

File No: SC/6/2004

Date of Judgment: 2nd July 2004

SPECIAL IMMIGRATION APPEALS COMMISSION

Before

The Honourable Mr Justice Ouseley

Mr G Warr

Mr J Mitchell

D

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

FIRST OPEN REVIEW JUDGEMENT

1. This is the open determination on the first review of the certificate issued by the Secretary of State for the Home Department in the case of? D under section 21(1) of the Anti-Terrorism, Crime and Security Act 2001. His appeal, as with those of seven others, was dismissed by the Commission in a determination handed down on 29th October 2003. Section 26 (2)(a) requires that the Commission hold a first? review of the certificate as soon as is reasonably practicable after the expiry of six months after the appeal was finally determined.
2. For the purpose of this review, the SSHD sought and was granted an extension of time for putting in written submissions as the person certified had put in no material as required by Rule 24 of the SIAC Procedure Rules 2003 and he had tried unsuccessfully at that stage to ascertain in the case of those persons represented by Birnberg Pierce whether they were going to submit material for him to reply to as envisaged by the Rules. Tyndallwoods who represented C and D told the commission in a letter dated 28th April 2004 that they did not intend to participate in the review process on behalf of their clients because the whole SIAC procedure was unfair. In the event no material was received from any person certified either before the SSHD?s material was submitted or after.
3. We point out that the SSHD is under an obligation, regardless of whether or not the person certified puts in material, to put in material which? satisfies the requirements of rule 24(3) within the time limit, i.e. 14 days before the review is due to commence. Whether or not that means that the person certified can then reply to it by way of his main evidence, which we accept is not what the Rules envisage, the obligation on the SSHD is clear.
4. The material which the SSHD must put in appears from Rule 24(3): it must give reason for the continuation of the certificate, any fresh evidence upon which he relies for its continuation, and confirmation that any previously given evidence upon which he continues to rely remains true. This is a duty of continuing scrutiny upon him.

5. The SSHD filed updated generic open and closed material and updated open and closed individual material in the case of each person certified. He also provided written submissions. As we have said we received nothing from any of the persons certified.
6. As the Rules envisage we considered the reviews in each case on paper, reading or re-reading the earlier open and closed generic and individual determinations and the updated material. We are producing our decision in the form of an open and closed generic judgment, which will be updates to the first generic judgment and will form part of the overall individual judgment, and individual open and closed judgments. This repeats the format adopted for the appeals.
7. We start our consideration of the material on the basis that it is not our task, and could not be, to consider whether or not the earlier judgments on the material before the Commission were correct on the merits. We have to examine the new material to see if it, together with the earlier material as analysed in the judgments, shows there to be a continuing basis for maintaining the certificate, or whether there is significant new material showing either that those earlier conclusions were wrong or that circumstances have changed so that now the certificate should not be maintained.
8. The updated open generic material, as we explain in the first review update to the open generic judgment, continues to show that there is a direct terrorist threat to the United Kingdom from a group or groups of largely North African Islamic extremists, linked in various ways to Al Qaeda.
9. We did not regard the SSHD's further evidence as adding anything of significance here. However, we accept that D has a long history of involvement in terrorist support activity and has the ability and commitment, despite past periods of detention, to resume those activities were he to be at liberty in the UK with those of his contacts who are here and with other extremists. The certificate is properly maintained.

MR JUSTICE OUSELEY

CHAIRMAN