

File No: SC/15/2002

Date of Judgment: 8 March 2004

**SPECIAL IMMIGRATION APPEALS COMMISSION**

Before

The Honourable Mr Justice Collins

Mr D Allen

Mr M James

**OMAR MAHMOUD MOHAMMED OTHMAN**

@ ABU QATADA - APPELLANT

And

**SECRETARY OF STATE FOR THE HOME DEPARTMENT - RESPONDENT**

For the Appellant: Mr Ben Emmerson QC

Mr R Husain

Instructed by Birnberg Peirce & Partners

For the Respondent: Mr Wynn Williams QC

Mr R Tam

Ms C Neenan

Special Advocates: Mr A McCullough

Mr M Chamberlain

**OPEN JUDGMENT**

1. We shall refer to the appellant as Abu Qatada or the appellant in the course of this judgment if only because that is the name by which he has usually been referred to in the media. Other names have been used by him, but there is nothing necessarily suspicious in that. He is a Jordanian national. He arrived in the United Kingdom on 16 September 1993, seeking to gain entry by means of a forged United Arab Emirates passport. He claimed asylum for himself and his

dependents who were his wife and three children. On 30 June 1994 he was recognised as a refugee and granted leave to remain until 30 June 1998. On 8 May 1998 he applied for indefinite leave to remain. That application had not been determined at the time of the coming into force of the Anti-terrorism, Crime and Security Act 2001 in December 2001.

2. The appellant was convicted in absentia in Jordan for his involvement in terrorist attacks there in March and April 1998 and in relation to a plot to plant bombs to coincide with the millennium. It is recognised by the respondent that he cannot be returned to Jordan since he would be likely to face persecution or breaches of his human rights under Article 3 of the European Convention on Human Rights. At the time the 2001 Act came into force, the appellant had left his address and was in hiding. He was eventually located in October 2002 and on the 23 October 2002 the respondent certified in accordance with s.21 of the 2001 Act that he believed the appellant's presence in the United Kingdom was a risk to national security and that he suspected that he was a terrorist. A covering letter dated 24 October 2002 stated the reasons for issuing the certificate as follows:

- 3.

"You undertake a range of support activities, including fundraising, on behalf of various international terrorist organisations, including networks associated with Usama Bin Laden. You have made public statements of support for the violent activities of these groups and a number of individuals arrested in connection with terrorist attacks have acknowledged your influence on them."

At the same time, and for the same reasons the respondent refused his application to vary his leave to remain which was still outstanding and decided to make a deportation order. In addition, the appellant was detained.

4. On 13 June 2003 the appellant made a statement for the purposes of this appeal which has been put before us. He explains in it that he believed that the 2001 Act had been enacted with him particularly in mind and he was aware from reports in the media that he was almost certain to be detained. It was for this reason and not because he believed that he had acted in any way which could justify his detention that he decided to go into hiding. He had been arrested in February 2001 by anti-terrorism police officers because he was suspected of involvement with a cell in Frankfurt which had been responsible for plotting to cause explosions at the Strasbourg Christmas market. However, it was decided that there was insufficient admissible evidence to sustain a prosecution and so no charges were preferred. UK and foreign currency to a value in excess of £170,000 was found in his possession. £805 was in an envelope which recorded that it was 'for the mujahidin in Chechnya'.
5. There is no doubt that, had he not gone into hiding, the appellant would have been certified and detained in December 2001. The thirteen who had then been certified appealed to the

Commission. The Commission decided to give what is described as a generic judgment which dealt with a number of issues both legal and factual which were likely to be or had been raised in most if not all the appeals. The open generic judgment was handed down on 29 October 2003. This appellant's appeal came before us on 19 November 2003. We indicated then that we proposed to rely upon the generic judgments, both open and closed, and would not be prepared to listen to any arguments which merely sought to go over matters which had been decided in the generic judgments. Any other approach would have negated the purpose of the generic judgments.

6. Mr Emmerson, on instructions from the appellant, informed us that his client had chosen not to attend the hearing or to participate in it in any way. He had read the decisions relating to the appellants who had been certified when the 2001 Act came into force and the generic judgment and so felt certain that the result of his appeal was a foregone conclusion. There had been many references to his role in the other appeals and some had been certified and detained, at least in part, on the basis that they associated with him. Since that association was regarded as sufficient to justify their continued detention, he considered that the decision on his appeal had, in effect, already been taken. He had chosen not to play any part precisely because he has no faith in the ability of the system to get at the truth. He considered that the SIAC procedure had deliberately been established to avoid open and public scrutiny of the respondent's case, which deprived individuals of a fair opportunity to challenge the case against them.
7. Having said that, Mr Emmerson made it clear that the appeal was not being withdrawn. It was accordingly necessary for us to consider it and to take into account the statement made by the appellant. Mr Emmerson emphasised a number of matters which, he suggested, should be regarded as favourable to the appellant's contention that he was not and never had been involved in terrorism within the meaning of the 2001 Act. Furthermore, the allegations showed that a distorted and over-simplified view was being taken by the Security Services of the appellant's activities and his role as a respected teacher and believer in the rights of Islamic communication throughout the world.
8. We should make it clear that we have considered the case against the appellant on its merits. We have not been influenced by any findings made in other appeals or in the generic judgments. One of the reasons why this judgment has taken a long time to be prepared was the need for us to read through and consider the evidence, both open and closed, that has been put before us. There is much more of it than in most of the other appeals. That is a reflection of the fact that the appellant has been associated with and had dealings with many of the others who have been certified and with individuals and groups themselves linked to Al Qa'ida. We see no reason to dissent from the views expressed in the generic judgment of the significance of the various individuals and groups referred to in it. But that does not mean we have therefore automatically accepted its views. We draw attention to the fact that the panel which produced the generic judgment was not the same constitution as this panel and that such input as there was by the chairmen of this panel to the generic judgment was limited to issues of law. We have considered the case against the appellant on the material put before us in this appeal. We have, of course,

considered paragraphs 152 – 153 of the generic judgment in which submissions are reflected which assert the active role of Abu Qatada in terrorism. The evidence before us in this appeal satisfies us that those submissions are well-founded.

9. When it came to the closed session, the Special Advocates informed us that after careful consideration they had decided that it would not be in the appellant's interests for them to take any part in the proceedings. We were very concerned at this, taking the view that that decision was wrong. The appeal was still being pursued and the appellant did not know what was relied on against him in the closed material. We were unable to understand how in the circumstances it could not be in his interests for the Special Advocates, at their discretion, to elicit or identify matters favourable to the appellant and to make submissions to us to seek to persuade us that evidence was in fact unreliable or did not justify the assessment made. When we asked Mr McCullough to tell us why he had decided as he had he told us that he could not since to do so would not be in the appellant's interest. We adjourned to enable the Special Advocates to seek to discover from the appellant through his representatives whether he did wish them to do what they could on his behalf and we also contacted the Solicitor General who had appointed the Special Advocates to seek her help in trying to persuade them to assist us. The appellant's representatives indicated that they had nothing to say on the subject and the Solicitor General took the view that it would be wrong for her to intervene in any way. Our further attempts to persuade the Special Advocates to change their minds were unsuccessful and since we could not compel them to act in any particular way we had to proceed without them. Mr Williams, at our request, identified various matters which might be regarded as possibly exculpatory and we ourselves raised other matters in the course of the closed hearing.
10. We are conscious that the absence of a Special Advocate makes our task even more difficult than it normally is and that the potential unfairness to the appellant is the more apparent. We do not doubt that the Special Advocates believed they had good reasons for adopting the stance that they did and we are equally sure that they thought long and hard about whether they were doing the right thing. But we are bound to record our clear view that they were wrong and that there could be no good reason for not continuing to take part in an appeal which was still being pursued. To do so could not conceivably compromise the appellant's desire not to appear to add any credence to the system which he regarded as inherently unfair. And any concerns about particular matters would be and should have been dealt with by the exercise of discretion in deciding what to challenge, what to elicit and what submissions to make. As it happens, the evidence in this case against the appellant is so strong that no Special Advocates however brilliant could have persuaded us that reasonable suspicion had not been established so that the certification was justified. Thus the absence of the Special Advocates has not prejudiced the appellant.
11. The generic judgment referred to a number of groups and individuals who were alleged by the respondent to be involved in Al Qa'ida terrorism. We should deal with some others who have been mentioned in this case and in respect of whom there has been evidence of association with the appellant.

12.

a. **Abu Dahdah**

Abu Dahdah @ Eddin Yarkas a Syrian national resident in Spain, was arrested in Spain in November 2001 together with some ten others. He was the leader of a group of extremists suspected of recruiting volunteers to carry out attacks on behalf of Al Qa'ida and providing false documents and safe refuge for other terrorists. The Spanish judge in charge of the investigation has described the appellant as 'the spiritual head of the mujahidin' in the United Kingdom and has claimed that Abu Dahdah had regularly sent him money and visited him in the United Kingdom.

(b) **Al-Tawhid**

Al-Tawhid is described as an international ring of extremists. Eleven suspected to be members of the group were arrested by the German police in April 2002. Its declared aims are to overthrow the Jordanian monarchy and replace it with a fundamentalist Islamic regime. But there is material which points to it being involved in much wider terrorist activities and to it being led not by the appellant but by Al Zangawi, who is involved with Al Qa'ida. A report in the Guardian of 28 October 2002 following the appellant's arrest refers to him having been named by the German authorities as a 'pivotal figure' in Al-Tawhid.

(c) **Ansar al-Islam**

This group has come to more prominence since the overthrowing of Saddam Hussain and the war in Iraq. It is a militant Islamic group operating in Northern Iraq, the area occupied by Kurds. It is said that it is working directly with Al Qa'ida and has been behind some of the recent attacks on Americans or their supporters in Iraq. In an interview in a Canadian newspaper dated 23 February 2003, a Canadian subject detained in Northern Iraq who is described as a 'key commander and ideologue with Ansar al-Islam' stated that he was chosen to be a suicide bomber and his training in April 2000 included listening to tapes of speeches by Abu Qatada. An ICT report of 23 March 2003 quotes an interview from the Christian Science Monitor with an activist in Ansar al-Islam who said that the group had received money from Abu Qatada.

13. The open material discloses a considerable number of press reports. The Security Services have put before us reports which they regard as reliable. This does not mean that they or we have relied upon them to reach our decision, but the evidence, most of it in closed, largely supports the conclusions set out in them. Their production enables the appellant to see what allegations made against him are regarded as largely reliable. While we accept that this is not a substitute for the

underlying evidence, it does at least enable the appellant to focus to some extent his denials. We also have in mind in considering all the material the appellant's assertion that the media have been manipulated by the Security Services to report in such a way as shows him to be heavily involved in terrorism.

14. In his statement, the appellant points out that he is a scholar of Islam. He is respected by very many who turn to him for advice on religious and moral issues. Since he holds beliefs which are regarded by the authorities as extreme and which can in our view be properly regarded as fundamentalist, it is hardly surprising that he is regularly contacted by those who hold similar views. Some may be involved in terrorism or have links to Al Qa'ida. If so, he was unaware of them and they did not come to him in connection with terrorism or activities linked to terrorism. Indeed, he has himself expressed condemnation of Al Qa'ida and Osama Bin Laden as well as the GIA.
  
15. We have no doubt that his beliefs are extreme and are indeed a perversion of Islam for the purposes of encouraging violence against non-Muslims and Muslims who are or have been supportive of the Americans in particular. It is no surprise that his speeches or sermons have been used in training of suicide bombers. In March 1995 he issued a 'fatwah' which on its face sought to justify the killing of wives and children of 'apostates' to stop the oppression of muslim women, prisoners and 'brothers' in Algeria. In October 1999, he is reliably reported as having made a speech at a gathering in the Four Feathers Mosque in which he gave a blessing to the killing of Jews. In addition, he said that Americans should be attacked wherever they were and that there was no difference between English, Jews and Americans. He is described by many sources as a spiritual advisor to terrorist groups or individuals who have been reasonably suspected of having links to Al Qa'ida and it is significant that many of those who have been detained under the 2001 Act and whose appeals have been dismissed have close links to the appellant. It is not at all surprising that he has been believed by some to be the head of the Al Qa'ida organisation in Europe. We do not think the material supports that conclusion, but it does show a very active involvement with many groups and individuals linked with Al Qa'ida.
  
16. We are satisfied that the appellant's activities went far beyond the mere giving of advice. He has certainly given the support of the Koran to those who wish to further the aims of Al Qa'ida and to engage in suicide bombing and other murderous activities. The evidence is sufficient to show that he has been concerned in the instigation of acts of international terrorism. But spiritual advice given in the knowledge of the purposes for which and the uses to which it is to be put provides assistance within the meaning of s.21(4) of the 2001 Act.
  
17. In his statement, the appellant not surprisingly relies heavily on three interviews he had with a member of the Security Services in June and December 1996 and February 1997. The first of these records his passionate exposition of jihad and the spread of Islam to take over the world. He claimed to 'wield powerful, spiritual influence over the Algerian community in London and was confident that he could use this influence to prevent any terrorist repercussions following the possible extradition of Ramda to France'. He maintained that a decision had been taken in

Algeria not to mount operations against the United Kingdom. The second interview concerned the split in the GIA. The appellant said that he did not want London to become a centre for settling Islamic scores and, in the view of the officer concerned, he 'came the closest he had to offering to assist me in any investigation of Islamic extremism'. He apparently said that he would 'report anyone damaging the interests of this country'. He referred to a visit from Abu Dahdah who had brought 'a gift of 4 kilograms of honey for this great spiritual guru'. The third meeting was to restate the officer's belief that the appellant wielded considerable 'spiritual, if not operational influence on an extensive number of Islamists of various nationalities and that, as a resident of the United Kingdom, I fully expected him to use that influence, wherever he could, to control the hotheads and ensure terrorism remained off the streets of London and throughout the United Kingdom'. He said that those over which he had influence were no risk to the country's security and he would not bite the hand that fed him. It is also recorded that 'surprisingly enough ... [the appellant] revealed little love of the methodology and policies pursued by Usama Bin Laden. He certainly left me with the impression that he had nothing but contempt for Bin Laden's distant financing of the jihad'. No further meeting took place.

18. It is apparent from all the material we have seen that the appellant's attitude to possible attacks in or against the interests of the United Kingdom has developed. In 1996 and 1997, when he was seen by the officer from the Security Services, he may well have regarded the United Kingdom as a safe haven and believed that it was far more useful to be able to operate here. In the following years and particularly since the attacks of 11 September 2001 his attitude has changed, although he was careful in any public utterances to avoid saying anything which committed him to encouragement of or in any way admitted involvement in violence here. He did, however, reiterate his views that to fight Jews even in the United Kingdom was acceptable. In addition and importantly, the interviews show that he accepted and indeed asserted that he did have influence over some of the extremists who might be expected to become involved in violence and terrorism. He knew that he was of interest to the Security Services and would have tailored his answers accordingly. However, we have no reason to doubt that at that time he believed on balance that it was better to avoid overt action against the United Kingdom and was prepared to instruct those over whom he had influence accordingly. That his attitude changed there can be no doubt from the material which we have seen.
19. Although he expressed dislike for Bin Laden's approach in early 1997, the material we have seen make it clear that he has not maintained that view. Certainly he has assisted and encouraged many who have themselves espoused the Al Qa'ida approach and whom he knew or must have known to have been involved in terrorism. And after 11 September, in a sermon he stated that the attacks were part of a wider battle between Christendom and Islam and a response to America's unjust policies.
20. There are a large number of allegations made. We see no point in dealing with them seriatim. We have indicated why we have formed the view that the case made against the appellant is established. Indeed, were the standard higher than reasonable suspicion, we would have had no doubt that it was established. The appellant was heavily involved, indeed was at the centre in the

United Kingdom of terrorist activities associated with Al Qa'ida. He is a truly dangerous individual and these appeals are dismissed.

MR JUSTICE COLLINS

CHAIRMAN