

Ref TRS/147/06

SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,
Breams Buildings
London
EC4A 1WR

Thursday, 9th March 2006

BEFORE:

THE HONOURABLE MR JUSTICE OUSLEY

Mr C MATHER
Mr J D LEDLIE

IN THE MATTER OF A BAIL APPLICATION

BETWEEN:

PP
Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondents

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Mr H SINGH GILL QC (instructed by Messrs Harrow Advocates & Solicitors) appeared on behalf of the Applicant.

MS J FARBEY (instructed by Treasury Solicitor) appeared as Special Advocate.

MR J EADIE (instructed by the Treasury Solicitor) appeared for the Secretary of State.

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Transcribed by Harry Counsell

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Fetter Lane,
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OPEN SESSION
DECISION
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MR JUSTICE OUSELEY:

1. This is a bail application which is made by the applicant, whose detention on immigration grounds is being certified by the Secretary of State as necessary on national security grounds, and, hence, the bail application comes before this Commission.

2. The applicant arrived in the United Kingdom for these purposes in September 2003 or thereabouts, using a genuine French passport but one to which he was not entitled in his true identity. He was using a false identity. He has given his account of how that came about and how he acquired the genuine French passport. He has continued to use the false identity contained in that French passport in the United Kingdom since his arrival. He used it through the Islamic marriage ceremony that he went through in April 2004 in this country to a Dutch citizen of Somali origin and continued to use it through his life with her and her son.

3. He returned to Algeria in September/October 2005 for a visit which was said to be to an unwell mother and returned to the United Kingdom using the same genuine passport that did not reflect, again, his true identity. He was again travelling on a false identity.

4. He was questioned by the Immigration Service and Special

Branch and his true identity came out. It was at this stage that his wife found out his true identity. She has forgiven his deceit involved.

5. He has claimed asylum following his return from Algeria on the grounds that he fears the GIA in Algeria, because of extortion threats and payments made by him to them under duress in the past, and is now said also to fear the Algerian Government, because of the detention on national security and the claims by the Secretary of State. The SEF has been issued and completed. The Secretary of State's decision on the claim is awaited. We have been told that it is expected in about two to three weeks.

6. The issues on the bail application are whether there is a risk to national security were he to be released on appropriately conditioned bail and whether there is a real risk that he would abscond and a risk, if he were to do so, to national security.

7. The bases, at least in open evidence, are that he poses a risk to national security because of his use of a false identity and his links to a group of Algerian extremists in France, including links to his brothers, one of whom is in custody, apparently because he cannot get a surety, the other has been released pending trial because it is not thought that the charges leading to conviction would warrant any significant custodial sentence.

8. The applicant here disputes the allegations in relation to national security. He points to his relationship with the lady whom he has married in the Islamic ceremony and her son by another man and he points to the absence, at least in open, of evidence of other adverse activities while here.

9. So far as national security matters are concerned, we

have looked carefully at all the evidence. We have given particular consideration to the helpful points made by the Special Advocate. As we have said, the evidence of the Secretary of State is disputed, but it is sufficient for present purposes that the Secretary of State's case has at least reasonable prospects of being made out and, if made out, represents a significant contention of a real risk to national security presented by this applicant.

10. The degree of risk could be reduced by conditions, but it would remain a significant risk and the risk would not be, in our view, as effectively managed as it would be by lawful detention.

11. I turn to the risk of absconding. The background material shows to us that there is a real risk that he would abscond, though not immediately, sooner or later, and sooner rather than later. In his case, we do not consider that that risk is essentially controllable by the conditions or by the two sureties that have been offered in this case. We are very conscious and give considerable weight to the persistent use of a false identity in this country and its use for entry on at least two occasions and the persistent deception involved to everyone, including his wife, for a long time. The significance of the admitted deceit is very grave in this case. We take the view that the pattern of behaviour is such as to create the real risk that nothing would stop him absconding. If he were to abscond and if he were to leave the United Kingdom and re-enter clandestinely, which is a real possibility, the risk which he would pose to national security would be the greater.

12. For those reasons this is not a case in which bail should be granted and it is refused.

13. If the application for asylum is unsuccessful, it would be obvious to the applicant that for the Secretary of State to accept the claim would involve him accepting at least a good prospect that the threat from the GIA was true, which would be inconsistent with what the Secretary of State's case before us has been and the applicant would know that. But, if the application is unsuccessful and it is followed by a deportation order and appeal, it may be necessary at some stage later, depending on the likely length of time which such an appeal would take to be disposed of, to consider again the balance between liberty and detention in this case.

14. For the present, bail is refused.

Thank you very much.