Appeal No: SC/7/2002

Date of Judgment: 29th October 2003

SPECIAL IMMIGRATION APPEALS COMMISSION

Before

The Honourable Mr Justice Ouseley, Chairman

Mr C M G Ockelton

Mr J Chester

C - APPELLANT

and

Secretary of State for the Home Department - RESPONDENT

For the Appellant: Mr M Gill QC, Ms S Harrison

Instructed by: Tyndallwoods

Special Advocate: Mr N Blake QC, Mr M Hoskins

Instructed by: Mr S Trueman, Treasury Solicitor

For the Respondent: Mr W Williams QC, Mr R Tam

Instructed by: Ms L Smith, Treasury Solicitor

Introduction

1. C is a citizen of Egypt. He appeals under section 25 of the 2001 Act against the decision of the Secretary of State on 18th December 2001 to certify him as a suspected international terrorist under section 21 of that Act, and section 2 of the 1997 Act against the Secretary of State's decision on the same date to make a deportation order against him. In addition to challenging the Secretary of State's suspicion of him as an international terrorist, his grounds of appeal are that he is and should continue to be recognised as a refugee under the 1951 Convention and that his removal would breach Article 3 of the European Convention on Human Rights and also Article 8 of that Convention because his wife is a citizen of Yemen and his daughter is British.

Immigration History

2. C's immigration history after he left Egypt is not entirely clear. He claimed asylum in the United Kingdom on 27th March 2000, stating that he had arrived in this country the previous day. In his SEF form, he said that had fled Egypt in 1997 and had lived illegally in Syria for three years. When he was interviewed, he said that he had left Syria on 18th March 2000, because "it is not safe to stay longer, there is security co-operation between Arab countries – this is developing every day". He went to Turkey. He then travelled by aeroplane from Turkey to England. He had passed through UK immigration using a "European" passport, with the assistance of an agent. In the

same interview, he said that he knew no-one in the United Kingdom before he came here.

3. At an interview with the Security Service, he said that he had left Egypt in 1999. He repeated that he had been to Syria. He said that he had stayed at the Yarmuk Refugee Camp outside Damascus. On this occasion, he said that he had left Syria "after a short while" and then he repeated that he had come to the United Kingdom via Turkey, and that he knew no-one here before he arrived.

4. In fact, neither of those accounts was true, and indeed the truth was put to him by Security Service officers in the same interview. He was in Eire from June 1998. He was arrested there, with other terrorist suspects, in a disruptive operation at the beginning of 2000. Before he claimed asylum in the United Kingdom, he had been here on at least one previous occasion in order to have a discussion with Hani Al-Seba'i, a person to whom we shall make more reference later.

5. In his claim for asylum, he said that although he had had no activity in Egypt, his alliance with a particular mosque had led the Egyptian authorities to assume that he was a supporter of al-Jihad (meaning, in this context, the EIJ). He had been sentenced in his absence to fifteen years' imprisonment for "alleged underground activities to topple the Egyptian regime". His brothers were also arrested: they confessed under torture and implicated C as well. When he was interviewed by the Security Service, he said that he had left Egypt in 1999 "because of general harassment of his co-religion". He said there were no specific charges against him. He said he was, however, wanted in Egypt. The account he gave on this occasion is summarised in the note of interview as follows:

"' Yes', he said and produced a photocopied newspaper cutting (Al-Quds Al-'Arabi 26th Feb 1999), with a list of names of those people wanted in the returnees from Albania case. His name (no 68 I think) was listed as OTR. He had never been in Albania and knew for a fact that many of the other people listed were innocent. However, two of his brothers were in jail already. Many of those who attended his mosque in Mina Al-Qamh were regularly pulled in for interrogation and he was wanted for his association with these people."

6. On the basis of the statements he made in his claim for asylum, he was recognised as a refugee in the United Kingdom on 30th March 2001 and granted indefinite leave to remain as such. There is no doubt on the evidence before us that that grant at that time (whether or not in fact merited) arose from inefficiency in the Home Office. The Security Service already had a clear interest in C, but the relevant desk in the Immigration and Nationality Department failed to keep a close enough track on the file which was, as a result, treated as though it bore an unremarkable asylum application. As it happens, the Security Service's first interview with C was on the very day that he received a letter stating that his claim for asylum had been successful. That came as a surprise to the Security Service.

7. As we have said, the decisions against which C presently appeals were made on 18th December 2001. The previous day, the Secretary of State had certified under section 33 of the 2001 Act that C was not entitled to the protection of Article 33(1) of the Refugee Convention, because Article 1(F) or Article 3(2) applies to him.

8. The stated grounds for the certification under section 33 and also under section 21 of the 2001 Act are as follows:

"You are an active supporter of Egyptian Islamic Jihad (EIJ) which is designed a proscribed organisation under Part 2 of the Terrorism Act 2000. Earlier this year, EIJ merged with Al Qa'eda. You were sentenced in abscentia to fifteen years' imprisonment by an Egyptian military court for your role in trying to recruit serving Egyptian Army officers for the EIJ and in planning operations on behalf of the EIJ, both in Egypt and abroad."

9. In opening the Secretary of State's case, Mr Williams submitted that the evidence established that C is a leading member of the EIJ and its leader in the UK; that he had been tried in absentia in Egypt and sentenced to 15 years' imprisonment for EIJ-related activities; That he has, while in the UK, been in contact with prominent extremists, including A, Usama Hassan, Hani Al Seba'i, Abu Qatada, Abu Mumin, Sawad Al-Madani, Mohammad Hassan, Abu Shaima, Abu Rideh, Ahmed Izzat Mursi and Sayyid Moawad, who is the leader of the EIJ in Germany. He is well placed to further the activities of Islamic extremists in the UK and has assisted in fraudulent fundraising activity.

10. As well as copious documentary evidence (both open and closed), we heard oral evidence from witness A on the Secretary of State's behalf. She was cross-examined at length by Mr Gill. At one point in his closing, he alleged that the Security Service "were trying to build a case of reasonable suspicion having made no effort whatsoever to investigate the case", that the evidence coming from witness A is "utterly unreliable", and that some of the things she said "must leave one with a bad taste in one's mouth as to whether she is really telling the truth or simply trying to tell a pre-determined lie". We regard witness A as a witness of truth in her dealings with the specific evidence relating to C as in other aspects of the appeals. She was, as it appeared to us, entirely ready to reconsider and if necessary revise assessments when faced with questions during the course of the hearing. She and the service for which she works are not concerned with criminal investigations, but with assessments made in the course of protecting the national security of this country. The suggestion that she was lying is, in our view, entirely unmerited. She provided what we regard as satisfactory material to justify her assessments; but, in any event, it is now for us to assess, on the evidence before us, whether the Secretary of State's suspicion of this Appellant was and is a reasonable one.

11. C did not give oral evidence. He has provided two written statements. He flatly denies any involvement in the EIJ. Now that he knows that it is pointless to deny having been in Ireland, he says that he met Al-Madani there at a mosque, and went from Ireland to see Al-Seba'i, staying at Al-Madani's house in London for three or four days. He also says this:

"When I made my application for political asylum in the United Kingdom, I did not say that I had been in Dublin because I was afraid that I would be returned there. I had applied for political asylum in Dublin before coming to England. Egyptian asylum applications are usually rejected in Ireland and the Irish usually threaten to deport Egyptians. They harassed several Egyptians. They went to their houses and searched and took their property (without arresting them) – children were panicked and they were very rough – they came in with weapons which made the children frightened. One Egyptian told me that they made him stand with his hands behind his head while his house was searched. They did this to several Egyptians. One of them was subsequently told to leave Ireland.

I was not arrested for suspected terrorist activity – it was the Intelligence Services who arrested me and kept me for 24 hours, they interrogated me and then I was released. They asked me whether I was a member of the EIJ and said that they suspected that I was a terrorist, but did not accuse me of any terrorist activities. They had arrested others prior to myself – Egyptians and Libyans. The Egyptians were arrested more than a year earlier, while the people who were arrested around the same time as myself were mostly Libyans. They took the others first and afterwards myself. I was arrested alone.

I had no 'activities' in Dublin! The Secretary of State is contradicting himself – I was released without any charges or further action. If I had been involved in any activities they would not have released me.

Before I came to England, I had an asylum interview but there was no decision when I came here. The Irish knew that I had come here and because of that, they closed the asylum file. I have friends in Dublin and they told me that post had arrived to say that my asylum file was closed.

I left Ireland 3/4 months after I was arrested because I was very anxious due to the harassment by the Security Service – I did not feel safe – they were trying to make me feel afraid. After I had been arrested, they started to stop me on occasions in the street. The very ones who had arrested me started stopping me in the street. Sometimes I could see them waiting in front of my house and sometimes they were there for 24 hours. All this was harassment. I also knew that Egyptian asylum applications are usually refused in Ireland and felt that my application would therefore be refused. It most certainly was not because my arrest disrupted my 'activities' as alleged by the Secretary of State – there were no activities to be disrupted."

12. As we have said, part of the Secretary of State's case is based on an allegation of fraudulent practices by C. So far as the open evidence is concerned, there is surveillance reporting on two "shopping trips", on 27th October and 31st October 2001. On behalf of C, we are urged to say that there is nothing in the 27th October report which throws any doubt on his honesty at all, and that the 31st October report is therefore entirely isolated; cultural explanations are also offered for the conduct of C and his companions on that day. We do not accept those submissions. The reports show C involved on both those days in expeditions which went to a number of ordinary high street stores in different areas. On 27th October, the party went from Luton and visited Marks & Spencers stores in Hounslow, Wembley and Brent Cross, as well as a number of other shops. Items were bought by cheque, transaction often totalling £99. On 31st October, the party left Luton and visited Marks & Spencers stores in Brent Cross, Wembley, Hammersmith and Edgware Road and returned, or attempted to return, goods to the stores. Again, they also visited other stores. (For the avoidance of doubt, we note that the evidence does indicate that there is a Marks & Spencers store in Luton.) It is right to say that the evidence we have summarised would not suffice to secure a criminal conviction. We are, however, entirely satisfied on the basis of this and evidence provided in the closed sessions that there is exceptionally good ground for suspicion that these transactions are neither either isolated nor innocent. The suspicion that C has been engaged in fraud is more than reasonable: it is virtually inevitable. Mr Williams pointed out in his closing submissions that that suspicion is rendered even more appropriate by what was found at C's house when he was arrested, including cheques and cheque cards in a name other than his own. Despite the explanation provided by Mr C, we agree. C was with Abu Shaima on these occasions. Abu Shaima had a BT telephone account billed to C's house. C provides an explanation for that in his statement: Abu Shaima had trouble with his landlord and was about to have to move out; C said he could come to stay with him and the first thing Abu Shaima did about that was to have BT install a landline in his name at C's house. Then Abu Shaima did not have to move and so the BT line was not used except by C's family by mistake. Again this is to our minds incredible: C's explanation is a deliberate attempt to deceive. We accept the Secretary of State's suggestion that the installation of that telephone line was intended to generate bills that could be used for fraudulent purposes.

13. We have dealt with these topics here because they are important in the assessment of the general credibility of C's statements. We bring to that issue also the following. In making his asylum application and in dealing with the Security Service, he was prepared to give a detailed account of his travels (including even a date when he left Syria) which was false. There can be no doubt about that. His omission of the considerable length of time he had spent in Ireland was a deliberate lie. So was his claim that before he came to the United Kingdom he knew nobody here. In fact, as we now know, he had passed illegally between the United Kingdom and Ireland on at least one occasion in each direction. That fact also incidentally tends to show a further underlying dishonesty in his claim for asylum: not only had he already made a claim in Eire (according to his latest account), but he had had a previous opportunity to claim in the United Kingdom had he wished to do so, even after discovering that Egyptian claims were generally unsuccessful in Ireland.

14. When a person is shown to have been deliberately lying on something which can be checked, there is no reason to believe his unsupported word on things which cannot be checked. That is true in general. It is even more so where, as in the present case, the explanations for the lies,

when detected, are entirely unpersuasive, and there is very good ground for suspecting that the individual is also engaged in fraud – that is to say that his dishonesty is not confined to his dealings with only one authority. We have reached the view that C's statements should be regarded as entirely unreliable. We attach no credence to his unsupported word. This applies not only to the subjects we have already specifically mentioned, but also to his claims that the associations identified in the open case were either innocent or purely social.

15. We turn now to the substantive issues in this case. We have dealt in the generic part of this judgment with the history, leadership, structure and alliances of the EIJ. For the purposes of this appeal, and in the light of the conclusions we have reached about the EIJ, it is clear that a person closely involved with the EIJ at any level would be a person who posed a risk to national security and whose certification and detention would be justified under the derogation. The Secretary of State's case is that C is such a person, indeed that he came to the United Kingdom in order to be the leader of the EIJ here. It is said that his predecessor in that role was Eidarous, and that after Eidarous and others were arrested in the United Kingdom pending their extradition to the USA in connection with the 1998 bombings of American Embassies in Kenya and Tanzania, there was a vacuum in the leadership here which was filled by C.

16. As well as C's denial, the Secretary of State's case is attacked by Mr Gill on a number of grounds. He says, first, that the Home Office was less than frank with those instructing him when they were asked to give further details of precisely how the "vacuum" arose. We have looked at the correspondence in the light of Mr Gill's submissions. We see no evidence of any intention to mislead. It appears to us that those instructing Mr Gill received appropriate answers to the questions they asked. Secondly, Mr Gill submits that there were others who could have taken the role now attributed to C. That may or may not be so, but it is not for us to make any comment: we are concerned with the role (if any) actually taken by C. Thirdly, Mr Gill submits that the timing is wrong. Eidarous was arrested in July 1999, but C did not come to the United Kingdom until the spring of 2000. If there really was a vacuum, argued Mr Gill, it would have been filled, in that time, by one of the others who had been arrested with Eidarous but subsequently released. We think there is nothing in that argument. That C came to the United Kingdom only the day before he claimed asylum depends on his unsupported statements. Prior to that, he was close to the United Kingdom and apparently able to pass to and fro. There may have been a certain amount of prevarication about who should take over Eidarous' role; it may have been hoped that Eidarous would be released. We do not know. Taking the circumstances as a whole, however, this delay does not damage the Secretary of State's case at all.

17. Mr Gill's fourth argument was that the open evidence shows nothing done by C as leader. In a structured organisation such as the EIJ, one would expect the person who was the leader of a national branch to be involved in overt activities. The Secretary of State's reply on this issue has to be largely confined to the closed sessions. What he says in open is that C is very cautious about surveillance and other similar activities. Some sign of that appears in the open material relating to the surveillance of the shopping expeditions that we have already mentioned.

18. Mr Williams was able to point out in his open submissions that C's role in the EIJ has been recognised by the Security Services of Egypt, Eire and the United Kingdom, and it is surprising if they should all be wrong. By and on behalf of C, it is said that they are wrong, that no terrorist allegations were put to C in Eire, and that the Egyptian Security Services are an organ of an oppressive regime and should not be treated as reliable. Witness A was asked specifically about that last point. She said that the British Security Service was entirely aware of the problem, but was satisfied that in this case the Egyptian assessment was reliable. We see no reason to doubt that that process of evaluation had indeed taken place: the Security Service has no conceivable interest in acting on information which it does not consider reliable. Similarly, we attach no importance at all to the fact that at one stage C was assessed by the (UK) Security Service as not currently engaged in operational activities: we are concerned with the whole picture on all the evidence we have seen and

heard. "Operational" activities in any event covers part only of what a terrorist supporter may do, and of course there may be apparently dormant periods while regrouping takes place.

19. We have had the advantage of hearing not only Mr Gill's submissions but also those made by the Special Advocates in the closed sessions. Given the apparent (but for present purposes irrelevant) uncertainty about the precise structure of the EIJ, it may be that it would be inappropriate to describe C as "the" leader of the EIJ in the United Kingdom. We are, however, entirely satisfied that the Secretary of State has reasonable grounds for suspecting that C has a senior leadership role in the EIJ in the United Kingdom. We remind ourselves that the certification under section 21 is on the basis that C is an active supporter of the EIJ. On our findings, that certificate is appropriate. There is a clear link, whether via EIJ or an EIJ rump to the public emergency.

20. We can deal briefly with the question of fraudulent activities. We have already recorded our finding that there is ample ground for the Secretary of State's view that C has been involved in fraud. At that stage, we left open the question of the intended destination of the proceeds of the frauds. The Secretary of State points out that C's lifestyle is not such as to suggest that his fraudulent activities are for his own benefit. Indeed, it is part of C's case in response to the surveillance report that he receives substantial amounts in social security and other benefits. Given those facts, coupled with his terrorist links and the total absence of credible explanation emanating from C, we are content to say that on this issue also the Secretary of State's case is made out: his suspicion that C was before his detention involved in fraud in order to support terrorist activity, is a reasonable one. The various activities lend support to each other, viewed in the round. His detention is proportionate, though we recognise the personal difficulties faced by his Yemeni wife in this country.

21. For the foregoing reasons, C's appeal against the section 21 certificate is dismissed.

22. That is not the end of the matter in his case, because, as we have said, he has appealed also against the decision to deport him on refugee and human rights grounds. His claim under the Refugee Convention is, as it has to be, that his removal would infringe his rights under the Refugee Convention. We put it in that way because it is easy to add extra confusion to this complication area of the law by referring to "refugee status", with the implication that that is something other than the essentially temporary position of being a refugee. It is right to say that in the United Kingdom (as no doubt in other countries) the recognition that somebody is a refugee under the 1951 Convention is accompanied by some other formal immigration decision. In the present case, it was accompanied by the grant of indefinite leave to remain. But recognition as a refugee does not make a Claimant any more of a refugee than he was previously, nor does it mean that a person who is not within the Convention definition of a refugee becomes entitled to the benefits of the Convention.

23. C, however, was formally recognised as a refugee in the United Kingdom and so is presently entitled to the benefit of his indefinite leave to remain. It is this factor which gives rise to some legal difficulty connected with the interpretation of the Refugee Convention and section 33 of the 2001 Act. On this issue, we have had detailed submissions, variously oral and written, from Mr Tam on behalf of the Secretary of State, Mr Gill and Mr Blake, as Special Advocate. We are grateful to them all.

24. We begin by setting out section 33 of the 2001 Act:

"33 Certificate that Convention does not apply

(1) This section applies to an asylum appeal before the Special Immigration Appeals Commission where the Secretary of State issues a certificate that -

(a) the appellant is not entitled to the protection of Article 33(1) of the Refugee

Convention, because Article 1F or 33(2) applies to him (whether or not he would be entitled to protection if that article did not apply), and

(b) the removal of the appellant from the UK would be conducive to the public good

(2) In this section –

‘ asylum appeal’ means an appeal under section 2 of the Special Immigration Appeals Commission Act 1997 (c 68) in which the appellant makes a claim for asylum (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c 33)), and ‘the Refugee Convention’ has the meaning given by that section.

(3) Where this section applies the Commission must begin its substantive deliberations on the asylum appeal by considering the statements in the Secretary of State’s certificate.

(4) If the Commission agrees with those statements it must dismiss such part of the asylum appeal as amounts to a claim for asylum (before considering any other aspect of the case).

(5) If the Commission does not agree with those statements it must quash the decision or action against which the asylum appeal is brought.

(6) Where a decision or action is quashed under subsection (5) –

(a) the quashing shall not prejudice any later decision or action, whether taken on the grounds of a change of circumstance or otherwise, and

(b) the claim for asylum made in the course of the asylum appeal shall be treated for the purposes of section 15 of the Immigration and Asylum Act 1999 (interim protection from removal) as undecided until it has been determined whether to take a new decision or action of the kind quashed.

(7) The Secretary of State may revoke a certificate issued under subsection (1).

(8) No court may entertain proceedings for questioning –

(a) a decision or action of the Secretary of State in connection with certification under subsection (1),

(b) a decision of the Secretary of State in connection with a claim for asylum (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999) in a case in respect of which he issues a certificate under subsection (1) above, or

(c) a decision or action of the Secretary of State taken as a consequence of the dismissal of all or part of an asylum appeal in pursuance of subsection (4).

(9) Subsection (8) shall not prevent an appeal under section 7 of the Special Immigration Appeals Commission Act 1997 (appeal on point of law).

(10) Her Majesty may by Order in Council direct that this section shall extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.”

25. The relevant Articles of the 1951 Convention are the following:

"Article 1 Definition of the term 'Refugee'

… .

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 31 Refugees unlawfully in the country of refuge

1. The contracting states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a country where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

…

Article 32 Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33 Prohibition of expulsion or return ('refoulement')

1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

26. The first question that arises is whether there is any right of appeal against the issue of a certificate under section 33 of the 2001 Act. We are satisfied that there is not. Rights of appeal to the Commission have to be given by statute and no statute creates such a right of appeal. We agree

with Mr Tam that the effect of section 33 is purely procedural: it governs the way in which some other appeals to the Commission are decided.

27. The next point is of more substance. On behalf of C, it is argued that he is not affected by the certificate, because he does not rely on Article 33, and Article 1(F) has no application to him because he has already been recognised as a refugee. He is lawfully in the United Kingdom as a refugee and so is, he says, entitled to the benefits of Article 32. It seems to us that, on the true construction of Articles 32 and 33, Article 33 applies to all refugees, whereas Article 32 applies to some refugees. There is no suggestion either in the Articles themselves, in the Convention, in the Handbook, or in any authority binding on us, that Articles 32 and 33 have application to two mutually exclusive groups of refugees. A refugee who is entitled to the protection of Article 32 is also entitled to the protection of Article 33. So C cannot distance himself from consideration of Article 33 by saying that he is entitled to the protection of Article 32. And the effect of Article 33(2) is clear. A person who has a well-founded fear of persecution can be returned to the very place where he fears that persecution if he has done one of the things mentioned in Article 33(2). He loses the protection otherwise accorded to all refugees.

28. We turn next to Article 1(F). This is an Article not about those who are refugees, but those who are not. A person who comes within Article 1(F) is not entitled to any of the benefits of the Convention, however great the risk of his persecution: he is not a refugee. Articles 1(F) and 33 do apply to mutually exclusive groups of people. A person falling within Article 1(F) receives no protection from refoulement because he is not a refugee; a person falling within Article 33(2) receives no protection from refoulement although he is a refugee. When does Article 1(F) apply? Generally speaking, it will be applied at the time when a person seeks protection as a refugee and, if applicable, will be invoked in order to deny him that protection, with the effect that he never has any of the benefits of the Convention. But it is clear from the Handbook, and from the fact that no particular "status" of refugee is recognised by the Convention itself, that Article 1(F) has a continuing relevance where somebody has been recognised as a refugee in ignorance of his falling in fact within the terms of Article 1(F). A person does not become a refugee by being recognised nationally as one. A refugee is a person who meets all the elements of the definition in the Convention. If he falls within Article 1(F) he is not a refugee: if somebody has recognised him as a refugee, that is a mistake which needs to be put right.

29. So far as English law is concerned, recognition of a refugee incorporates both a formal letter giving that as the decision on the claim and a grant of indefinite leave to remain in the United Kingdom. Invocation of Article 1(F) after recognition necessarily implies the revocation of those decisions. We therefore need to consider whether the decision to allow the claim for refugee status and to grant consequential indefinite leave can be revoked by the Secretary of State.

30. There is no reason in principle why an administrative decision made as a result either of a mistake of fact or a wrong assessment of the facts should not be revoked. Revocation is especially (though not exclusively) appropriate where the decision is only a temporary one, as in truth any decision relating to present fear of persecution always must be. No decision cited to us suggests that in the field of refugee law, the Secretary of State cannot reverse a mistaken decision made by himself that has not been the subject of subsequent litigation. It is true to say that if a decision has been made, or confirmed, by judicial process, the executive cannot ignore or reverse it (see especially R v SSHD ex parte Danaei [1998] INLR 375; R v SSHD ex parte Saribal [2002] INLR 596) – but that is quite a different matter.

31. There can be little doubt that a person who fosters or supports terrorism is a danger to the security of the country in which he is. There can also be little doubt that fostering or supporting international terrorism are acts contrary to the purposes and principles of the United Nations. (If that proposition is not obvious, support for it can be derived from Security Council Resolutions 1269, 1373 and 1455, binding on all member countries.) If therefore there are serious reasons or

reasonable grounds for considering that a person has taken part in fostering or supporting international terrorism, therefore, it may not matter very much whether his case is considered under Article 1(F) or 33: the outcome is that he is not entitled to protection from refoulement.

32. This does not quite conclude the matter, because we have not considered Article 32. So far as English law is concerned, the position is that if we are satisfied that the allegations in the certificate are made out, we must dismiss so much of the appeal as amounts to a claim to asylum, which includes any claim to protection under Article 32. But Article 32 is of itself only procedural. It does not prohibit expulsion of a refugee lawfully in the territory of a contracting state: it simply sets out a mechanism for doing so. Article 32(1) limits the grounds which need to be invoked before such an expulsion can take place; Article 32(2) provides for a process of examination of those grounds and Article 33(3) requires the refugee to be given time to seek a safe destination. Nothing in the decision making or appellate process in this case is capable of infringing Article 3, even if the Appellant is to be regarded as a refugee lawfully in the United Kingdom. The grounds of proposed expulsion are national security; the decision was taken by the Secretary of State personally in accordance with due process of law; the Appellant is allowed to submit evidence to clear himself, to appeal and to be represented; and he has, and continues to have, time to seek admission elsewhere.

33. There could, therefore, be no breach of Article 32. Because of the decision we have reached on the facts of this case, we conclude that C has been and would if at liberty continue to be an active supporter of an international terrorist group. The grant of refugee status to him was an error. He is not a refugee because of the provisions of Article 1(F)(c), and so in any event Articles 32 and 33 could not apply to him. If we were wrong about that, then in any event Article 33(2) applies to him because there are reasonable grounds for regarding him as a danger to the security of the United Kingdom, and he is accordingly not protected from return to Egypt. In accordance with section 33 of the 2001 Act, we dismiss his asylum appeal.

34. C also raised grounds under Articles 3 and 8 of the European Convention on Human Rights. Those grounds relate solely to alleged infringements of that Convention which would occur if the Appellant were removed from the United Kingdom to Egypt. They are thus, in a sense, hypothetical. In the general run of human rights appeals in immigration matters, the breaches are hypothetical: they will only take place if and when the Appellant is removed. The Appellate Authorities need to consider the hypothesis, because the case is brought on the basis that the Respondent does indeed intend to remove the Appellant. That is not the case here. It is because the Respondent concedes that removal would breach at least some part of the European Convention on Human Rights that the Appellant is detained under section 23 of the 2001 Act, rather than being removed. In these circumstances , is not merely hypothetical: it is a possibility that can be ignored. We do not need to make a finding on these grounds.

35. That leaves what may be called the pure immigration appeal. The Appellant has indefinite leave to remain but, as an alien, is subject to deportation under section 3(5)(a) of the 1971 Act if the Secretary of State deems his deportation to be conducive to the public good and the decision is appealable, but in national security cases as in any others, an Appellant appealing a decision of this sort has the burden of proof. Although such decisions are often made following conviction of a serious criminal offence, nothing prevents a deportation decision under section 3(5)(a) being made on the basis of suspicion or of general public order. Given that the Secretary of State has established his case on the section 25 appeals, we find also that the Appellant has failed to show that his deportation would not be conducive to the public good.

36. It follows that C's certification, asylum, human rights and immigration appeals are all dismissed.