he would be acquitted. His next arrest was in January 1998. He had gone to buy some tyres with Kalin Adeokun. Adeokun produced a card to pay and, when it was queried, told the Appellant that they should leave. They were arrested but he was not charged. In March 1999, he, Ali Khelifi and three other Algerians were in a car. They had stopped at a petrol station, not to get petrol but because it was time to pray. Khelifi tried to pay for some chocolates with a card which was said to be false and all were arrested when the police were called by the garage attendant. It seems that there was no proof that the card was forged and so no charges were preferred. This happened near Northampton. The Appellant had a substantial sum of money on him, namely over £500, and there was amongst all five cash running to several thousand pounds. The police report records that no reasons were given for their being in Northamptonshire or for possessing the money. The Appellant told us he was going to a car auction.

9. When the Appellant was arrested and detained on 23rd April 2002, his house and car were searched. In his car were found two paying in slips for an account in the name of A Bouazza and one for an account in the name S Warsame. He was unable to explain how the Bouazza slips were in his car, although Bouazza he had met when he was detained in 1998. Warsame was a Somali lady friend of his wife. At his home was found a paying in slip for an account in the name of A Azam. The Appellant said he was an Algerian who had come to him needing proof of an address in order to open an account. A document referring to an account in the name of Ghomid was explained because Ghomid did not speak English and the Appellant would help him when he needed to go to the bank. A paying-in book and a French identity card in the name of Divino, who had been convicted of fraud, could not be explained: the Appellant said he had stayed at his address but could not say how it came to be in his house let alone in the attic where it was found. Reference in a diary to the name Amor Sliti together with a bank account number was explained on the basis that Sliti was from Belgium and did not speak English and so the Appellant would help him if he needed to go to his bank. A Nat West card in the name of D Zucchini was being kept safe by him because Zucchini, which he believed to be Kenyan (but Zucchini was not his real name) was concerned that where he was living was unsafe.

10. We found the Appellant's evidence about these documents far from satisfactory. He also sought to explain how he came to be entering the United Kingdom at Harwich in March 1998 with Houari and Ben Abdel Hafid with a total of £6,500 in cash, of which £1,900 was his. He told us he had gone to Germany to buy a Mercedes but it was in very poor condition and so he had bought a Nissan instead and had eventually made £250 on the deal. £1,000 of the £1,900 was borrowed from his brother-in-law. He had bought the money back because the vendor would have lost on converting cash and so was content with a guarantee of payment. This explanation we found difficulty in accepting and it gave no explanation for the large sums of money in the others' possession. The allegation made is that money was raised for the GIA and the GSPC by means of fraud and the car dealing was part of it. Large sums of cash and close connection with those

perpetrating credit card fraud gives rise in our view to obvious suspicion, particularly when the Appellant was such a poor witness. Even without extra evidence in the closed material, we would reject his evidence that he was in no way involved in fraud. That does not of course establish involvement in terrorism. But denials of any involvement in fraud in the light of the allegations made are of some significance.

11. We have referred in the appeal of G to the camp in Dorset. It is most unfortunate that a combination of a poor police report and a failure to look properly into the available information led to a mistaken attempt to paint a picture of a gathering to elect an emir or leader of a group. Thus greater significance was sought to be attached to the camp than was appropriate. But there is significance in the fact that a number of members or supporters of the GSPC were meeting together and the Appellant's presence among them supports the case against him. We appreciate that he denies that any of them were, certainly so far as he knew, involved with the GIA or GSPC, but it is pertinent to ask what was the purpose of the camp. The Appellant's account of how he came to be there and how it was arranged was unconvincingly vague.

12. Also found at the Appellant's house when he was arrested in April 2002 was a telephone bill in the name Yarkas dated 14th April 2002. Yarkas is significant because he had been arrested in Spain in November 2001 under anti-terrorist legislation due to his links with Al Qa'eda. The Appellant said that he had met Yarkas in 2000 and he had asked the Appellant to give him proof of an address to enable him to open a bank account and that must have been how the telephone bill was sent to him. We were not impressed with that explanation.

13. The Appellant was asked about his dealing with Al-Anser, a GIA propaganda newspaper. He explained that until 1996 he was happy to contribute to leaflets distributed at the Mosque which showed support for those who had been part of the FIS. It was not a GIA propaganda newspaper in his view but provided by members of the community concerned by the repression and atrocities being carried out by the Government. Those with whom he was said to associate were often no more than acquaintances. Any association was otherwise with friends and there was nothing sinister in it.

14. We have already indicated our lack of belief in parts of the Appellant's evidence before us. We recognise that even if we are persuaded that he has not told the truth in certain matters that does not mean we should be satisfied that the case against him is made out. But his credibility is important. And we are quite satisfied that when we add in the closed material the Respondent was correct in his view and we are satisfied that the Appellant is an international terrorist within the meaning of section 21 and that it is proportionate that he be detained.