

Appeal No: SC/2/2002

Date of Judgment: 29th October 2003

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:
The Honourable Mr Justice Collins
Mr C M G Ockelton
Mr J Daly

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APPELLANT

and

Secretary of State for the Home Department
RESPONDENT

For the Appellant: Mr B Emmerson QC, Mr R Hussain
Instructed by: Birnberg Peirce & Partners
Special Advocate: Mr I McDonald QC
Instructed by: Mr S Trueman, Treasury Solicitor
For the Respondent: Mr W Williams QC, Mr J Swift
Instructed by: Ms L Smith, Treasury Solicitor

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1. G has two names which have been used in this appeal and by the Respondent in the certificate which he issued and in the decisions to remove and to deport. The Appellant's appeal was heard together with those of H and F. This was convenient because there was a degree of overlap in the material against them since all were said to have been members of the GIA and the GSPC and all were Algerians. In addition, they were all represented by the same team, although there were different Special Advocates. But each Appellant must be given separate consideration and their agreement to be heard together was to assist the Commission (and themselves) to enable the appeals to be heard more efficiently and expeditiously. Accordingly, we are giving separate judgments in each case, both open and closed.
2. However, there are issues which are common to all. These have been comprehensively considered by the Commission sitting under the Chairmanship of Ouseley, J in earlier appeals. We have considered the judgment of the Commission on those issues and agree with it. It can be taken that, so far as material, the conclusions set out in that judgment are incorporated into this judgment without the need for them to be repeated. We feel more able to approach the matter in this way since those representing these Appellants were all involved in the previous appeals.
3. The Appellant, who put before us a statement made in September 2002 but did not give evidence, was the third of a family of eleven children and was born in Djelfa in Central Algeria in March 1969. In his statement, he says that he developed polio when two which has left him with a permanently weak and paralysed right leg so that he limps and has to wear a support. However, he told an immigration officer when applying for asylum in October 1995 that he had been shot and injured when in Afghanistan in 1994 because the Afghan Government had shelled a shelter in which he was staying. He supported the FIS, in common with the majority of Algerians, and began to be active on its behalf from about 1989. He was

arrested and tortured in 1991 and in December of that year, fearing that he would again be arrested and detained, he left Algeria for Saudi Arabia. He stayed there until late 1992 but, he says, could not remain and so went to Pakistan and visited Afghanistan from time to time, it being easy to cross the border between the two countries. It became difficult to stay in Pakistan because he was an illegal immigrant there and, with a civil war raging in Afghanistan, it was unsafe to retreat there. Some friends obtained a false French passport for him and a ticket and he came to the United Kingdom. He arrived in August 1995 and claimed asylum.

4. His asylum claim was rejected in September 1997 and his appeal to an Adjudicator (who did not believe that the Appellant's account was credible in material particulars) was dismissed in December 1999. He has married a French national and they have a three year old daughter. He and his wife applied for a residence permit as she is an EEA national in November 2000 and, after an initial refusal, the respondent granted one for six months from 5th June 2001. Application had been made for its renewal following its expiry on 4th December 2001, but no decision had been made when the Appellant was detained on 19th December 2001, following his certification against which he is now appealing.
5. The certification under section 21 is said to be because:

"You are an active supporter of the Salafist Group for Call and Combat (GSPC), which is designated a proscribed organisation under Part 2 of the Terrorism Act 2000 and which has links to Osama Bin Laden's terrorist network. Your activities on behalf of the group and of extremist fighters in Chechnya include sponsoring young Muslims in the United Kingdom to go to Afghanistan to train for jihad."

At the same time, decisions were made to deport him under sections 3(5)(a) and 5(1) of the Immigration Act 1971 and to remove him under Regulation 21(3)(b) of the Immigration (European Economic Area) Regulations 2000 on national security grounds which were the same as those set out to support the section 21 certificate.

6. The open statements provided to justify the certification do not refer to a great deal of source material and so consist mainly of assertions. As in most of these appeals, the main part of the evidence lies in closed material and so, as we are well aware, the Appellants have been at a disadvantage in that they have not been able to deal with what might be taken to be incriminating evidence. The Special Advocates have been able to challenge certain matters and sometimes to good effect. That indeed was the case in relation to a camp in Dorset attended by a number of those, including the Appellant, of interest to the Security Service. We shall come to that in due course.
7. The case against the Appellant is that he was a member of the GIA and, since its split from the GIA, of the GSPC. He is associated with a number of leading extremists, some of whom are also members of or associated with the GSPC, and has provided active support in the form of the supply of false documents and facilitating young Muslims from the United Kingdom to travel to Afghanistan to train for jihad. He is regarded as having undertaken an important role in the support activities undertaken on behalf of the GSPC and other Islamic extremists in the United Kingdom and outside it. All this the Appellant denies and in his statement he gives innocent explanations for the associations alleged against him. He was indeed friendly with in particular other Algerians in the United Kingdom and, so far as 'F' was concerned, the families were close because, apart from anything else, their respective wives were French. He attended Abu Qatada's mosque. He was an impressive preacher and the Appellant says he listened but was never involved. Indeed, he did not know Abu Qatada except through Chechen relief, which the Appellant and many hundreds of other Muslims supported, and he had never spoken

to him on the telephone. He had on occasions approached Abu Qatada at Friday prayers at the mosque if he wanted guidance on some social problem.

8. Two surveillance reports were produced, detailing observations in July 1998 and November 1999 respectively. On 19th July 1998, a Sunday, the Appellant was seen to travel to the Four Feathers Mosque where he met, among others, Abu Qatada. This was not a Friday, but in his statement the Appellant says it was merely going to a prayer meeting. It was accepted that Abu Qatada used to speak on Sundays to large audiences. The surveillance on Thursday 25th November 1999 showed him in company with 'Z' (then on bail in relation to charges under the Prevention of Terrorism Act) and stated that "at one time [the Appellant] and [B, an Appellant whose appeal has been dismissed] were in adjacent [telephone kiosks] but there was no apparent contact". Witness A said that the expression "no apparent contact" conveyed significance to her. We are not persuaded that anything can really be made from the surveillance except that the Appellant was in company with 'Z' at one time during the day and at another was in an adjacent phone box to B but neither communicated with the other.
9. When the Appellant left Algeria in 1991, the GIA did not exist. That does not prevent him having become a member once it did, although out of the country, but there is no evidence that he did. The GIA itself, although proscribed, does not fall within the derogation. The GSPC, which broke away from the GIA, is said to have links with Al Qa'eda. Again there is no evidence that the GSPC has any formal membership nor that the Appellant was directly connected with it. But there is evidence that he was associated with some who themselves were leading lights in promoting the GSPC and its aims and what in our view is important is whether we are persuaded that the Appellant did assist or support those individuals or any of them or any others who were actively involved in terrorism on behalf of or which was itself supported by Al Qa'eda.
10. Much was made by Mr Emmerson of a GSPC Communiqué 16 which purports to have been issued by Ibn Khattab, the GSPC leader in Algeria, shortly after the 11th September attack on the USA (9/11). This was said to show that the GSPC was opposed to terrorist activity outside Algeria. Two passages are relied on, both on the third page of a four page somewhat rambling document. The first reads:

"The group [GSPC] is at peace with those who are at peace with it and at war with those at war with it."

The second referring specifically to 9/11, reads:

"As to the substance, such deeds are inadmissible as far as religion and its rulings are concerned."

11. However, the document must be read as a whole. There is no specific condemnation of 9/11 and it is said that:

"The objective in the huge explosion [9/11] was not merely to disturb American policy but also to send a red signal bearing a threatening message to America in particular and to the entire world. The message being 'there is no such thing as the most superior state'."

The words relied on are somewhat weakened when it is known that there were many, including apparently Ibn Khattab, who did not believe that "brother Osama Bin Laden has either the capability or the resources to do such a thing". Furthermore, the belief was expressed by others that 9/11 had been organised by

the CIA and the Israelis in order to justify attacks on Muslims. Once it became clear that that view was nonsense and that Osama Bin Laden had indeed been responsible, no further condemnation was uttered. On its last page, the communiqué reads clearly "that the GSPC considers the aggression against Afghanistan is terrorism". And it concludes by stating:

"Those who have transgressed [in respect of their policy to Muslims] shall soon know their fate."

The communiqué as a whole and the subsequent silence when it became clear who had really been behind 9/11 in our view do not support the submissions made by Mr Emmerson.

12. A much redacted police report concerning observations at a camp in Dorset attended by a number of persons allegedly involved with the GIA and the GSPC in July/August 1999 was produced. This was said to have been for the purpose of electing an emir or leader of the group. The report was somewhat confusing as to when the camp took place, but in the end, following confirmatory enquiries, it was established that it was on the weekend at the end of July and beginning of August. It seems that the police had been alerted by a local resident who had been concerned that some of those present had "appeared to be paying particular attention to the goats in the farmyard and this aroused suspicions as [the resident] was aware of instances of "goat rustling" for sacrificial purposes in neighbouring counties in the recent past". In any event, following cross-examination, it was correctly accepted by Mr Williams that the allegation that the purpose of the camp was to elect a leader was not established to be accurate. But the camp still has significance in showing the association of those present. We accept that there may be nothing strange in the culture of those from Algeria for the men to go away from their families on a trip such as that, but the opportunity to discuss matters of mutual interest far from prying ears is obvious.
13. On 20th July 2001 and 28th September 2001 the Appellant was visited by officers of the Security Service. These were described by witness A as "disruption interviews". The assessments were that he had been unhelpful on both occasions and not altogether truthful. He denied knowing B, Arif or Moumou. He said he "occasionally" worshipped at Abu Qatada's mosque but was unaware of his Fatwah. He explained his denials, which included Abu Doha, on the ground that he did not recognise the names put to him since he knew most by nicknames (for example, Abu Doha as 'the doctor') and he had requested but had not been shown photographs from which he could tell who they were. He also denied he had ever said he had not gone to Afghanistan: that was a misunderstanding by the officer. We accept that we must be careful not to read too much into a report which may have been based on some misunderstanding, but we are bound to say we are not impressed with the excuses put forward in particular in relation to the names, particularly, for example, B.
14. Reliance is placed on various articles found in his house when he was arrested. These include a copy of the fatwa issued by Bin Laden. The Appellant says he had never seen it and could not explain its presence. A GSPC communiqué, as he says, probably one handed out at the mosque. Analysis of the hard drive of his computer showed it had visited an internet site that specialised in United States military technology. This was not something which could be relevant to the Appellant's studies. And a hand drawn diagram of a missile rocket he has not seen before. It might, he thinks, have been in a book about Islam he had bought second hand from the mosque.
15. We note the denials, but we have to consider all the evidence. As will be clear from this judgment, we have reason to doubt some of the Appellant's assertions. But the closed material

confirms our view that there is indeed reasonable suspicion that the Appellant is an international terrorist within the meaning of section 21 and reasonable belief that his presence in the United Kingdom is a risk to national security. We have no doubt that he has been involved in the production of false documentation, has facilitated young Muslims to travel to Afghanistan to train for jihad and has actively assisted terrorists who have links with Al Qa'eda. We are satisfied too that he has actively assisted the GSPC. We have no hesitation in dismissing his appeal.