

Appeal No: SC/6/2002

Date of Judgment: 29th October 2003

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

The Honourable Mr Justice Ouseley, Chairman

Mr C M G Ockelton

Mr J Chester

D

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

For the Appellant: Mr M Gill QC, Ms S Harrison

Instructed by: Tyndallwoods

Special Advocate: Mr N Blake QC, Mr M Hoskins

Instructed by: Mr S Trueman, Treasury Solicitor

For the Respondent: Mr W Williams QC, Mr R Tam

Instructed by: Ms L Smith, Treasury Solicitor

D

1. D is a citizen of Algeria. He appeals against decisions of the Secretary of State on 18th December 2001 to certify him as a suspected international terrorist under section 21 of the 2001 Act and to make a deportation order against him.

History

2. There has been confusion about his immigration history, because of a typographical error in one of the statements, an allegation made against him which resulted in his arrest and release in 1999, and, apparently as a result, duplication of bail records. Only at the hearing did it become clear that the early part of the recorded immigration history is based on falsehood. He applied for asylum at the Home Office on 5th March 1999, claiming that he had arrived in the United Kingdom illegally on 27th February 1999. The application was refused on 13th February 2001. D appealed on 20th March 2001, but by December of the same year the matter had not yet come before an Adjudicator. On 17th December, the Secretary of State, acting under section 33 of the 2001 Act,

certified that D was not entitled to the protection of Article 33(1) of the Refugee Convention because Article 1(F) or 33(2) applies to him and his removal from the United Kingdom would be conducive to the public good. The following day, as we have said, the Secretary of State made the decisions against which D now appeals.

3. The grounds given for the certification, under both section 21 and section 33, are that D has been an active supporter of the GIA and that his activities on behalf of international terrorists include the procurement of terrorist-related equipment. The Respondent subsequently added allegations that D had been involved in fraud to support terrorist activities and that he supported a looser network of North African terrorists centred on Beghal. In this appeal, D challenges the statements in the certificates and appeals against the decision to make a deportation order on the ground that it would infringe his human rights.

4. In the documentation produced for and at the hearing, the Secretary of State's case for his suspicion of D was put on the following bases. First, he is an active supporter of the GIA, having been arrested and prosecuted in France in 1994 and sentenced to a period of imprisonment (which resulted in his immediate release because he had already been in prison for 35 months awaiting trial). Secondly, he uses false documents. Thirdly, he is involved with other extremists, in particular Djamel Beghal, Abu Qatada and members of the latter's group, and Begg, with whom he worked at the Maktabah Al-Ansar Book Shop in Birmingham. He has also been in contact with other extremists, in particular at a meeting in 17th December 2001 in Leicester. The Secretary of State's third open statement adds, as contacts of D's, Gahalem Belhadj, Baghdad Meziane and Brahim Benmerzouga.

5. We take into account the Secretary of State's oral and written evidence, both open and closed, and the evidence produced on behalf of the Appellant himself including statements and a video tape. In his statements, D denies association with the GIA or with any other terrorist grouping and gives an account of his relationship with most of those mentioned in the Secretary of State's case.

6. Mr D gave oral evidence. In his closing, Mr Gill remarked that it was clear that D would talk for days if allowed to do so, but it seems to us that that willingness was very clearly circumscribed. D did speak at length about what he said were his own views and philosophies. He said that he had not been involved at any time with the GIA, and that he regarded it as wrong to kill civilians, although they might sometimes be the inevitable victims of a just war. He told us about his work at the book shop. He said that when he first started working there, the books stocked had been almost entirely jihad-related, but he had expanded the range of subjects. He provided some explanation for the activities recorded in a surveillance report, and explained also in some detail how he came to have opened various mobile phone accounts: he, with a colleague, was cleverly taking advantage of a giveaway offer by a phone company. He explained how to obtain and build up false identities, with what seemed to be a knowledgeable enthusiasm.

7. On a number of other matters, he was very much less forthcoming. Although it is part of the open case that he is associated with Abu Qatada, he deals only briefly with contacts with Abu Qatada in his written statements. Mr Williams asked him direct questions about contacts with Abu Qatada and obtained an account of some such contacts only with the very greatest of difficulty. This was a matter on which, in our view, D was not anxious to tell the truth and we see no reason to suppose that he has now told the whole truth. Similar concerns relate to some of the other documentary evidence. He was asked, in particular, about two documents found at his flat in two different names (neither of them his): one was an application form for an American Express card and one was a receipt for £2,000 sent to Hungary. The latter was found under the carpet. D claimed that these documents were both left at his house by a regular visitor to it whom, despite the most pressing of invitations, he would not name. He said that he did not want to get his friend into trouble with the Security Service. He was unable to explain why, if the American Express application had

been left by accident, he had not given it back to his friend when he found it; and he was unable to explain why the other document had been left under the carpet.

8. Similar concerns again relate to D's evidence about the attendance at the Eid party at the end of Ramadan, on 17th December 2001, two days before he was detained. We well appreciate Mr Gill's submission that a person who attends a party would not necessarily be able to name everyone else there. But this was almost D's last contact with the outside world. He has had every opportunity to remember the party and no doubt has done so. But he will not say who was there. This reticence applies even in respect of a friend of his, whom he had known for some time, having met him through car dealing transactions in Scotland. This gentleman had been staying with his family in D's flat during the period immediately before Eid. D said that he knew him only as Mustafa and claimed that he could not give the rest of his name. D was also asked about numerical details of bank accounts found jotted down amongst his papers. He said that he would sometimes help people to buy cars or to deal with their banks and so would need the numbers.

9. As D conceded, he did not arrive in the United Kingdom on 27th February 1999, but at the end of May 1998. He went to live with the Beghals. He worked, using a false identity. He then claimed asylum in March 1999, not only lying about the date of his arrival but putting forward a completely false story about his experiences in Algeria. When his asylum claim was refused, without waiting for the outcome of the appeal he had launched, he began preparing yet another identity for himself, buying a Belgian passport, arranging for false documentation evidencing his address, and being ready to acquire a false national insurance number. We heard D's explanations for his use of false names. We do not accept them. There is no credible reason for his not operating in his real name when he first arrived in the United Kingdom and if he had a genuine claim to be a refugee (as he says he did by the time that his claim was refused, whatever may have been the position about his original story) he should have been preparing himself to put that story to the Adjudicator, rather than preparing to take cover under a false identity. Further, whether or not there is a credible explanation for any of these deceptions or attempted deceptions of the United Kingdom authorities, certainly none of them is at all creditable.

10. We regard D as a practised and accomplished liar. We do not believe his excuses, his claims to ignorance, his attempts to distance himself from other terrorist suspects, or his assertions that he has nothing to do with the GIA or other terrorist organisations, networks or activities. Mr Gill pointed out in his closing submissions that Mr Williams had not challenged every assertion made by D in his written statements. He did not need to do so. He had adequately shown that the statements were made by a person who is not prepared to tell the truth.

11. Merely deciding that D is not entitled to credit is not, of course, a basis for deciding that the Secretary of State has reasonable grounds for suspecting that he is an international terrorist. Because of the nature of the case against D himself, much of it had to be dealt with by way of closed evidence. That is not to say that D did not have an opportunity to meet the general case against him, for we are satisfied on the basis of the evidence as a whole that the Secretary of State has more than ample grounds for his suspicion and that the matters to which he refers in his case are sufficiently identified in the open case and are matters with which D could have dealt in his evidence if he was able and willing to do so honestly. It is right to say that the Secretary of State was in error in suggesting that weapons were found at the book shop when D was working there: they were not – they were found at Begg's house, before D started working at the book shop, and, in any event, as weapons they were ineffective. It is true also, and we accept, that some of the relationships, in particular that with Beghal, had a social content. But that was not all. Taken as a whole, the evidence we have seen is sufficient to support the Secretary of State's case that D's extensive contacts with those who were involved at various levels in terrorist planning and activity did not arise primarily or solely for social reasons: he had contact with these individuals because he was himself supporting international terrorism in various ways. As we note in the generic part of this determination, his association with the GIA would be formally sufficient to justify the certificate, but

would not be “within the derogation”. His support of the looser network of North African terrorists is, however, sufficient for both purposes. His appeal against the certificate is dismissed. Again, it is accumulation of matters, viewed in the round, which persuades us that the Respondent has reasonable grounds for his conclusions. This was reinforced by view which we formed of the Appellant’s own evidence. Notwithstanding his protestation that, as a Muslim, he would not break the covenant to which his presence in this country, safe from persecution, bound him, we regard the Respondent’s grounds as reasonable and his detention proportionate. We were not persuaded by his claim.

12. D also claims that his removal would breach his rights under the European Convention on Human Rights. That is accepted by the Secretary of State: it is why he is detained under section 23 rather than being removed. Insofar as his detention interferes with his family life, we regard that interference as amply justified in the interests of national security. His appeal against the decision to make a deportation order against him is therefore also dismissed.

13. The appeal against the decision on 13th February 2001, presumably to give removal directions against him as an illegal entrant, apparently remains outstanding before an Adjudicator: we have seen no certificate transferring it to us. If it had been before us we should have dismissed it, relying on Article 1(F)(c) of the Refugee Convention. Assuming that it is not before us, we direct that it be now considered by an Adjudicator without delay; and we further direct that the Adjudicator who hears the appeal be shown a copy of this judgment.