

SPECIAL IMMIGRATION APPEALS COMMISSION

Before

The Honourable Mr Justice Collins

Mr J Barnes

Mr M James

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APPELLANT

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellant: Mrs Gareth Peirce
For the Respondent: Mr Wynn Williams QC, Miss Lisa Giovannetti
Special Advocates: Mr Angus McCullough, Mr Martin Chamberlain

OPEN JUDGMENT

1. The appellant is a Libyan national born in April 1966 and brought up in Sibrata. He obtained a degree at Benghazi University in geology and geological engineering with a view to working in the oil industry. In 1991 he says in his statement that he went to Medina University in Saudi Arabia to concentrate on Islamic studies. It seems he had shown opposition to the Ghaddafi regime which had led

to detention and he told the immigration officer who interviewed him on his arrival in the UK in November 1994 when he claimed asylum that in 1992 he went to Pakistan and fought with the Arab mujahideen against the communist regime in Afghanistan. He does not mention this in his statement, but says he spent the years 1991 – 1994 at Medina University.

2. On 18 November 1994 his claim to asylum was refused. It was said that the Libyans were not likely to be interested in him since he had been away from Libya since 1992 and in any event there were doubts that he really was involved with an anti-Ghaddafi group. However, he attracted the attention of special branch who noted that he “claimed that he was part of an anti Ghaddafi organisation involved in illegal arms dealing, demonstrations and general stirring of anti Ghaddafi feeling in mosques”. He made a further claim to asylum which was rejected in July 1997, his appeal against the original rejection having been dismissed. This further claim was supported by a letter which was said to have come from his brother in Libya indicting that the internal security services had contacted the appellant’s father because they were interested in discovering where he was. A document enclosed in the letter was regarded as false and so the letter was given no weight. Doubt was also cast on the appellant’s claim to have fought for the Mujahideen.

3. Despite the rejection of his asylum claims, the appellant was not removed from the United Kingdom. It came to be accepted that he could not be returned to Libya and the fact that he is now certified and detained under the Anti-Terrorism Crime and Security Act 2001 (the 2001 Act) shows that that is so.

4. On 23 November 2002 the respondent issued certificates under sections 21 and 33 of the 2001 Act. The reasons were:-

“You are a member of a group of Mujahideen engaged in active support for various international terrorist groups, including networks associated with Usama Bin Laden. Your activities on behalf of these networks include the provision of material support.”

At the same time, the respondent decided to make a deportation order, based on the same grounds, and to detain the appellant.

5. As is the position in almost all the appeals under the 2001 Act, most of the material evidence relied on against the appellant is closed and so he has not had sight of it. He was served with the open statement and material which contained the allegations made against him. They are in the main allegations since the supporting material is largely closed. He made a fairly lengthy statement on 8 August 2003 seeking to answer those allegations as best he could. In it, he denies that he is or ever has been a terrorist or has supported terrorists within the meaning of the 2001 Act.

6. When the appeal was opened, Mrs Peirce told us that the appellant had decided that he was not going to take any further part in it. He wanted it to be made clear that it was not to be taken that he was involved in or supported terrorism. He did not. He had been involved only in assisting fellow refugees

and those who were, like him, supporters or members of the Libyan Islamic Fighting Group (LIFG) which is not a proscribed organisation and is not linked to any Al Qa'ida network. Some of the material which had been disclosed, in particular what he described as a confused and contradictory report in an Italian newspaper, was wholly unreliable and should not have been used to justify detention. He believed that the appeal was a foregone conclusion and his inability to deal with the closed material made the whole process unfair. He did not want to lend it any credence by further participation. He did, however, wish his appeal to be considered and it was not withdrawn.

7. We are conscious of the difficulties in an appellant's path and the perceived unfairness of the procedure. We have not hitherto allowed any appeal, but that has been because we have been satisfied that a reasonable suspicion that the particular appellant was a terrorist within the meaning and scope of the 2001 Act was established. Each case has been and is considered on its own facts against the tests and legal background which have been set out in the generic judgment. Mr McCullough carried out a detailed and most effective cross-examination of the witness called on behalf of the respondent. We for our part have given this appeal the most anxious and careful consideration, taking account of all the material put before us, including the appellant's statement. We have reminded ourselves of what has been said in the Generic Judgment at paragraph 48:

“The test is ... whether reasonable grounds for suspicion and belief exist ... [the evidence] does have to be scrutinised carefully and its weaknesses and gaps examined to see if it does provide such grounds or whether suspicion exists or survives because of a failure to investigate matters in obvious ways which would have cast a clearer light, one way or the other, on the point.”

We recognise that we must be careful not to place undue weight upon any particular piece of intelligence or assessment, since each must be looked at in the context of the whole. Equally, individual pieces of evidence looked at in isolation may seem to show little or nothing adverse to the appellant. But we must not discard them merely because of that. When the whole picture is considered, they may properly be given some weight. Equally, there may be innocent explanations for individual pieces of evidence relied on against the appellants. But we are concerned to decide whether reasonable suspicion is established and so the existence of an innocent explanation may not prevail. The question always is whether the suspicion was reasonable. We can only answer that question by submitting all the evidence to a close and penetrating analysis and then deciding whether it does establish a reasonable suspicion notwithstanding that there might be an innocent explanation.

8. The appellant admits and the respondent accepts and asserts that he is a member of the LIFG. He says that its only interest is in opposing the Ghaddafi regime in Libya and it has no links with Al Qa'ida nor any agenda involving attacks on the West or Western interests. It is described by the respondent as an Islamic extremist group which plans to replace the Ghaddafi regime with an Islamic state. The appellant objects to the adjective 'extremist' but we do not doubt its accuracy. It is not proscribed in the United Kingdom and the United Kingdom has been used as a supposedly safe base for fund raising, some of which has been achieved by fraud. The respondent accepts that the LIFG, as a group, does not pose a current threat to national security. His case against the appellant is that some members of the LIFG have supported and have links with Al Qa'ida and the appellant is one such. The appellant claims

that he has done nothing which goes beyond the aims of the LIFG and has never knowingly involved himself with terrorists linked to Al Qa'ida.

9. The LIFG has involved itself with armed insurrection in Libya and is not averse to the use of violent means to attain its objectives. It can properly be regarded as a terrorist organisation. The reason why that is not sufficient to justify certification under the 2001 Act is because it was accepted by the respondent in the challenge to the derogation, as Lord Woolf, CJ records at paragraph 42 of the judgment in A, X and Y v SSHD [2002] EWCA Civ 1502, [2003] 2 WLR 564, that the powers under sections 20 to 23 of the 2001 Act would only be used against those said to be linked to Al Qa'ida and that the Commission should set aside the certificate if that link was not established. We have explained in the generic judgment what that involves and in particular the identification of Al Qa'ida: see in particular paragraphs 97 to 99 and 109 to 111. The group that can be properly labelled Al Qa'ida or associated or linked to it may be informal and loosely co-ordinated. It may consist of individuals who have a common anti-western agenda which is to be furthered by violent actions and who support the cause and methods of Al Qa'ida. So it is that the respondent alleges and must establish albeit to the low standard of reasonable suspicion that the appellant has links to Al Qa'ida or has knowingly provided support to extremists who belong to loosely affiliated Al Qa'ida networks. We recognise that it is enough that he has supported one who in fact belongs to such a network if he has turned a blind eye. He does not have to know; it is sufficient if he ought to have known in all the circumstances.

10. As a result of Mr McCullough's rigorous cross examination in the closed session, we are satisfied that the assertions made in the statements provided by the respondent are not supported by the evidence put before us. Some are clearly misleading when the source documents are looked at and some can only be justified if the worst possible view is taken of the appellant. Further, in some instances it was apparent that insufficient effort was made to ensure that what appeared to be accurate on a somewhat superficial view of the material was in fact accurate since further investigation showed that it was not. Some of these shortcomings were accepted by the witness, but it was argued that sufficient remained when the evidence was looked at as a whole to justify the certification and detention. However, we are satisfied that Mr McCullough's submission that there has been in the statements served on behalf of the respondent (which must we assume reflect what was put before him) a consistent exaggeration of the extent to which the documentary evidence relied on supports the links alleged between the appellant and Al Qa'ida linked extremists is correct.

11. We must make it clear that we do not doubt the good faith of those responsible for the assessments. They bear a very heavy responsibility in trying to ensure that the country is safeguarded from acts of terrorism. We have no doubt whatever that they were entitled to be suspicious of the appellant's activities and to question whether they were limited to promotion of the LIFG cause alone or to assistance of its members or supporters in a way which showed that the appellant did not know nor should have known that that assistance would benefit Al Qa'ida linked extremists. We recognise that when the Security Services receive a piece of information from a reputable source, they are entitled to act upon it and it would be quite impossible to investigate on every occasion to see whether that piece of information is indeed supported. But when a decision is to be made which will result in a person's detention for an unspecified period on reasonable suspicion, it does become necessary to ensure so far as

possible that the assessments are accurate. Apart from anything else, if they are not and it can be shown on appeal (when any exculpatory material has to be produced) that they are not, the case against an appellant is inevitably weakened.

12. For obvious reasons, it is not possible to identify in this open judgment more than a very few of the assertions which are not supportable. Further, we recognise that the fact that some are to be discounted does not mean that the appellant will succeed. We repeat that we have to look at what remains and further remind ourselves that an assertion which is shown to be dependent on taking an adverse view of the appellant may properly have weight if there are others which do establish that that adverse view is justified.

13. There is no doubt that the appellant has been involved in the provision of false documentation and money to those who can properly be labelled as Islamic extremists, but that label is apt to cover those who support the LIFG. We note, too, that the respondent accepts that the appellant has engaged in fund raising for what he describes as legitimate causes. In his statement, he plays down his involvement in the provision of false documentation, but does admit that he knows of the need for his fellow refugees to obtain false documentation and how to get hold of them. He explains his possession of passports, photographs and documents in others' names which were found when he was arrested on the basis that he was a member of a group which arranged for this sort of assistance to other refugees who were LIFG supporters. That he has been less than frank about his involvement in false documents is apparent, but it is not surprising since he would have been committing criminal offences.

14. He was granted indefinite leave to remain in the United Kingdom in 1999 and in 2000 he was provided with a travel document. He used this to visit Switzerland in November 2001 and Iran in May 2002. On his return from Switzerland, he was questioned at the airport. He claimed he had visited a cousin called Abdul Hamid, but professed himself unable to remember his address or telephone number or even the village where he lived. He had a visa for Iran valid between September and November 2001, but it was unused and he said he had planned to visit his father and six brothers there but had decided to put the trip off. The point is made that his account of the interview is not supported by facts before us, but we have no verbatim record. He went to Iran in order to help a number of Libyans who had had to flee Afghanistan and were stuck in Iran.

15. It was said in the amended open statement that the appellant was considered to be a member of an international terrorist group by reason of his membership of LIFG. That assertion was withdrawn by Mr Williams at the outset of the appeal, but it should never have been included, particularly as it was accepted that the LIFG was not regarded as a current threat to national security. It was said that the appellant stated on his arrival in the United Kingdom in 1994 that he was "part of an anti-Ghaddafi organisation involved in illegal arms dealing". That came from a special branch report. Production at a later stage of the actual interview shows that that summary was inaccurate and conveyed an unfair impression. What he said was that the group he was in in Libya procured arms by buying them from South Libya or getting them from military sources. He was involved in that. That is not the same as dealing in arms and we note that in his helpful summary of the case against the appellant Mr Williams correctly refers to involvement in acquiring weapons to attack the regime.

16. The appellant said in interview that in 1992 he was fighting at or near Jalalabad. He is criticised for not referring to that in his statement, but the open statement served on him did not refer to that or seek to rely on it against him. It is in any event difficult to see how his involvement in fighting with Mujahideen in 1992 against the communist puppet regime in Afghanistan could properly be used against him as support for an Al Qa'ida link or sympathy with Al Qa'ida's anti-western agenda. In any event, he must have been aware of what he had said in interview and that it had apparently been treated with scepticism by the respondent at that time.

17. As we have said, we have no doubt that he has been actively involved in the provision of false documentation. He denies that it went beyond provision for fellow Libyans and was not so far as he was aware for terrorist purposes covered by the 2001 Act. We are well aware that there is a substantial trade in false documents only a very small proportion of which can be linked to terrorism. Those who wish for a new life in another country need such documentation and are prepared to pay for it and those involved in that trade can make considerable sums of money from it. In any event, whatever the use to which such documents were to be put, it is hardly surprising that the appellant should have taken steps to conceal what he was about and to ensure that his means of communication were as secure as possible.

18. One matter relied on heavily by the respondent is the transfer by the appellant of £600 to Nisam Saadi in France. In fact, as is accepted by the respondent, the money went to Nisam's brother, Fahdal, who was using his brother's identity. In his statement, the appellant says that he did not know either brother but had been asked to transfer the money. Fahdal Saadi is currently in detention in Iran and is suspected of having links with Al Qa'ida. For reasons which we cannot detail further in this open judgment, we were not persuaded that it was reasonable to suspect that this transfer involved a support for Fahdal Saadi which the appellant knew or ought to have known was support for someone involved with Al Qa'ida.

19. Association with individuals who themselves are considered to have been involved in terrorist activities is relied on. This sort of association can provide cogent support for the contention that an individual himself has links to terrorists. But it must be looked at with care since any extreme Islamist and in particular one who is a member of an extremist organisation which is itself involved in terrorist activities is likely to be at least acquainted with those who have a similar viewpoint. Some of these may well themselves be active terrorists, but association with them must not be taken necessarily to mean that an individual is supporting or knows what they are doing, especially if they themselves are or have been members of the same organisation or for other reasons are friends. So here association with Sami Assadi is relied on. Assadi may well have been involved in terrorist activities which go beyond the stated aims of the LIFG. But Assadi was a leading LIFG member and so it is hardly surprising that the appellant associated with him. Another association relied on is with Abu Qatada. Abu Qatada's important roles in terrorist planning is an undoubted fact, but the appellant has explained in his statement the reason for and the extent of his association. The respondent asserts that the association is much greater and closer than is admitted. In our judgment, the evidence produced does not support that

assertion.

20. We do not doubt that the respondent was entitled to suspect that the appellant is a terrorist within the meaning of the 2001 Act. Much of the material upon which the respondent relies could point in that direction, but only if a generally adverse view is taken of everything. Such a view is in our judgment not reasonable and, as we have said, we are concerned that too often assessments have been based on material which does not on analysis support them. We have thought long and hard before deciding on this appeal since we are conscious of the heavy responsibility that is placed upon us where the safety of the citizens of this country is at stake. There can be no doubt that Al Qa'ida and those who support its aims do constitute a very real threat. However, although we pay the greatest respect to the views of the respondent and those who advise him, we would be failing in our duty if we did not act on our own judgment. We believe that the assessments placed before us and the respondent are not reliable and that reasonable suspicion is not established.

21. It follows that we must allow the appeal against certification and cancel the certificate.

22. There is also an appeal against the decision to make a deportation order. We recognise that the interests of national security as a ground for deportation may go beyond what is required to justify certification under the 2001 Act. But the reasons for the decision to make a deportation order were precisely the same as those which had led to the decision to certify. Accordingly, since we have not accepted that those reasons have been established, we must also allow the appeal against the decision to make a deportation order.

MR JUSTICE COLLINS

CHAIRMAN