Appeal No: SC/4/2002

Date of Judgment: 29th October 2003

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

The Honourable Mr Justice Collins

Mr J Freeman

Mr B Blackwell

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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 I McDonald QC, Mr K Qureshi

Instructed by: Mr S Trueman, Treasury Solicitor

For the Respondent: Mr W Williams QC, Ms L Giovennetti

Instructed by: Ms L Smith, Treasury Solicitor

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1. The case against the Appellant, as framed in the open material, is that he is a key member of an extreme Islamist group known as the Tunisia Fighting Group (TFG). It is said that this group was formed during 2000 and had its origins in the Tunisian Islamic Front (known as the FIT since the name is in French). Its ultimate aim is said to be to establish an Islamic State in Tunisia. It is further asserted that the Appellant has been in regular contact with a number of known extremists including some who have been involved in terrorist activities or planning. Both the FIT and the TFG are said to have links with Al Qa'eda.

2. The open material deployed against the Appellant is not at all substantial. The evidence which is relied on against him is largely to be found in the closed material. This has meant that he has been at a real disadvantage in dealing with the case because he is not aware of those with whom

he is alleged to have been in contact. He has made a statement which is before us but he chose not to give evidence. We would only comment that when he was detained in December 2001 a considerable amount of material was found which suggested that he had been involved in credit card or cheque frauds in the course of which considerable sums of money had been raised. It seems not to be disputed that a number of North African refugees living in the United Kingdom have indulged in such frauds although it is denied that the money raised thereby has been used for terrorist purposes. We have no explanation from him in relation to the evidence which points to his involvement in such fraudulent activity, but we know that he would not admit for a moment that, if he was involved, his involvement had anything to do with terrorism.

3. Our general approach to the issues we have to determine has been comprehensively set out in the judgment of the Commission following the hearing of the first group of appeals. We have considered and gratefully adopt what is there said: we need not set out the relevant points here. Mr. Emmerson did, however, raise a new point of substance in this appeal. He had in earlier cases submitted that if information had been or may have been obtained by means of torture, the Commission should afford it no or very little weight. Before us he went further and submitted that information obtained by torture or by breaches of Article 3 of the European Convention on Human Rights was inadmissible. He was not, of course, aware whether any information which may have been obtained following torture or other inhuman or degrading treatment was relied on against the Appellant. He drew our attention to allegations that Abu Zubaida had been wounded when captured and that his wounds had not been treated when he was interrogated and to assertions made by Beghal that his confessions allegedly made in the UAE to involvement in a plot involving bombing in Paris had been forced out of him and were untrue. We have considered these submissions but, for reasons which have been incorporated in the general judgment, have rejected them. We do not accept that English law has ever considered that illegally obtained evidence is inadmissible, although we recognise that there is a discretion to exclude it. But there is no sufficient material which persuades us that we can conclude either that torture or other treatment contrary to Article 3 of the ECHR was used or even that it may have been used if (which we doubt) that is the test to be adopted.

4. The Appellant is Tunisian. He has used different names but there is nothing necessarily sinister in that: it certainly cannot of itself suggest a finding that he is a terrorist within the meaning of section 21 of the 2001 Act. In his statement, he says he left Tunisia when he was 17 (which would have been in 1970) and went to Algeria to work in his father's patisserie business there. He visited Tunisia annually but in 1994 decided that he must leave North Africa because of his membership of the FIT. He obtained and travelled via France to the U.K. using a false French identity card. He claimed asylum on the basis, according to the Home Office records, of his membership of a group called Islamic Jihad. He says that that was an error and the Respondent accepts that it may be that whoever was speaking to the Appellant may have mistakenly referred to Islamic Jihad instead of FIT. It took the Home Office 6 ½ years to deal with the asylum claim. It was refused in January 2001 but the Appellant was granted exceptional leave to remain until 2005. The Secretary of State's reasons are we suppose those which he has relied on to justify use of the 2001 Act, namely that the Appellant would if returned to Tunisia be at risk of treatment which contravened Article 3 of the ECHR.

5. In his statement, the Appellant says that he has never heard of the TFG and is certainly not a member of it. He has no idea why he should be suspected of being an international terrorist. He was interested in the possibility of living in Afghanistan in order to live a Muslim life and on some occasions people had stayed with him before going there and he had spoken to them on the telephone to get reports about life there. He explained how he had met Abu Qatada. He had heard that he was a good Muslim. He says this:

"When I met him, and thereafter, I always found him to be, as well as a very wise man, a very tolerant and sympathetic one. His message was always that problems need to be solved by dialogue".

The Appellant's wife is a Palestinian and knew Abu Qatada's wife. Thus the families are close. It is common knowledge that it has been averred that Abu Qatada is himself a terrorist and that his teachings show him to be thoroughly intolerant. He has himself been detained and his appeal to the Commission is one to be heard in the autumn. We recognise that we must not prejudge his case. Suffice to say that the case against this Appellant does not depend on his friendship and close relationship with Abu Qatada.

6. We have no doubts that the TFG exists. We note that on 10th October 2002 the UN added to the consolidated list (Al Qa'eda section) the Tunisian Combatant Group. The French name for the TFG is 'Group Combatant Tunisien' which can also be translated as Tunisian Combatant Group. We are satisfied that it is one and the same. We recognise, as Mr. Emmerson has submitted, that its inclusion in the U.N. list does not prove its existence, but it is in our view persuasive in that a responsible body has recognised its existence. There is further closed material which establishes its existence. Witness A was, Mr Emmerson submits, somewhat vague about the FIT, but accepted that it was not part of the Al Qa'eda network and that the Appellant had not been and would not have been certified if he had just been a member of the FIT. This was because, although the FIT had been involved in terrorist activities outside Tunisia, namely in France, it was not within the scope of the derogation. Witness A further accepted that the TFG had not launched any terrorist attack on its own and that, so far as she was aware, it had never issued a written communiqué nor had it a constitution or formal membership. Nonetheless, as we have said, we are satisfied not only that it exists but also that it has links to Al Qa'eda. Our reasons for so concluding must be given in the closed judgment.

7. In May 1998 the Appellant and some 10 others were arrested in a joint Special Branch and Security Service operation pursuant to warrants under the Prevention of Terrorism Act. The Appellant was released without charge and in due course received £18,500 compensation for wrongful arrest. The arrests were in connection with allegations of involvement in a plot to target the World Cup in France. We of course give weight to the absence of any admissible evidence to support the Appellant's involvement in that alleged conspiracy, but it is not and cannot be the answer to this appeal. We have to consider all the material to see whether there are reasonable grounds for a belief or suspicion of the kind referred to in section 21(a) or (b) of the 2001 Act.

8. Questions were asked about the trial of one Sirri in connection with the production of letters of introduction to the so called journalists who assassinated Masood in Afghanistan. It was pointed out that the trial had collapsed because it could not be proved that Sirri was aware of the ultimate purpose of the exercise. Thus any contact with suggested terrorists must be carefully considered and the Commission must be satisfied that any assistance given was given knowingly. We are well aware of that requirement and have considered the material with care.

9. In July 2002 the Commission was satisfied on the evidence that there was a threat to the life of the nation which emanated from Al Qa'eda and its associates. Nothing since has persuaded us that that conclusion was wrong. The threat undoubtedly still exists and various incidents around the world have shown how real it is.

10. We are satisfied that the Appellant is a member of the TFG itself an international terrorist organisation within the scope of the 2001 Act, and that he has links with an international terrorist group. We appreciate that our open reasons for being so satisfied are sparse. That is because the material which drives us to that conclusion is mainly closed. We have considered it carefully and in the context of knowing the Appellant denies any involvement in terrorism or any knowing support for or assistance to terrorists. We have therefore been careful only to rely on material which cannot in our judgment have an innocent explanation.

11. In the result, this appeal must be dismissed.