

Judgment delivered orally at hearing on 24<sup>th</sup> May 2005

**SPECIAL IMMIGRATION APPEALS COMMISSION**

Before:

The Honourable Mr Justice Ouseley

**'MK'**  
APPLICANT

and

Secretary of State for the Home Department  
RESPONDENT

For the Appellant:	Ms N Rogers
Instructed by:	Ms G Peirce, Birnberg Peirce & Partners
Special Advocate:	Mr A Nichol QC
Instructed by:	Mr S Trueman, Treasury Solicitor
For the Respondent:	Mr S Wilken
Instructed by:	Ms S Nasser, Treasury Solicitor

**OPEN JUDGMENT**

1. The Applicant has been in immigration detention since he was served with a Deportation Order on 23<sup>rd</sup> September 2004. He has been detained pending deportation. His detention has been certified as necessary in the interests of national security. That is the same basis as given by the Secretary of State for the making of the Deportation Order. The Applicant applied for bail on 6<sup>th</sup> April 2005. He is French citizen and his deportation is proposed to France.
2. The objections to bail are twofold. First, the risk to national security and, second, the risk of absconding. These are based on the Statement of Objections and are supported by a witness who was made available for cross-examination in open session and was actually cross-examined by the Special Advocate on behalf of the Applicant in closed session. There was no evidence from the Applicant which took issue with the merits of the Secretary of State's case as set out in the Statement of Objections.
3. The brief grounds of appeal did take issue with the general case. There was no evidence until

late in the day on his family and community ties. I make it clear that I expect that any applicant for bail within SIAC would produce evidence which explained why it was that he could be expected to turn up for his appeal rather than abscond. The Commission should not be expected simply to rely upon the most general of assertions in grounds of appeal to which no statement of truth has been attached. This is not the first time that the Commission has had to make such a point.

4. I turn first to deal with the objection based on the risk to national security. A number of aspects were raised in a helpful cross-examination by Mr Andrew Nichol QC in closed session. However, I approach this application on the basis that the Secretary of State has good prospects of making good the allegations in the Statement of Objection to bail and has good prospects of showing that those demonstrate a risk to national security and that there is therefore a sound basis for the making of a Deportation Order.
5. But the question which is not addressed, but which is particularly pertinent in the light of events after the certification of detention, is whether bail conditions could adequately control the risk to national security. I emphasise, as I did in the bail judgment in the Abu Rideh case, that that is the question which should be addressed by both parties. It is particularly important for the Secretary of State to address the effectiveness of conditions in controlling or managing the risk to national security to an adequate level in the light of his apparent acceptance of the adequacy of conditions imposed in control orders in respect of those who were formerly detained under Part IV of the ATCSA 2001.
6. I recognise the way in which the case history developed in relation to the Part IV detainees, but it is not suggested on behalf of the Secretary of State that the conditions imposed under a non-derogating Control Order are inadequate in relation to the risk to national security, although no doubt detention is more effective. I appreciate also that individual cases may exhibit differences in relation to the imminence or severity of risk to national security which they may present and that a power exists here lawfully to detain the Applicant pending deportation. As I have said, detention is, by its nature, more effective in controlling the risk to national security.
7. However, I have not been presented with material or submissions from the Secretary of State which address the inadequacy of Control Order type conditions if imposed here to deal with risk as equally as effectively as it is said to do in Control Order cases. I am not prepared to assume that they cannot deal with the risk equally as effectively. The Secretary of State argued that the Control Order type conditions could not be imposed so as to address the risk to national security. In that respect, the Secretary of State had in mind particularly the conditions which dealt with visitors to the house, computer and other equipment in the house and restrictions on meetings out of the house.
8. This contention was based on paragraph 29(5) of Schedule 2 to the Immigration Act 1971 as amended by section 3 and Schedule 3 to the SIAC Act 1997 as amended. The Secretary of State

also relied on the enlarged provisions for bail conditions in the Asylum and Immigration (Treatment of Claimants) Act 2004 section 36 and the contrast which those provisions were all said to present to section 3 of the Bail Act 1976.

9. To my mind, that argument is not well founded. First, it is plain that paragraph 29(5) refers to conditions for ensuring appearance, but does so in terms which make it clear that they are not exhaustive. The words "may include" plainly show that. It would also be startling and unprincipled if bail could be refused by reference to a risk such as the risk to national security or the risk of committing offences, a risk which in any particular instance was capable of adequate control by the imposition of conditions, but in respect of which no conditions could lawfully be imposed because they did not relate to absconding. In that context, secondly, the provisions in the 2004 Act should be seen as clarifying powers which would have existed in any event. Thirdly, the Control Order conditions which are at issue here, visitors, equipment and meetings, serve a dual purpose in this case. They both reduce the risk to national security and they impose a restriction on obtaining facilities for successfully absconding.
10. Accordingly, subject to strict Control Order type conditions, I do not consider that the Secretary of State has made out his objection to bail on the grounds of national security.
11. I turn now to the risk of absconding. The Applicant has known of at least some Security Service interest in him in 2001 and that that interest included an allegation of contact with Abu Doha. He would not necessarily have known how seriously this was viewed until the making of the Deportation Order and the accompanying letter providing reasons for it. The real question is whether the service of the Deportation Order and the pending appeal creates an incentive to abscond.
12. The Applicant has not lived under a false identity in the United Kingdom, nor has he assumed one since 2001. He has not changed addresses in the United Kingdom. I accept that he has a degree of tie with his common-law wife with whom he has been through a form of Islamic marriage and his step-daughter. His brother lives in London and his partner's family, in particular her mother and brother, live nearby. I have some reservations about the fullness of what I have been told. There is some incentive on the Applicant to attend the deportation hearing in order to contest it.
13. There is also some incentive to abscond because he is now aware of the fact that his activities are viewed as being serious by the Secretary of State. But the incentive to abscond in this case is significantly reduced by comparison with that often found in these cases because the intention is to deport the Applicant to France, the country of which he is a citizen. Of itself, France is not such a country that it inspires fear in the ordinary person in the way that the return of a citizen, say for example to Zimbabwe or Iraq, might do. There is no known threat because he is a French citizen of any onward removal to Algeria from France or of arrest and detention in France. I specifically asked the Applicant why he objected to being deported to France and his answer was

that it would disrupt his life. I concluded that that was an important answer. He had been here for some ten years and had relatives and his partner's relatives here. He could very readily have exaggerated the difficulties which France would create for him even as a French citizen. But he had no particular fear of any treatment which he would receive in France. His fear was of the disruption to the life which he had in the United Kingdom with his partner, her daughter, his brother, and his brother-in-law, together with the degree of settlement which he had here. That makes considerable sense. That is important because the disruption which he would experience through absconding and going into hiding in the United Kingdom is at least of a similar nature in its disruption to his family life to that which he would experience were he to be deported to France. There is no reason to suppose that his partner, a British citizen, and her daughter would not be able to go to France to live and to marry there as they intend to do in the United Kingdom.

14. If there is an incentive to abscond to avoid the disruption of going to France, there is an incentive, which works in the opposite direction, to stay in the United Kingdom so as to contest the appeal and to avoid the disruption which would be associated with absconding. Were he to abscond, it is very difficult to see that an appeal would succeed or that it would not be brought on more quickly than the current timetable which envisages a final hearing in December 2005 with every prospect of being rapidly dismissed. I conclude that there is a risk of his absconding and going underground in this country but that is a risk which can adequately be reduced by sufficiently strict bail conditions.
15. I am prepared, therefore, to order the release of the Applicant on bail on strict terms for his attendance on 5<sup>th</sup> December 2005 at SIAC or at such other times as SIAC may order. He is not to be released, however, until certain conditions have been satisfied. Those conditions should follow the lines set out by way of example in the Control Order conditions on Abu Rideh, except for condition 1, 7, 9 and 12. There should be no restriction on his going into a garden, if there is an enclosed garden with his house. The hours of which he is allowed out will be from 10am until 4pm. He is to report daily to a police station to be identified between the hours of 12 noon and 2pm. There will be an area limit which I will define on a map within which he must stay in the absence of specific Home Office consent. Condition 4 will need to be adjusted. There is a requirement for two sureties which can be taken, subject to satisfactory identification of them, their property and assets at an appropriate police station. In view of the absence of his passport, in circumstances which remain contentious, I also propose to order that he should not apply for or have at any time any passport, whether for him or someone else, in his possession. He is not to apply for any travel tickets which would enable him to travel outside the area shown on the map which I will identify without the consent of the Home Office.

MR JUSTICE OUSELEY

CHAIRMAN