

Appeal No: SC/10/2002

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

Jamal Ben Miloud Amar Ajouaou

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 S Catchpole QC

Instructed by: Ms L Smith, Treasury Solicitor

Jamal Ben Miloud Amar Ajouaou

1. Jamal Ben Miloud Amar Ajouaou is a citizen of Morocco, born on 28th February 1963. The appeal before the Commission is that lodged from Morocco on 25th January 2002 against the decision of the Secretary of State on 17th December 2001 to certify him under section 21 of the 2001 Act as a suspected international terrorist.

History

2. Ajouaou came to the United Kingdom first on 24th December 1985 as a visitor. He was granted leave to enter in that capacity, and subsequently obtained further leave to remain as a student. He married a British citizen on 4th October 1986 and was granted one year's leave to remain on the basis of that marriage. On 21st June 1988, he was granted indefinite leave to remain in the United Kingdom, again on the basis of that marriage. Shortly thereafter, the marriage broke up.

3. In 1990, Ajouaou applied for naturalisation as a British citizen. Subsequently, he went to Bermuda for a year and was working there when his application was refused. He returned to the United Kingdom during 1994 and was granted indefinite leave to remain as a returning resident. In 1997, he applied again for naturalisation as a British citizen. No decision has yet been made on that application. In 2000, he remarried, again to a British citizen, and there is a child of that marriage.

4. As we have said, it was on 17th December 2001 that the Secretary of State issued the certificate that is the subject of this appeal. Apparently on the same date (although the notice itself is not dated), the Secretary of State issued notice of intention to deport Ajouaou on the ground that it would be conducive to the public good in the interests of national security to do so. Ajouaou was thereupon detained: his detention was also certified as being in the interests of national security.

5. For the latter reason, his application for bail was an application to this Commission. It was unsuccessful. In the meantime, he had appealed under section 2(1C) of the 1997 Act against the decision to make a deportation order and under section 25 of the 2001 Act against the certification. Those appeals were lodged on 19th December 2001. On 22nd December 2001, Ajouaou left the United Kingdom and has, since that date, been in Morocco.

6. In earlier proceedings, the Commission ruled that, although Ajouaou's outstanding appeals had lapsed by the operation of section 27(1) of the 2001 and section 7A(4) of the 1997 Act, he was entitled to issue a fresh notice of appeal, from abroad, against the decision to certify him as a suspected international terrorist. He could not appeal from abroad against the decision to make a deportation order, because that decision has effect only in respect of a person who is in the United Kingdom. His new notice of appeal, to which we have already made reference, does in form appeal also against the decision to make a deportation order: that is of no effect. We should emphasise that at the time the Commission made its ruling the certificate was still in force, as it was, to all appearances, at the time when the second appeal was lodged. Later, however, on 16th January 2003, the Secretary of State cancelled the certificate. He purported to do so with effect from 22nd December 2001, apparently acting

on the premise that he could not properly believe that a person's "presence in the United Kingdom" was a risk to national security if the person was not present in the United Kingdom.

Evidence

7. Ajouaou could not give oral evidence before us because he is not in the United Kingdom. We have read his statements, as well as those of Shakil Raza and Saladin Best, who have made statements in support of him. We have considered the other material put in by both parties. We are aware of the difficulties faced by Ajouaou and other Appellants in their task of rebutting a case based on suspicion and on evidence which, itself for reasons of national security, cannot be put to them specifically for a reply. The position is, however, that the Appellant alone knows what his activities and detentions have been, and he knows in general terms the Secretary of State's view of him and the reasons for that view. We do not hold the failure to give evidence against this Appellant or against any other Appellant. But the lack of detailed evidence, whether oral or written, about the Appellant's own activities from him may well make it more difficult for an Appellant to rebut the evidence and inferences relied on by the Respondent .

The open case against Ajouaou

8. The open case against Ajouaou may be summarised as follows:

- (1) he has links with both the GIA and the GSPC and is a close associate of a number of Islamic extremists with links to Al Qa'eda and/or Bin Laden.
- (2) he has been concerned in the preparation and/or instigation of acts of international terrorism by procuring high-tech equipment (including communications equipment) for the GSPC and/or Islamic extremists in Chechnya led by Ibn Khattab and has also procured clothing for the latter group.
- (3) he has supported one or more of the GIA, the GSPC and the Ibn Khattab faction in Chechnya by his involvement in fraud perpetrated to facilitate the funding of extremists and storing and handling of propaganda videos promoting the jihad.

9. The Secretary of State's open case expands on those allegations and further indicates the use of at least one alias and a pattern of association with individuals known or assessed to be involved in terrorism: those mentioned in the open statement and in Mr Williams' open submissions are Abu Doha, Jamal Beghal , Abu Qatada, A, Mohazzim Begg and F. All these were described by Mr Williams as "known Algerian Islamic extremists". Mr Williams also submitted that Ajouaou is an associate of the Egyptian, Yasser Al-Sirri, and of Abu Rideh and a close associate of several members of the Gamma'at Al-Islamia. The closest associate is said to have been that with Abu Doha. We do not need to repeat here what we said about Abu Doha in the context of A's appeal and in the generic part of this judgment.

10. Witness B confirmed that the allegation against Ajouaou is that he is a member of a network,

rather than a member of any particular organisation such as the GSPC or the GIA.

Findings

11. Looking now at the facts alleged against Ajouaou, we begin with the fraud. In cross-examining witness B, Mr Emmerson made strenuous efforts to discover whether anything other than the bare allegation could be made open. The answer was that it could not. The witness said “the allegation is that he is involved in fraud, or has been involved in fraud, and to explain further does involve reference to material which is only closed material”. In those circumstances, Mr Emmerson declined to make any submissions on the matter. He said that he was unable to deal with the allegation because he had no specific or detailed knowledge of what was alleged.

12. When Mr Emmerson made his submissions, he was aware that the Respondent’s position was that he could substantiate the accusations of fraud by material available only in closed session. We have examined that material. We cannot deal with it in detail here. What we can say is that it amply supports the allegation that Ajouaou was involved in fraudulent activity. We can also say here that we regard it as inconceivable that Ajouaou could have honestly thought that there was nothing in his history requiring explanation from that angle. We are acutely aware, as always, that the division of the case into open and closed material may make an Appellant’s position very difficult.

13. We turn next to issues relating to handling and procurement. The open case is that Ajouaou obtained and arranged the export of clothes and boots, as well as telecommunications equipment, and the open assessment is that in doing so he was supporting the extremist Mujahaddin fighting in Chechnya. Ajouaou is also said to have held propaganda videos, apparently with a view to their distribution. In his cross-examination of witness B, Mr Emmerson secured an acknowledgement that the video tapes in question are produced in large numbers and are on open sale in a number of book shops. Witness B accepted that tapes of film shot in the field of conflict were used generally as a means of raising awareness about Russia’s activities in Chechnya. He commented, however, that “our experience is that they tend to circulate amongst the extremist communities”. The open evidence relating to telecommunications equipment is limited to a receipt found in a search after Ajouaou’s arrest, detailing equipment to the value of some £22,000.

14. In his statement, Ajouaou offers an account of his interest in Chechnya. He says that after his arrival in the United Kingdom, he became friendly with the owner of the Islamic Information Centre in Shepherd’s Bush and his interest in Islam developed. He became involved in voluntary activities at the Centre, not least because of his linguistic ability, which often enabled him to assist other enquirers as well as the Centre’s owner. He met Abu Doha (who he knows as Mr Makhulif or “the Doctor”) at the Centre. Abu Doha had come to England, says Ajouaou, for the sole purpose of getting help for Chechnya, to be passed on either as humanitarian aid or to assist in resisting the Russians. It was clear to Ajouaou that Abu Doha had “the best of connections and routes” to get help to Chechnya. Ajouaou says that he knows nothing of the structure or organisation of the camps in Afghanistan, but he did understand that, although those involved in the war in Chechnya did not particularly seek recruits and

Abu Doha was not involved in recruitment, if there were individuals who wanted to go out and fight, Abu Doha would arrange for them to be sent for a time to Afghanistan for training, because otherwise they would be no use as fighters at all.

15. Abu Doha did not speak English and Ajouaou became his regular assistant as a translator. He went around England with Abu Doha fundraising and showing videos, no doubt similar to those to which reference is made in the Respondent's case. He was, he says, content to collect clothing and shoes for Abu Doha to send out to Chechnya and also to help with the exportation of telecommunications equipment. On that, he says this:

“21. When I was with [Abu Doha] his central concerns were raising money and obtaining in shipping supplies, including the topping up of money for the use of satellite phones in Chechnya. It was he, I understand, who had sent the phones to them in the first place and he, I believe, took on the responsibility of keeping them topped up with money via the phone suppliers based here

22. ... There was an occasion I know when there was some equipment that Mr Makhulif was trying to send out of Gatwick to Chechnya via Azerbaijan and the customs authorities said it couldn't go because the items required permission to export them. It is my recollection that they were communications items. I went with him to instruct solicitors to make a formal application for their release. Once again, there was nothing secret so far as I was concerned about what was being done, save insofar as the Russians were concerned, for the most obvious of reasons. Although these articles were clearly very important and central to the ability of Chechnya to defend itself against the Russian occupation, my involvement in them for the most part was linked to Mr Makhulif's need for help in communicating in English.”

16. Ajouaou's comment on Abu Doha's intentions in all this is that “all I can say is that my dealings with him were straightforward and lawful and were completely consistent with what thousands of other people in England were moved to do, ie to help Chechnya resist the Russian invasion”.

17. Ajouaou also deals in his statement with a number of the contacts and associations upon which the Respondent relies. We have just given details of his account of his meeting and working with Abu Doha. When Abu Doha was arrested, he asked for Ajouaou to continue to translate for him and Ajouaou visited him in prison for that purpose. He also visited Al-Sirri in prison, for the same reason as he says. He says that he has no knowledge of any “Abu Doha group”, but that he did translate from time to time for other detainees in Belmarsh Prison.

18. (We note in this context that some surprise has been expressed that he was allowed to go to and from Belmarsh Prison, visiting terrorist detainees there, before his own arrest of course, if he were thought to be involved in these activities himself. The point being made, if we understand it correctly, is that the fact that Ajouaou was allowed to do so may show that he was not at that stage of any real interest to the Security Service. We do not think that that suggestion has any substance. Witness B was asked about it and his answer was to the effect that clearance may have been given for these visits

simply because there was no contact with the officer who might have raised concerns. In any event, however, it does not seem to us that any conclusions could properly be drawn, even if the decision to allow Ajouaou to visit Belmarsh was made with full consideration. No doubt those who were responsible for the security of this country sometimes do their work by keeping a low profile rather than raising objections to a suspect's intended activities.)

19. In his statement, Ajouaou describes Abu Qatada as a charismatic preacher and teacher of Islam whom he had encountered slightly before 1999, but came to his meetings "somewhat more after the whole Chechnya situation blew up at the end of 1999". Ajouaou describes Abu Qatada as an honest scholar of Islam with an honest, warm kind of personality, who is frank and speaks his mind. Abu Qatada relied on Ajouaou's skills for translation and Ajouaou was part of Abu Qatada's preparation for certain provisions in the 2001 Act which he saw as aimed at himself. There can be no doubt that Ajouaou was and is a trusted associate of Abu Qatada.

20. No doubt in due course there will be proceedings before the Commission in which Abu Qatada plays a part. For that reason, it would not be right for us here to reach a firm conclusion about Abu Qatada's activities and intentions. Given Ajouaou's long, close and trusted association with him, however, and on the material as it stands at present we cannot believe that Ajouaou is honest when he describes Abu Qatada in the terms we have indicated and says that he is not a supporter of terrorism but merely gives honest and learned Islamic advice to those who seek it.

21. As Mr Emmerson put it in his closing submissions, the heart of the Respondent's case insofar as it relates to association is that Ajouaou "just knows too many people to be innocent". He urged us to be very cautious about accepting an allegation of association with other individuals in a community of expatriates who have common interests. Links would be very easy to misinterpret and the Secretary of State's case appears, he said, to make no allowance for innocent association, including friendship and political association falling short of terrorist interest.

22. Like the other Appellants, Ajouaou is not charged in these proceedings with a series of individual offences. The issue is whether, taking the evidence as a whole, it is reasonable to suspect him of being an international terrorist (as defined). When we look at all the material before us, as we do, we treat it cumulatively. It might be that the material relating to fraud alone, or to clothing alone, or to videos alone, or to associations, would not by itself show that a person was in any way involved in terrorism or its support. But we need to assess the situation when various factors are found combined in the same person. Those factors are as follows. First is his involvement in acts of fraud, of which he must be aware but of which he seeks to provide no explanation, excusing himself apparently on the ground that he is not aware which particular act or acts the Secretary of State has in mind. Secondly, he has been involved in supply and procurement activities to those fighting in Chechnya. Thirdly, he has been involved in raising consciousness (and hence in raising money) about the struggle in Chechnya, and has been doing so in a specifically Islamic (rather than a merely humanitarian) context, using and distributing films which, according to the evidence before us, tend to be found in extremist communities. In the generic evidence, we have dealt with the Chechen Arab Mujahaddin and the significance of support for it which we accepted is given in full knowledge of its wider jihadist agenda.

Fourthly, he has done so as a close associate of Abu Doha. Given the information we have about Abu Doha which, as we have said, we see no reason to doubt, we regard Ajouaou's claim that Abu Doha was doing nothing illegal (save that he was hiding his activities from the Russians) as entirely implausible. Fifthly, he has had associations with a number of other individuals involved in terrorism. They are for the most part specified by name in the open case but are not mentioned in his own statement. Apart from Abu Doha and Abu Qatada, the only associate he deals with in his statement is Al-Sirri, who is in some ways a rather special case, as we explain in the generic part of this judgment. Ajouaou has made no answer to the allegation that he is associated with other Algerian Islamic extremists or with members of the Gamma'at Islamiya or with Abu Rideh.

23. Those are the five features which meet in Ajouaou. No doubt the Secretary of State could have made his case by demonstrating various combinations of them in a single person. With all five, we regard the case as compelling. We are entirely satisfied that the Secretary of State is reasonable in his suspicion that Ajouaou supports or assists the GIA, the GSPC, and the looser group based around Abu Doha, and in his belief that at any time Ajouaou is in the United Kingdom his presence here is a risk to national security.

24. There is one other matter which we should mention before we close. As Ajouaou says in his statement, he was in Morocco when Abu Doha was arrested. Mr Emmerson in his submissions made reference to Ajouaou's frequent travel between Morocco and the United Kingdom, even in the months before he was arrested. Those facts must cast serious and probably fatal doubt on any claim by Ajouaou that it would be in breach of an international Convention to return him to Morocco. It appears clear, however, that the Secretary of State was not aware of Ajouaou's travels and indeed we do not know whether he made the journeys in his own name. We do not regard the fact that Ajouaou had been travelling as pertinent to the Secretary of State's apparent view (implied in the certificate and in the detention under it, read in conjunction with section 23) that Ajouaou could not properly be returned to Morocco.