Appeal Number: SC/38/2005
Date of Hearing: 27-30 March 2007
Date of Judgment: 14 May 2007

SPECIAL IMMIGRATION APPEALS COMMISSSION

Before:

THE HONOURABLE MR JUSTICE MITTING
SENIOR IMMIGRATION JUDGE LATTER
Mr C SMITH

MOLOUD SIHALI

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellant: Mr M Mansfield QC and Mr M Ryder, Ms F Webber
Instructed by Tyndallwoods Solicitors

For the Respondent: Ms L Giovannetti and Mr R Palmer
Instructed by Treasury Solicitor for the Secretary of State

Special Advocates: Mr M Supperstone QC and Ms C Brown
Instructed by Special Advocates Support Office

National Security

1. The appellant is a 31 year old Algerian citizen. He claims that in the summer of 1997 he left Algeria to avoid compulsory military service. He flew to Rome, where his brother Ismail was living. He did so, using an Algerian passport in his own name, stamped with a legitimate 28 day visa. He then travelled to Milan, where another brother Amar was living. He then decided to travel to England, with a view to settling there. He travelled via Paris and Calais, arriving in Dover with a false Italian identification card and £100, which his brother Amar had given to him. He threw away the identity card and made his way to London. Although he gave a different account of how he came to be in England to the police in September 2002 – that his name was Omar Naitatmane and he had entered legally in 1995 and again in 1999 – there is no reason to disbelieve his account of the date and circumstances in which he came to the United Kingdom, which he now asserts to be true.

2. On arrival in London, he went to the Finsbury Park Mosque, then the centre of a small Algerian colony, soon to be the centre of Islamist extremist preaching as well. He stayed at the mosque for 3 – 5 months. There he met, and befriended, K and David Khalef. K was an appellant against a deportation notice in SIAC proceedings. In a judgment dated 12th July 2004, it was found that there were ample grounds for believing that he was a senior member of a group known by one of the many aliases of U who had actively supported the activities of the group and other Islamist extremists. Khalef was a co-defendant with Moloud Sihali in the "Ricin" trial and, like him, was acquitted of conspiracy to murder and to cause a public nuisance. No deportation notice has been served on him and the Secretary of State does not assert that he poses a risk to national security.

3. From 1997 until 1999 he stayed intermittently at the mosque or with girlfriends, mostly of European extraction. In 1999 Khalef invited him to stay in a rented house at 240 High Road Ilford. From then until his arrest on 19th September 2002, he lived there or with a girlfriend.

4. Until 2001 he says that he worked casually, using his own name. In 2001, using the name and passport of his cousin Omar Naitatmane, he obtained better paid casual work through an agency. He altered the passport by removing his cousin's photograph and inserting his own. On 10th November 2003, he pleaded guilty to possessing this false passport with intent to induce someone to accept it as genuine contrary to Section 5 (1) of the Forgery and Counterfeiting Act 1981. He opened a bank account using his cousin's identity in January 2001. In 2002, he opened a second bank account in this name. He did so for a fraudulent purpose. He wished to receive Job Seekers' Allowance, while working. To that end, he had to be able to demonstrate that his income from work had ceased. He used the original bank account for that purpose, and the new to bank earnings from work, still carried out in the same name.

5. In early 2002, he adopted a second false identity – Christophe Riberro. He obtained a false French passport in this name. On 10th November 2003 he pleaded guilty to possessing this passport with intent to induce somebody to accept it as genuine contrary to Section 5 (1) of the Forgery and Counterfeiting Act 1981. He opened 2 bank accounts in this name. In evidence in the "Ricin" trial on 27th January 2005, he explained that he used this name for the purpose of obtaining better paid work via an agency. One of the accounts, at Barclays Bank, Earls' Court branch received a significant payment in May 2002, as will be explained below. In one or other name, he opened 5 bank accounts and 3 credit card accounts and attempted to open several more. His account at trial and to SIAC of the reason for opening the two additional bank accounts was not consistent in respect of one of them; but nothing turns on that discrepancy. The Security Service does not assess that the accounts were operated to raise money for terrorism. We believe that they were intended to facilitate fraud.

6. On 24th June 2002, he obtained a tenancy of flat 103D Elgin Road, Ilford in the name Omar Naitatmane. The rent was paid, in whole or in part, by housing benefit paid to him in that name.

7. The appellant was of no interest to the Security Service prior to his arrest on 19th September 2002. After initially maintaining the fiction that he was Omar Naitatmane when interviewed by the police, he has since freely admitted the matters summarised above. They could well have led the Secretary of State to decide to deport him on the ground that it was conducive to the public good, for reasons other than risk to national security; but, because it was, and remains, the assessment of the security service that he does pose such a risk, the Secretary of State has deemed his deportation to be conducive to the public good on that ground and has certified that his removal from the United Kingdom would be in the interest of national security under Section 97A Nationality Immigration and Asylum Act 2002. The basis for the decision was the view taken of his activities and associates in the 6 months or so up to 19th September 2002. By notice dated 19th September 2005, he has appealed to SIAC against that decision.

8. According to the appellant, K moved into 240 High Road in the spring of 2002. According to the Crown's case at the "Ricin" trial, and the appellant. Mohammed Meguerba arrived in the United Kingdom, from Dublin (where he had been living with his second Irish wife) in the summer of 2002. On 8th April 2005, Kamel Bourgass was convicted by a jury of conspiracy to commit a public nuisance – by causing fear and disruption by the intended deployment of poisons and/or explosives. The necessary basis of that verdict was that Bourgass had conspired with Meguerba to that end. Meguerba was arrested on 18th September 2002, but released because his significance was not then appreciated. He fled to Algeria, where he was detained and interrogated by the Algerian security service, the DRS. The product of his interrogation was communicated to the Security Service and the Metropolitan Police. Accusations have been made that his statements were the result of

torture inflicted by the DRS. For pragmatic reasons, the Secretary of State has decided, in all SIAC appeals, not to rely upon them. They have also been held, in Y, to be unreliable. Nevertheless, the jury's verdict and information about Meguerba's activities in the months up to and including September 2002 demonstrate that during that time he was involved in planning terrorist activity. Interaction between him, K and the appellant forms the heart of the Secretary of State's case against the appellant.

9. In 2001 K attempted to join the Mujaheddin to fight in Chechnya, unsuccessfully. He returned to the United Kingdom and was detained at Yarlswood Detention Centre. He escaped from there during the fire in early 2002. By the Spring of 2002, he had, on the appellant's own admission, returned to live at 240 High Road Ilford, with the appellant. Witness E's assessment is that K would not have stayed with anybody whom he did not trust. The appellant's evidence is that, by 1998, he had developed a friendship with K. He says that he was not that religious, that he did not know that he was involved in terrorism or had been detained and escaped. As will be explained, the appellant's interaction with K was significant and was capable of facilitating K's terrorist activity; but the trust which K reposed in him is not, by itself, powerful evidence that the appellant knew what K was up to. K would have known that the appellant abided by the illegal Algerian "community" code, as he put it: "you trust people not to grass you to the police or immigration people". K's trust in the appellant demonstrates no more than that.

10. The appellant says that he met Meguerba in May 2002, when he appeared with K. He knew him as "Sofiane". He said that he did not think that he was an extremist, let alone a terrorist – he was clean shaven and wore Western clothes. The appellant was remarkably accommodating towards him. On 25th May 2002 £360 was paid into an account which he had opened at Barclays Bank Earl's Court Road branch in the name Riberro at St Annes Square Manchester. The source of payment was then unknown to him. He claimed to have learnt the identity of the payer, after his arrest, in Belmarsh: V. Soon after the payment, Meguerba demanded that the money be paid to him. In evidence at his trial, when he was asked whether the payment out was recorded in the bank statements for the account, he gave this answer: "I had a Visa card with £2000 and I took the money out and I was at that time looking for a place to rent....." He told SIAC that, well before the payment into his account was made, he had withdrawn a significant sum in cash from his Visa account, which he kept to fund a deposit on the flat that he was hoping to rent for himself. He paid the money to Meguerba out of that cash reserve. Asked, both at his trial and in this hearing, how the unknown person (in fact V) came to know his bank details, so as to make the payment into his account, he explained that Meguerba must have found one of his bank statements lying around at 240 High Road and obtained the details from them, without the appellant's knowledge. This is utterly implausible. If true, it would have meant that an active terrorist, with associates in England,

would, opportunistically, have used the bank account of a man he hardly knew, without his consent, to effect the remittance. We are satisfied that it was made with the knowledge and consent of the appellant.

11. On or soon after 24th June 2002 the appellant let K and Meguerba stay at his flat, 103D Elgin Road, Ilford. He claimed at trial and before SIAC that he fell out with Meguerba in August 2002, because Meguerba said that he wanted to bring his wife to live at the flat. He claimed that Meguerba did not thereafter stay at the flat, at least to his knowledge, although K did. Keys to the flat were found by the police at 10 Worcester Avenue Tottenham, an address associated with Meguerba and V. Papers and other belongings attributable to K and Meguerba, and virtually nothing belonging or attributable to the appellant, were found by the police at the flat when they searched it on 20th September 2002. Almost all of the appellant's belongings were found at 240 High Road, where he had stayed.

12. This was not the only assistance provided to Meguerba by the appellant. On 1st July 2002, 7 Roses UK Ltd was incorporated by Meguerba, using the name Meurillion and the appellant, using the name Riberro. As he admitted at trial, the appellant agreed to pretend to be the company secretary. A bank account was opened in the false name Meurillion. According to the appellant, the purpose was to permit Meguerba to pay the suppliers of his market trading business. There were frequent telephone calls between the two of them at this time: over 180 in June 2o02 alone. The appellant's account, at trial, was that Meguerba was using him to speak to K.

13. At trial, the appellant said that he had nothing to do with Meguerba after their argument in August 2002. He maintained that account before SIAC. When asked to explain why he had made 4 telephone calls to Meguerba between 21.56 and 22.39 on 18th September 2002, he was unable to offer any explanation.

14. We do not believe the appellant's account of his dealings with Meguerba. The undisputed facts (the payment into his account of £360, the incorporation of 7 Roses UK Ltd, the renting of 103D Elgin Road with effect from 24th June 2002, the fact that K and Meguerba stayed at the flat and that their belongings were found there on 20th September 2002, and the telephone calls from the appellant to Meguerba on 18th September 2002) satisfy us, on balance of probabilities, that the appellant obtained the tenancy of the flat for the occupation, initially, of K and Meguerba. It is not unlikely, as the appellant claimed at trial and before SIAC, that he intended to use the flat himself once they had left. It is possible that he was disappointed that they stayed as long as they did.

15. The appellant was arrested at an internet café, in the company of K, on 19th September 2002. He was attempting, via the internet, to obtain a loan of £12,000 - £15,000 for K from the latter's bank. He had

maintained in examination in chief at his trial that the intended transaction was not dishonest. He told SIAC that its purpose was to buy a van for K, for the use in his market business. We are told, and accept, that he had given instructions to that effect to his solicitors in December 2004. Despite that, he admitted in cross-examination at the trial that he was helping K to perpetrate a fraud. The Security Service's assessment of K's purpose is that it was to fund terrorist activity. Given his background and the material which we have considered in closed session, we accept that assessment.

16. We are satisfied on balance of probabilities that, between May and September 2002, the appellant provided and attempted to provide, assistance for activities which, in fact, had a terrorist purpose; and that he has lied about them. Unsurprisingly, this caused the security service to form the initial view that he had done so knowingly. Its current assessment is that it cannot state, for certain, that he had that knowledge. Nor can we. We share witness E's scepticism that the appellant can have been unaware of K's extremist views; but it remains the case that there is nothing in the material so far considered that demonstrates that the appellant knew that either K or Meguerba or both were terrorists. Further, the lies which he told at his trial are explicable as a clumsy, if perhaps successful, attempt to distance himself from their activities in the eyes of the jury. The repetition of the same lies before SIAC is explicable simply by the wish to preserve some credibility by maintaining a consistent account. The security service point to the absence of any apparent financial reward for the appellant in helping K and Meguerba. The help to K is explicable on the basis of his friendship with the appellant. That to Meguerba is consistent with the payment into the appellant's bank account of £360 on 25th May 2002: this may have been his reward for arranging the tenancy of 103D Elgin Road and permitting Meguerba to occupy it for a period. A possible explanation of the appellant's claimed annoyance at Meguerba's continued occupation is simply that he had overstayed the period for which he had paid. It is not possible to reach those conclusions on the balance of probabilities. Our purpose in stating them is simply to indicate that there could have been a motive for assistance other than a terrorist purpose. Further, such a motive would be consistent with the view which we have formed, from the appellant's conduct – using false names and documents, opening several bank and credit card accounts in false names and fraudulently obtaining state benefits – and from his demeanour and evidence in the witness box, that he is an unprincipled and dishonest individual, determined to make the best of his circumstances in England for his own purposes alone.

17. When the police searched 240 High Road, they found in the base of the bed used by the appellant, a Safeway plastic bag containing several false passports, 2 blank press passes, a blank United States Federal Bureau of Justice special agent identity card and a blank United Nations driving permit. The appellant admitted that he had seen and handled them, when shown them by Khalef in the kitchen of 240 High

Road. He maintained at trial that he had told Khalef to get rid of them because they were "trouble". He did not know that they had been put in the base of his bed. He was charged in five counts in the "Ricin" indictment with possessing the passports. There was no charge in respect of the other documents. He was acquitted of all counts of possession. Khalef pleaded guilty to possessing the passports. Like the security service, we are sceptical about the appellant's attempt to distance himself from all of these documents. We accept that some or all of them could have been used for terrorist purposes; we are not convinced by the fact or place of their discovery and the appellant's knowledge of them, that he knew that they were intended for such a purpose. Our assessment is that he did not object to their being kept at the flat, that he knew they were for an illegal purpose, but neither knew nor cared what that purpose was.

18. Our assessment of the character and purposes of the appellant is reinforced by the absence of any evidence or intelligence that he has ever been a principled Islamist extremist. The Security Service does not suggest that he is. A small incident, following his release from Belmarsh after his acquittal in 2005 provides support for that view. He and Khalef went to stay at the flat of Mohammed Abdul Qavi, one of three witnesses of the highest probity, who gave evidence on the appellant's behalf. Khalef was an observant Muslim. The appellant made a point of asking Mr Qavi to produce a prayer rug and to orientate it correctly. Mr Qavi noticed that he soon lost interest in religious observance and believed that he was not a practising religious person. We accept that evidence.

19. The Secretary of State's case is not based on the premise that the appellant was or is a committed terrorist or even committed Islamist extremist. It can be encapsulated in the following proposition: because he had provided active, if undiscriminating, assistance to terrorists in the past, there is a real risk that he will do so, with similar lack of discrimination, in the future. Miss Giovanetti draws an analogy with a skilled forger or money launderer, willing to lend his services, for reward, to all, including those whom he knows or believes to be active terrorists. The analogy is not apt. The appellant has never engaged in anything beyond petty dishonesty. He has no significant skill which would be of use to terrorists in the future. The risk to them of making use of him would be significant. Further, there is evidence that he was deeply shocked by his re-arrest in September 2005: his three witnesses spoke of the impact that re-arrest had, visibly, had on him. Our view is that he would not knowingly put his liberty, the possibility that he might be allowed to remain in the United Kingdom and his perceived safety on return to Algeria, if deported, at risk by further assistance to those who might be terrorists. Whatever the risk to national security which he may have posed in 2002, the risk is now insignificant.

20. By a certificate dated 24th August 2006, the Secretary of State certified that the appellant was not entitled to the protection of Article 33 (1) of the Refugee Convention because Article 1 (F) or 33(2) applies to him.

The certificate was issued under Section 33 of the Anti-Terrorism Crime and Security Act 2001, but is now deemed to have been issued under Section 55 of the Immigration Asylum and Nationality Act 2006. There is no formal appeal against this certificate. Nevertheless, Miss Giovannetti properly conceded that SIAC should, in these proceedings, entertain an appeal against the certificate. We are required by Section 55 (3) of the 2006 Act to begin substantive deliberations by considering the statements in the Secretary of State's certificate. We disagree with the statements that he has been guilty of acts contrary to the purposes and principles of the United Nations and that there are reasonable grounds for regarding him as a danger to the security of the United Kingdom. Accordingly, we do not dismiss his asylum appeal under Section 55 (4) on either of those grounds.

21. For the reasons stated, we do not find that it would be conducive to the public good that the appellant should be deported on the grounds that it would be in the interests of national security so to do. Accordingly, we allow his appeal against the decision to deport him on national security grounds (only) notified to him on 15th September 2005.

Safety on Return

22. Because of our conclusion on the national security issue, this question does not, strictly, arise. Nevertheless, we have heard full evidence and argument upon it. The Secretary of State will, in due course, have to reconsider the appellant's circumstances, so as to decide whether or not to order his administrative removal or to make a deportation order on the ground that it would be conducive to the public good, for reasons other than the interests of national security. Our views on safety on return may, accordingly, be of some guidance to him, to the appellant and to any court or tribunal which has subsequently to consider the appellant's case.

23. We accept, and adopt without repeating, the observations and findings made by the commission in Y, BB and G about the general situation in Algeria and the worth of assurances given by the Algerian Ministry of Justice to the British Government about the treatment of persons that it wishes to deport to Algeria on national security grounds. Events arising since those judgments, in particular concerning the treatment of Q, H, K and P are dealt with in paragraphs 14 to 42 of the open judgment in "U". The members of the commission who heard this appellant's case, also heard evidence and submissions about those events. We have reached the same conclusions as those set out in U and adopt them.

24. By a Note Verbale dated 5th August 2006, the Algerian Ministry of Justice gave the following assurance: "Should the above named person be arrested in order that his status may be assessed, he will enjoy the following rights, assurances and guarantees as provided by the constitution and the national laws currently in force concerning human rights:

b). The right to appear before a court so that the court may decide on the legality of his arrest or detention and the right to be informed of the charges against him and to be assisted by a lawyer of his choice and to have immediate contact with that lawyer;

b) he may receive free legal aid;

c) he may only be placed in custody by the competent judicial authorities;

d) if he is the subject of criminal proceedings, he will be presumed to be innocent until his guilt has been legally established;

e) the right to notify a relative of his arrest or detention;

f) the right to be examined by a doctor;

g) the right to appear before a court so that the court may decide on the legality of his arrest or detention;

i) his human dignity will be respected under all circumstances."

There is no significance in the misprint of "(b)" for "(a)" or the absence of paragraph (h).

25. By a Note Verbale dated 14th March 2007, the Algerian Ministry of Justice noted a Interpol report that "he was reported by the British authorities for irregular residence" and that "he has no police record in Algeria", as was shown by an extract from the judicial records which was enclosed with the note. On 23rd March 2006, the Foreign and Commonwealth Office handed to the Algerian Embassy a note which summarised the British Government's knowledge of the appellant's activities in the UK,
"Another of the accused in the Ricin trial. One of the 4 who were acquitted in April. Believed to be involved in providing logistical support to members of proscribed organisations belonging to Al Qaeda. Connected with (K)....Khadri (aka Toufiq) currently detained pending extradition to France on terrorist charges, and Meguerba (currently detained in Algeria). On bail."

26. That description would now have to be supplemented by a copy, or summary, of SIAC's open judgment in these proceedings. There is no reason to believe that the British Government will not modify its view of the appellant's activities in the light of this judgment; but even if it were not to do or the Algerian Government were to choose to prefer the original assessment, there is no reason to believe that he would be detained, with a view to charging him, charged and prosecuted for an offence under Article 87a6 of the Algerian Criminal Code. In the hierarchy of those so far returned, even on the Secretary of State's original case, put at its highest, he fell below V and K, neither of whom

have been charged. In the highly unlikely event that he were to be charged and prosecuted, he would not be subjected to a trial which flagrantly violated his Article 6 rights, for reasons set out in detail in paragraphs 50 to 68 of U. In his case, the only accusation known to have been made by Meguerba against him is that which he admits: that he allowed Meguerba and K to occupy 103D Elgin Road. Accordingly, even if that statement was produced by torture inflicted on Meguerba and could, without more, be adduced in evidence against the appellant, it could not have any significant bearing on the ultimate outcome of any trial.

27. For the reasons given, on the material considered by us, we are satisfied that the United Kingdom would not act in breach of the appellant's rights under Articles 3,5 & 6 ECHR (which are the only ones potentially engaged) by deporting or removing him to Algeria.

Conclusion

28. We were not asked to invite the Secretary of State to grant leave to remain to the appellant. Nor would we have done so. It is for the Secretary of State to decide whether to deport or remove the appellant on grounds other than the interests of national security and, if he does, whether or not to certify under Section 94(2) of the Nationality Immigration and Asylum Act 2002.

MR JUSTICE MITTING

ADDENDUM

On 2nd May 2007 SIAC received, by fax, a letter from Sihali's solicitors Tyndallwoods, enclosing a witness statement by Natalia Garcia of the same date, which exhibited 2 letters said to be in the handwriting of Q, a former client of Ms Garcia. All advocates for the 4 appellants in whose cases judgment has been handed down today submit that SIAC should take the letters into account in reaching its judgments.

The Secretary of State also submitted, by letter from the Treasury Solicitor dated 2nd May 2007, further notes of discussions between a British Embassy official and Q's sister Djazia on 23rd April 2007; and between a British Embassy official and Maitre Tahri (one of H's lawyers) on 26th April 2007.
Ms Garcia states that she recognises Q's handwriting and that the 2 letters are from him. We have no reason to doubt that they are.

The first is to Ouseley J and reads:

"Dear Sir Osliy. To SIAC court my name [Q] former long lartin detainee I rhite you this wourd to let you no that my life here in Algeria in danger first I was torture betaine humilition in police station.
Second here in Serkadji prison life here like slave. Algerian otority thay give a garanty but thay brook the agreement. So Mr judj Osly stop deportation to Algeria in end I wont let you no that eneythink happen to ..... here in Algeria Britich otority responssable for life
Thank you
Detainee Q."

The second letter is to Miss Garcia and adds nothing relevant to the first.
The first letter is dated 10th April 2007. Miss Garcia states that both letters were received by fax at her office on 23rd April 2007 at about 12.30pm from Q's sister. This is consistent with the fax imprints on each page which bear that date and are timed between 12.11pm and 12.17pm. Miss Garcia does not explain why it took until 2nd May 2007 to refer them to SIAC. She states that she is not at liberty to provide full details of the provenance of the first letter because of "serious concerns for the safety of third parties".

She also refers to statements made to her by Djazia about the circumstances in which Q is now being held in Serkadji prison: in a dormitory with 25 others; and that he is required to take a sleeping pill each night, against his will. This information is entirely consistent with what the British Embassy official records Djazia as having told him on 23rd April 2007. It does not alter the view which all four panels of SIAC which have considered these cases have formed about the "prison conditions" issue under Article 3.

Q's claim in the first letter can be broken down into 3:

1. He has been tortured, beaten and humiliated "in police station" (which we take to be a reference to DRS custody in Antar barracks).

2. His life in Serkadji prison is like that of a slave.
3. The Algerian authorities have broken a guarantee in respect of him.

(i) is inconsistent with the description of him by one of his lawyers, Mrs Daoudi, as being "generally in decent health"; with her statement that what he complained of was hearing the sounds of apparent ill-treatment of others, not harm to himself; with Djazia's statement to a British Embassy official on 12th March 2007, that following a family visit on 10th March 2007, he was well, but not happy about his detention; and with her statement to a British Embassy official on 23rd April 2007 that he had not been mistreated (otherwise than being removed to a dormitory in Serkadji prison and made to take sleeping pills at night). This allegation is also entirely unspecific and made very late in the day. While the possibility that he was ill-treated cannot wholly be dismissed it is no more than a mere possibility. This new allegation does not persuade us that there exists a real possibility that any of the 4 appellants with whose cases we are concerned will be tortured or ill-treated on return. Put in the language used by the Strasburg Court, this material does not give rise to substantial grounds for believing that there is a real risk that they would be subjected to treatment which would infringe Article 3 if it were to occur in a Convention state.

(ii) Adds nothing to the "prison conditions" issue already considered.

(iii) Cannot refer to any assurance given to the British Government in relation to Q, because none was given. It must refer to the promises said to have been given at the Algerian Embassy orally to individuals. We have already dealt with this issue in the judgment in U. This adds nothing to it.