

Date of Judgement: 12/07/2004

SPECIAL IMMIGRATION APPEALS COMMISSION

Before :

THE HONOURABLE MR JUSTICE SULLIVAN
Mr C M G OCKELTON
Mr M G TAYLOR CBE

Between :
K - Appellant

- and -

Secretary of State for the Home Department - Respondent

For the Appellant **Ms G Pierce**
For the Respondent **Mr S Catchpole QC**
Mr T Eicke
Special Advocate **Mr N Blake QC**
Mr D Beard

OPEN JUDGMENT

Introduction

1. K (who is known under many names) is a citizen of Algeria. He appeals under section 2 of the **Special Immigration Appeals Commission Act 1997** ('the 1997 Act') against the Respondent's decision to make a deportation order against him, and under section 25 of the **Anti Terrorism, Crime and Security Act 2001** ('the 2001 Act') against the Respondent's decision to certify him as a suspected international terrorist. Both of those decisions were made on the 2nd October 2003. On that date the Respondent also issued a certificate under section 33 of the 2001 Act that K was not entitled to the protection of Article 33(1) of the **Refugee Convention** because Article 1(F) or 33(2) applied to him (whether or not he would be entitled to protection if that article did not apply) and his removal from the United Kingdom would be conducive to the public good.

History

2. K claims to have arrived in the UK from Spain on 9th February 1998 having left Algeria on 2nd February 1998. He was in possession of an Italian identity card in the name of Fabio Marco which he claimed to have purchased in Spain. He claimed asylum in the UK on 13th February 1998 on the basis that he was a draft evader. His solicitors returned his completed asylum questionnaire on 11th September 1998.
3. Whilst awaiting the outcome of this application K used a false French passport in the name of Sylvian Delas to make several trips to the United Arab Emirates in May and June 2001. In July 2001 he travelled to Georgia on the same false passport, from where he was deported back to the UK. On being refused leave to enter he admitted that the passport was false and acknowledged his asylum application. He was told that his travel outside the UK had terminated his claim for asylum.
4. K then made a second claim for asylum. He was interviewed in connection with this claim and granted temporary admission to the UK. His second application for asylum was refused on 21st August 2001, but by this time he had absconded, having failed to abide by the conditions of his temporary admission. When he was apprehended on 10th October 2001 he had a French driving licence in the name of Adam Naouli. A purported appeal against the refusal of asylum was lodged by Rosecal on 2nd November 2001, but was rejected because Rosecal was not authorised to give immigration advice.
5. K remained in custody at the Yarlswood Detention Centre until he absconded again following a fire at the Centre on 14th February 2002. He was rearrested on 19th September 2002. Since then he has been detained in HMP Belmarsh.
6. The certificates under sections 21 and 33 of the 2001 Act were issued by the Respondent for the following reasons:

"You are a senior member of group of Mujahideen engaged in active support for various international terrorist groups, including networks associated with Usama Bin Laden. Your activities on behalf of Islamist networks include facilitation of travel for Mujahideen, in particular from Abu Doha's group, to and from Afghanistan, Pakistan and the Caucasus. You have also attempted to join Ibn Khattab's Arab Mujahideen in Chechnya in order to fight. You held a senior position within Abu Doha's group and you have provided active support for a network of extreme Islamists planning to carry out attacks in the UK and Western Europe including the use of toxic poisons."

For the same reasons the Respondent deemed it conducive to the public good to make a deportation order against K for reasons of national security.

7. K appealed against the Respondent's decisions by notice of appeal dated 7th October 2003. His grounds of appeal were as follows:

"1. The relevant provisions of the 2001 Act and the Human Rights Act 1998 (Designated Derogation) Order 2001 are incompatible with Articles 3, 6, 14 and 15 of the European Convention on Human Rights ("ECHR").

2. The circumstances of the Appellant's continued detention are violative of Article 3 and 8 ECHR.

3. (a) There are no reasonable grounds for the belief and / or suspicion that the Appellant's presence in the United Kingdom is a risk to national security and / or that he is an international terrorist – section 25 (2)(a).

(b) In fact on the merits, the Appellant is not such a person; so there is some other reason as to why the Certificate should not have been issued – section 25 (2)(b).

4. The Secretary of State has erroneously certified that the Appellant is not entitled to the protection of Article 33(1) of the Refugee Convention because Article 1(F) or Article 33(2) apply to him.

5. The Appellant's deportation is neither in the interests of national security nor otherwise conducive to the public good and the decision to deport him should be accordingly overturned.

6. The decision to deport the Appellant is in breach of the UN Convention 1951 and / or Articles 2 and / or 3 of ECHR.

7. The decisions to deport the Appellant and certify him are in breach of the Appellant's and his family's right to respect for family and private life – Article 8 ECHR."

The Respondent's First Open Statement

8. Pursuant to rule 37 of the Special Immigration Appeals Commission (Procedure) Rules 2003 ('the Rules') the Respondent lodged and served an Open Statement setting out the grounds for his decision that K should be detained under the 2001 Act, and the evidence that would be relied upon in support of those grounds, supported by a Statement of Security Service Witness G.

9. Having summarised K's immigration history and the facts relating to the decision to detain him under the 2001 Act (paras. 2 – 6 above), the statement set out the evidence upon which the Respondent relied in support of the decisions referred to in paragraph 1 (above). In summary, it

was contended that:

(1) K was an established and senior member of the North African extreme Islamist network formerly led by Abu Doha. He was in regular contact with senior members of that group in the UK including Abu Doha himself, Abu Doha's successor Toufiq, and other named members of the group including Houssam @ Mohammed Kouchi

(2) Many of those associated with the group had undergone terrorist training in Afghanistan and had been active in the provision of logistical support to Algerian terrorist groups including the GSPC, the Arab Mujahideen in Chechnya and terrorist training camps in Afghanistan.

(3) K had attempted to travel to Chechnya but had been detained by Georgian police on 3rd July 2001 as he attempted to enter the Pankisi Gorge. When detained, he was in possession of mobile telephone numbers associated with Toufiq and 'G', a former member of the GIA who latterly worked on behalf of its splinter organisation, the GSPC, and was involved in fundraising for the Chechen mujahideen. K was also in contact with other significant members of the GIA and the GSPC.

(4) K had maintained close contact with a North African extreme Islamist network based in Pakistan and Afghanistan with links to Al Qa'ida which was heavily involved, prior to the Allied invasion of Afghanistan, in organising the travel of extremists to and from Afghanistan and the training camps located there. K's activities on behalf of this network included the provision of financial and logistical support.

(5) K had lived at the Finsbury Park Mosque for over a year in 1999/2000 and stated that he knew Abu Doha, Toufiq and Houssam only because they prayed there, although he had previously denied that he knew Abu Doha.

(6) K was extremely security conscious. In September 2001 Security Service surveillance noted that K, and an associate subsequently identified as Mohamed Yacine Ankouche had used anti-surveillance techniques during a journey to St. Albans and during a trip to a photo-booth. It was assessed that the visit to the photo-booth was to obtain photographs to use in false documentation. Redacted copies of surveillance reports dated 28th September and 2nd October 2001 were included among the documents produced with the Statement. These described the behaviour of K and his associate in some detail, e.g. "they appeared to wait until everyone else had cleared the platform before jumping back onto the train"; when the train stopped at St. Albans they "were seen to pause on the platform, looking at other

passengers" etc.

(7) Following his escape from detention in February 2002 K had re-involved himself in extremist activity. He had provided support for the network of North African extreme Islamists, including former members of the Abu Doha group, planning terrorist attacks in the UK and Europe including the use of toxic chemicals. His activities suggested that he could be properly described as a member of the network.

(8) When arrested in London on 19th September 2002 K was found to be in possession of a bankcard in the name of Izac Katti. He denied any knowledge of a Belgian passport found at his address, but admitted that he recognised the photograph as that of "Toufiq" whom he used to see at the Finsbury Park Mosque but had not seen for at least 18 months. He attributed false documentation found at his address to an individual called Djamel, who was assessed to be Aissa Khalef. Khalef was traced to an address in Norfolk where he was arrested on 26th September and found to be in possession of a document in Arabic on the production of poisons, explosives and electronic circuits.

(9) In January 2003 the Metropolitan Police Anti Terrorist Branch searched a flat in Wood Green. What was found there pointed to the preparation of toxic chemicals for terrorist use. It was assessed that not all of the toxic chemicals manufactured in the UK had been recovered.

10. The First Open Statement concluded with the Respondent's Assessment, as follows:

"[1] K is a key UK-based contact and provider of financial and logistical support to extreme Islamists in the UK and overseas, who belong to networks linked to Al Qaida. His contacts are senior figures and cross a range of international terrorist networks. The sort of support which K offers, significantly increases the capabilities of these networks, without which they would be unable to function as effectively. These networks pose a direct threat to the UK.

[2] K was a member of the Abu Doha group in the UK, which has been linked to a number of plans for significant terrorist attacks. He also belongs to and has provided support for a network of North African extremists directly involved in terrorist planning in the UK, including the use of toxic chemicals...

[3] K has been detained previously, but has absconded from custody and resumed his terrorist support activity in the UK. It is assessed that if released from custody, he would seek to do the same. His extensive extreme Islamist contacts, his experience in providing logistical support, his ability to obtain fraudulent

documentation in order to evade detection mean that he would pose a significant threat to UK national security were he to be at liberty."

The Appellant's Statement

11. In his statement dated 28th April 2004 K denied that he was an international terrorist, that he belonged to any international terrorist group and that he had any links with such a group. He contended that the UK authorities had treated him in an inconsistent manner. He had been told when interviewed by the Security Service in August 2001 following his deportation from Georgia that the authorities had "no problem" with his trip to Chechnya to assist the Chechen resistance and that his problem was with immigration. He had made no secret of his view that the Chechens were entitled to defend themselves against "the brutal Russian occupation". He would have given assistance in Chechnya as a medic.
12. He explained that he did not attend the further immigration interview at Heathrow in August 2001 because he had been exhausted from lack of sleep and was suffering from a degree of depression. He had been forced to escape from Yarlswood in order to save his life. He had not been involved in the commission of any offences whilst in the UK. Following his arrest in September 2002 he had been asked by the authorities to provide information as to who was sending money and going to Georgia. He had replied that he had no information to give, other than information about his own journey, which he had been told was not a problem.
13. In 1999 he had gone to Afghanistan. He had two reasons for going there: to try to live an Islamic way of life in a country that was making a genuine attempt to be an Islamic State, and so that he could receive some training to be of use to defend Chechnya if it was invaded by Russia. As well as religious study he studied "medical and emergency treatment and help, and very specific military training for the mountains, i.e. that was of use only in resistance in Chechnya – not in other circumstances". He had not been in a Bin Laden training camp in Afghanistan.
14. He said that when he left Afghanistan he had no intention of returning to this country. He did so only because it was not possible to travel directly to Chechnya. He therefore returned to the UK and travelled from there to Georgia in July 2001 using his own money. He did not intend to return to the UK, but was deported from Georgia. He did not wish to be in the UK and following his escape from Yarlswood he had worked at markets in London to save money to leave the UK.
15. He maintained that to the best of his knowledge the individuals with whom he had been arrested in September 2002 were innocent. He had nothing to do with any flat in Wood Green or anything to do with any chemicals or preparation. He was not a member of any group, had never heard of the Abu Doha Group, and believed that it had been dreamed up by the Respondent. The man he knew as Abu Doha was well known in the community as someone who was getting help for Chechnya. He knew other Algerians, but they were people with whom he used to play football near the Finsbury Park Mosque.

16. In the one instance where the Respondent had made a specific allegation to which he could respond, he contended that the allegation was demonstrably wrong: he did not accompany someone called Mohammed Yasin Aknouche to St. Albans, nor did he use anti-surveillance techniques. He asked for copies of the photographs taken during the surveillance operation to be produced. Since in 2001 the Respondent did not think that K had done anything unlawful or dangerous, the Respondent's subsequent change of mind resulting in K's potentially indefinite detention under the 2001 Act was neither fair nor just. He was being detained in HMP Belmarsh for no reason.

The Respondent's Second Open Statement

17. The Respondent served a Second Open Statement supported by a Statement of Security Service Witness K to update the material contained in the First Open Statement and to respond to the Appellant's Statement. The Respondent also produced an updated Open Generic Statement – April 2004, supported by a Statement of Security Service Witness J. K's immigration history was set out in a Statement of Mr Troake a Grade 7 Civil Servant in the Immigration and Nationality Directorate of the Home Office.
18. In the Second Open Statement the Respondent did not accept that the authorities had behaved inconsistently towards K: the Security Service's understanding of his activities and appreciation of their significance had developed over time. K's denials were not accepted and attention was drawn to what were said to be several inconsistencies in his account of events. These included the following:
- (1) K had never previously admitted that he went to Afghanistan despite the fact that he had been given a number of opportunities to do so when interviewed by the Immigration Service and the Security Service on 2 occasions in July 2001, by the Metropolitan Police Special Branch in September 2002, and by the Security Service in October 2002. In September 2002 he claimed that he had never travelled to Afghanistan. In October 2002 it was put to him that he had met Abu Doha in Afghanistan; he denied this and stated that he had never been there.
 - (2) Although he stated (as he did to the Immigration Service in July 2001 and the Metropolitan Police Special Branch in September 2002) that he attempted to travel to Chechnya because he wished to provide medical assistance, in his interview with the Security Service in July 2001 he had initially stated that he travelled to Georgia as a tourist, before quickly changing his story.
 - (3) K had not been truthful about his activities in the UK. He had denied that he had been involved in the commission of any offences, but by his own admission he travelled to the UK on a false Italian ID card, when deported from Georgia he had a false French passport, when detained in 2001 he had a French driving licence in

the name of Adam Naouli, and when he was arrested in September 2002 he was using a bank account in the name of Izac Katti.

It was also noted that K's statement did not deal with his time in Dubai. In respect of the trip to St. Albans the Respondent had identified K's companion as Aknouche, but conceded that the photographs were not conclusive. However it was pointed out that K had not denied that he had travelled to St. Albans, had given no explanation for his trip, and had not identified his companion. Copies of the photographs taken during the surveillance operation were produced.

The Rule 38 Process

19. Both the First and the Second Open Statement were amended following the procedure set out in rule 38 of the Rules. As a result, K was provided with further particulars of the case against him. Amongst others, these particulars included:

(1) Further names of other members of the Abu Doha group with whom K was said to be in regular contact (para. 9(1) above), including 'P'.

(2) The assessment that K was actively involved in assisting members and associates of the Abu Doha group to travel from the UK to Afghanistan / Pakistan and Georgia / Chechnya.

(3) The name of one of the significant members of the GIA / GSPC with whom he was alleged to have been in contact: the UK based 'A' (para. 9(3) above).

(4) An allegation that he had maintained close contact with Omar Chabani @ Abu Jafar Al Jazairi, an individual associated with the Abu Doha group and the North African extreme Islamist network referred to in para. 9(4) above.

(5) That following his escape from detention in February 2002 K was associated with members of the North African network referred to in para. 9(7) above including Mohammed Meguerba, with whom he worked on a market stall.

(6) That K was heavily involved in the supply of false documents, including passports and the fraudulent use of chequebooks and credit cards.

The Hearing

20. In his opening submissions on behalf of the Respondent Mr Catchpole QC briefly outlined the case against K that had been set out in some detail in the Respondent's Open Skeleton Argument. That case was summarised in paragraph 18 of the Skeleton Argument, as follows:

"(1) K had received mujahideen training in Afghanistan. It was assessed that this training would have included weapons and explosives training;

(2) K was a close associate of Omar Chabani @ Abu Ja'far himself a close associate of Abu Doha group and a North African extreme Islamist based in Pakistan with links to Al Qa'ida;

(3) K provided financial and logistical support to the Abu Doha group / North African Network;

(4) While in the UK, K became an established and senior member of the Abu Doha group / North African Network;

(5) K was a close associate of, inter alios, significant members of the Abu Doha group (including Toufiq, who was Abu Doha's successor, and Houssam) and held a position of authority amongst his North African extremist associates in the UK;

(6) K was actively involved in assisting members and associates of the Abu Doha group to travel from the UK to Afghanistan / Pakistan and Georgia / Chechnya;

(7) K himself attempted to travel to Chechnya in July 2001 but was returned to the UK by the Georgian authorities. It was assessed that K's intention was to join the Arab mujahideen in Chechnya which, under the leadership of Ibn Khattab, was linked to Al Qa'ida;

(8) Following his escape from Yarlswood Detention Centre in February 2002, K re-involved himself in extremist activity, providing support to the network of North African extreme Islamists planning terrorist attacks in the UK and Europe including the toxic chemicals;

(9) K was heavily involved in the supply of false documents, including passports, and the fraudulent use of chequebooks and credit cards in the support of the North African network and had a role in the distribution of the funds of the network;

(10) K was very security conscious.

(11) K played an active role in facilitating and assisting with the travel of Islamists to and from the UK, including for mujahideen training in the camps linked to Al Qa'ida and the North African network in Afghanistan;

(12) K was an associate of a number of other Islamic fundamentalist terrorists,

many of whom had been linked to disrupted attacks in the UK and / or were themselves detained under the 2001 Act. His association with these individuals was consistent with K himself being a part of the networks who posed the threat giving rise to the present public emergency;

(13) The networks within which K operated were still engaged in active terrorist support and planning. K would resume his various activities in support of those networks if he were at liberty in the UK."

21. K did not amplify or amend his grounds of appeal or his written statement (paras. 7 and 11 – 16 above) nor did he attend the hearing of his appeal. Ms Pierce made a brief statement on his behalf. She drew attention to K's written statement and submitted that it was clear that the Respondent was not prepared to acknowledge the possibility of any error in the absence of specific evidence to disprove his allegations, which K was unable to provide because the allegations made against him were general in nature and the alleged supporting evidence had not been disclosed to him. She submitted that the photographs of K's companion on the trip to St. Albans should have been produced at an earlier stage. The authorities had known what K was doing in relation to Chechnya, the request that he should give information about the activities of others in relation to Chechnya had been improper, he had no information to give. It was unfair for the authorities retrospectively to contend that K's attempt to get to Chechnya was unlawful.
22. Ms Pierce confirmed that K wished his appeal to proceed, but because he believed that the procedures under the 2001 Act were fundamentally unfair he did not wish to be represented by a lawyer. She had therefore been instructed to take no further part in the proceedings. We pointed out that while K was entitled to adopt that course, the credibility of the denials in his written statement had been placed in issue by the Second Open Statement, and it would be difficult for us to assess his credibility if he played no part in the proceedings. Ms Pierce confirmed that K had given the most careful consideration to his position and had instructed her accordingly. Having confirmed that she was not instructed to cross-examine the Respondent's witnesses who were formally tendered for cross-examination, Ms Pierce withdrew from the proceedings. The open session was thereupon concluded.

The Open Case – Discussion and Conclusions

23. We recognise the difficulties faced by an Appellant who sees only the open material and can understand K's perception that the procedures are unfair. However, each case will turn upon its own individual facts, and it would be wrong to give the impression, which Ms Pierce sought to do, that this particular appellant had been placed in a position where he was prevented by reason of the procedures under the Act from mounting an effective defence in response to the case made against him.
24. We have summarised the information made available to K at the various stages of the procedure,

the First Open Statement, the Second Open Statement, the amendments pursuant to rule 38, and the Respondent's Skeleton Argument, and K's response to this information in his Written Statement. While some of the assessments in the open material can fairly be described as general assertions unsupported by any documentary evidence, in response to which K would not have been able to give any more than an equally general denial, it is clear that in respect of other assessments K was provided with a great deal of detailed information: names, dates, places and supporting documents.

25. K is in the best position to give an account of his whereabouts and activities since he first claimed asylum in 1998. His written statement is significant not so much for what it says, as for what it does not say. To take one example: the visit to St. Albans and the photo-booth where K says that the Respondent's specific assertion is "completely wrong" (para. 9(6)). K has not denied that he went to St. Albans. He knows who accompanied him and why they went there. He has not explained why they went there, nor has he identified his companion, despite having been provided with the photographs taken during the surveillance operation, as he had requested. While he has denied that he engaged in anti-surveillance behaviour, he has not denied, or given any explanation for, the conduct described in some detail in the surveillance reports.
26. In his written statement K mentions for the first time that he went to Afghanistan in 1999. The Second Open Statement made the point that K had previously denied that he had ever been to Afghanistan (para. 18(1)). Redacted copies of the interviews containing his denials were included in the documents accompanying the First Open Statement. K has not disputed the accuracy of those documents, nor has he explained his earlier denials.
27. K's statement does not explain why he gave inconsistent information about the reasons for his visit to Chechnya. When interviewed after being returned from Georgia in July 2001 he initially attempted to persuade the Security Service that he had been visiting Georgia as a tourist. During his interview with the Immigration Service he said that the reason he was going to Chechnya was because he "wanted to help the Chechnian fighters. I have some medical knowledge and I thought I would be of some assistance to them." When asked what medical knowledge he had he replied: "I have an interest in medicine so I read a few books about medicine." There was no suggestion that he had received any medical training. In September 2002 he told the Metropolitan Police Special Branch that he had travelled to Georgia "simply to provide medical assistance to the refugees. He flatly denied ever having attended any military training courses and claimed never to have travelled to Afghanistan". His written statement is not consistent in this respect. He maintains that he went to Chechnya to act as a medic, but now admits to having studied medical and emergency treatment in Afghanistan. In addition his statement says that he undertook "very specific military training, for the mountains – i.e. that was of use only to the resistance in Chechnya". His statement does not suggest that he was not intending to use that military training.
28. K's written statement does not mention his trip to Dubai, nor does it explain why, having decided not to attend the second immigration interview at Heathrow in July 2001 because he was feeling exhausted and depressed, and having escaped from Yarlswood during the fire in February 2002

in order to save his life, he remained at large until rearrested in October 2001 and September 2002, respectively. Since the statement does not deal with K's possession of documents in a variety of different names (para. 18(3) above) the assertion that he has not been involved in the commission of offences whilst living in the UK is unconvincing.

29. One of the most striking omissions from K's written statement is any serious attempt to deal with the Respondent's contention that he was in regular contact with named members of the Abu Doha group (para 9(1) and 19(1) above); with other named individuals, such as Chabani @ Al Jazairi, who were said to be associated with that group (para 19(4) above); and with 'A', a UK based member of the GIA / GSPC (para. 19(3) above). The documents produced included redacted records of interviews in which K said that he had never heard of Chabani [@ Al Ja'far], did not know 'P', and did not know anyone by the name of 'A' or Abu Doha. When interviewed in October 2002 K said that after prayers at the Finsbury Park Mosque he and some others, including a man named Toufiq would leave the mosque to play football in a local park.
30. K knows the identity of his associates, and the circumstances in which he has been associated with them, since his arrival in the UK in 1998. Apart from stating that the man he referred to as Abu Doha was known by the whole community as someone who was getting help for Chechnya (para. 15 above), K's written statement does not say whether he was, or was not associated with any of the individuals mentioned in the Respondent's evidence, and does not deal with the circumstances in which he may have been associated with them, except to say that a number of the names mentioned to him in interview were Algerians who were in the UK, were not in prison, and were people with whom he used to play football near the mosque.
31. The matters referred to in paragraphs 25 – 30 (above) are not an exhaustive list, merely the most obvious examples of the way in which K's written statement fails to deal with the open case made against him. Given the unsatisfactory nature of the statement we do not feel able to give any significant weight to the general denials contained within it (paras. 11 – 15 above). We have dealt with these matters in some detail because they are useful illustrations of the extent to which K would have been able to answer the case against him, if he had chosen to do so. While we do not draw any adverse inference from K's failure to give evidence, or otherwise participate in the hearing of his appeal, we have to determine his appeal on the evidence and we are left with the position that there has been no effective challenge by way of evidence, cross examination or submission, to the open material produced by the Respondent.
32. We have considered the detailed material relating to K in the amended First and Second Open Statements against the background of the material contained in the Amended Open Generic Statement – April 2004, and in the light of the Commission's decision dated 29th October 2003 in **Ajouaou and A, B, C and D** ('the generic judgement'). We need not repeat those generic assessments and conclusions, save for the Commission's conclusions in respect of the Abu Doha group in paragraph 294 of the generic judgement:

The Abu Doha Group

"294. There is ample evidence to support the conclusion that this group falls within the Act, has links to Al Qa'eda and is a very important part of the emergency. It is not a group with an exclusive membership; its members or supporters or some of them may form part of other networks or groups, as well. It is the paradigm group, loosely co-ordinated but overlapping with other groups or cells of North African, principally, Algerian, extremists. It may overlap with groups centred around Abu Qatada or around Beghal. It too is controlled or influenced by people outside the United Kingdom."

33. We have to consider the evidence, both open and closed, as a whole. Thus far in this judgement we have confined our attention to the open material. We accept the, unchallenged, evidence within that material, and for the reasons set out above, we are satisfied upon the basis of that material alone that there are ample grounds for believing that K was not merely a senior member of the Abu Doha group in the UK, that he was a close associate of other significant members of the group, and that he actively supported the activities of the group and other North African extreme Islamists in the manner described by the Respondent. Applying the test contained in section 25(2) of the 2001 Act, there are reasonable grounds for a belief or suspicion of the kind referred to in section 21(1)(a) and (b), and no other reason has been advanced as to why the certificates should not have been issued.
34. For the sake of completeness, we note that insofar as K's Grounds of Appeal (para. 7 above) relate to the substance of the Respondent's case against him, they amount to nothing more than bare denial. Insofar as they relate to the fairness of the procedures under the 2001 Act generally, and the extent to which the Act is incompatible with the European Convention on Human Rights, those arguments were considered, and rejected, in the derogation proceedings, and the decision of the Court of Appeal in **A, X and Y and Others v. Secretary of State for the Home Department** [2002] EWCA Civ. 1502, [2003] 2 WLR 564 ('the derogation decision') is binding upon us, although we are aware that the appeal to the House of Lords is due to be heard in October.
35. It has not been suggested on behalf of K that his appeal under the 1997 Act against the Deportation Order raises any separate or distinct issues in addition to those raised in his appeal against the decision to certify him as a suspected international terrorist under the 2001 Act. Article 8 of the ECHR is mentioned in K's Grounds of Appeal, but the point has not been further developed. K has not given any details of his private or family life so it is not possible to assess the extent of any likely interference. There is, however, nothing in the material before us which suggests that any interference might be disproportionate bearing in mind the need to protect national security.
36. It follows that upon consideration of the open material K's appeals must be dismissed.

The Closed Material – Discussion and Conclusions

37. Although the closed material is extensive, a detailed discussion in this Open Judgement is neither appropriate nor necessary. At the outset of the closed session Mr Blake QC explained that, for the reasons set out in a Note which has been sent to K's Solicitors, the Special Advocates had concluded that they did not intend to ask questions of the closed witness or make submissions in the closed proceedings. The Note makes it clear that in reaching that conclusion the Special Advocates had proceeded upon the basis that their statutory duty was to form their own independent judgement of how the interests of the Appellant were best promoted in closed session, paying great weight to the position adopted by the Appellant (that he did not wish to participate in the proceedings), but not being bound by it if they concluded that a different approach would be in the Appellant's best interests.
38. We recognise that K's unwillingness to participate in the hearing placed the Special Advocates in an invidious position. Had K presented an effective challenge to any part of the open material the Special Advocates could have pursued that challenge in closed session, to ascertain whether, and if so to what extent, that part of the open material was supported, or negated, by any of the closed material. In a case such as this, absent any challenge to the open material by an appellant it will be difficult (though not always impossible, see the Commission's decision in **M v. Secretary of State for the Home Department** dated 8th March 2004) for the special advocate to make any effective challenge to the closed material.
39. The Special Advocates having explained their position, the closed session was concluded. In the absence of any submissions or 'live' evidence we merely record our view that the material in the closed statements and accompanying documentation fully supports, and does not in any way detract from, the open material discussed above.
40. The standard of proof prescribed by section 25(2) of the 2001 Act is relatively low: are there reasonable grounds for belief or suspicion. As explained above, we are satisfied that this low threshold is easily crossed on the basis of the open material alone. If the totality of the material, both open and closed, is considered, we have no doubt that K was a senior, and active member of the Abu Doha group as described in the Respondent's evidence.

No Need for a Closed Judgement

41. Rule 47(4) of the Rules requires us to serve a Closed Judgement upon the Respondent and the Special Advocate if this Open Judgement does not contain the full reasons for our decision. We did not find it necessary to rely on the closed material in reaching our conclusion that K's appeals must be dismissed (para. 36 above), and since there was no challenge to the closed material there are no issues that need to be resolved in a Closed Judgement.

Conclusion

42. For the reasons set out above K's appeals are dismissed.

The Honourable Mr Justice Sullivan