Asylum and Immigration Tribunal

AF (Terrorist Suspects – HS (Algeria) confirmed) Algeria CG [2009] UKAIT 00023

THE IMMIGRATION ACTS

Heard at Field House
On 5 February 2009 and 12 February 2009

Before

SENIOR IMMIGRATION JUDGE ALLEN
SENIOR IMMIGRATION JUDGE MATHER
MRS M PADFIELD

Between

AF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

i). An appellant who can establish that he has a history that suggests he may have connections to international terrorism is at real risk of being detained on arrival in Algeria, and investigated.

ii). It is reasonably likely that when the suspicion is of international terrorism such a returnee will be passed into the hands of the Department du Renséignement de la Securité ("DRS") for further interrogation.

iii) The historic evidence about the DRS's propensity to use torture as a means of interrogation, together with the continuing absence of any evidence of accountability or monitoring, strongly suggests that, in the absence of evidence to the contrary, the DRS still uses torture and other serious ill-treatment in its places of secret incommunicado detention.

iv) In the light of the further report from Dr Seddon, and of both Y, BB and U v Secretary of State for the Home Department [2007] UKSIAC 32/2005, and PP v Secretary of State

for the Home Department [2007] UKSIAC 54/2006, the Tribunal sees no basis for doing other than confirming that HS (Terrorist suspect – risk) Algeria CG [2008] UKAIT 00048 (heard before the SIAC Cases) was correct and that the risk categories set out therein do not require widening.

Representation:

For the Appellant: Ms C M Fielden, Counsel instructed by CLC Solicitors
For the Respondent: Mr M Blundell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Algeria. He was born on 30 November 1964. He claims to have arrived in the United Kingdom on 13 October 2003 using a false French passport and claimed asylum the same day. He was accompanied by his wife and three other dependants.

2. His application was refused. An appeal was heard by Immigration Judge Entwistle on 25 October 2005. That appeal was dismissed, the appellant applied for a review and on 20 December 2005 Senior Immigration Judge Jordan ordered reconsideration.

The Error of Law in the First Determination

3. On 20 March 2007 Senior Immigration Judge Goldstein considered whether there had been an error of law in the Immigration Judge's determination and concluded that there had, but only on one discrete and important issue. In giving his reasons for making that finding the Senior Immigration Judge said:-

> "…there was before the Immigration Judge a discrete but important issue, as to whether the Appellant would be viewed as having links with international terrorists or would indeed be perceived as a terrorist, owing to the time that he spent out of Algeria in Pakistan, Saudi Arabia and the Yemen and as a consequence of the work that he undertook in those countries, and thus be at real risk on return to Algeria. As properly identified by the parties, there was an absence of findings by the Immigration Judge in relation to these matters. Thus and for like reason, I agreed that the determination disclosed a material error of law. "

4. We do not propose to summarise again the general basis of the appellant's claim to asylum but we do need to set out the findings at paragraph 20(i) to (vii) of the Immigration Judge's determination because Senior Immigration Judge Goldstein directed that the findings therein should stand. The following is a summary of those findings:-

   20(i) The appellant qualified as a teacher in 1983 and left Algeria for the first time in September 1989, going to Pakistan for ten months. He returned to

Algeria in 1990 and regularly spoke out against the government at the mosque. He visited France in December 1990 and in April/May 1991 for employment reasons. In 1991 he claimed to have heard via a cousin and a distant relative who was a gendarme that a potential case was being opened against him in common with others who had previously been in Pakistan. The Immigration Judge said he placed little weight on the appellant's assertions that the Secret Service had a dossier, or file, on him. The appellant had not claimed he was ever arrested, detained or tortured for any activity in Algeria or because he had lived abroad, particularly in Pakistan.

20(ii) When the appellant was out of Algeria it was for the purpose of employment and economic betterment. He left Algeria in 1991 for Saudi Arabia and then travelled to Yemen in September that year. He worked in Yemen as a teacher until 1993. In 1993 he travelled to Saudi Arabia where he married in Jeddah in 1993, his mother having arranged the marriage. The marriage was registered at the Algerian Embassy. He then went to Pakistan again until September 1993 and taught in refugee camps. That was followed by a teaching job in Yemen which he had until 1995.

20(iii) Having married, the appellant's wife returned to Algeria in 1994 with "her son". She remained there for two months. She had no problems on arrival but claims to have been interrogated when she was leaving again. The Immigration Judge did not accept she would have left her son behind, as she did, if she was aware that the authorities were interested in the appellant. The Immigration Judge did not accept that when the appellant went to the Algerian Embassy in Yemen in 1994 to renew his passport he was told that he was wanted, but does seem to have accepted that the passport renewal was refused.

20(iv) The appellant had never joined any political party in Algeria, and in particular not FIS.

20(v) The Immigration Judge did not accept the appellant's claimed reasons for his passport not being renewed in the Yemen noting that the appellant's wife's passport was renewed. He concluded that the Algerian authorities had no adverse interest in the appellant at that time.

20(vi) The Immigration Judge recorded that, when the appellant was in Sierra Leone, the fact he had altered his old passport was discovered. He was refused another visa for the country and had no alternative but to leave. He did not claim asylum in Sierra Leone. He decided to travel to London but was stopped, when in transit, in the Netherlands because the alterations to his passport were noticed. When he was refused permission to continue his journey, he claimed asylum. When his application was refused, his appeal was dismissed and it was made clear by the

Netherland's authorities that he would be returned to Algeria or Sierra Leone he left, on 13 October 2003, to travel to the United Kingdom using false documents.

20(vii) The Immigration Judge said the appellant had been living outside Algeria for fourteen years at the time of the appeal. He found no evidence to substantiate a fear of persecution when he left. He noted that the appellant had produced a third explanation for his passport not being renewed in Yemen. He first said it was because some documents were missing; second because he was wanted, his third explanation was that it was because there was a Pakistan stamp in it. The Immigration Judge expressly said he did not believe that the appellant had been told he was wanted. He noted the appellant's claim that he would not be safe on returning to Algeria with a laissez passer.

20(viii) This sub-paragraph did not contain any findings of fact.

5. Although there was no reference in the Immigration Judge's analysis of the evidence, or his findings, to Dr Seddon's report, it clearly was before him. It is referred to in the list of evidence at paragraph 9(iv) and there is a passing reference to it in the recorded submissions of the Presenting Officer, but nothing else.

Our Approach

6. We need to go behind some of the Immigration Judge's findings because much of the argument before us concerned the identity of the organisations that the appellant worked for during his time outside Algeria. The Immigration Judge said no more than that the evidence about this was not disputed. As our task is to decide whether the places in which the appellant worked, and the organisations he worked for, together with his long absence from Algeria and a history of two failed asylum claims would be sufficient to put him at risk, it is obviously important to consider the organisations. Dr Seddon included a curriculum vitae with each of his reports, and he is known to the Tribunal before which he has often given evidence. We accept he is qualified to give expert evidence on Algeria. Dr Seddon analysed the appellant's employers at Section 2 of his report dated 18 October 2005. Dr Seddon said that, after undertaking his military service which he concluded in 1988 the appellant was unable to take up his previous job as a primary school teacher and decided to go to Pakistan to assist with teaching Afghan refugees on the Afghan/Pakistan border. He went in September 1989 for ten months, teaching Arabic. On arrival, he first lived in Rawalpindi near Islamabad, and worked for an organisation called the "Social Reform Organisation", for seven months. That organisation is based in Kuwait. He then went to Peshawar where, depending which account is accepted, he worked either for the same organisation, or for the World Islamic Relief Organisation which is based in Jeddah in Saudi Arabia.

7. Having been back to Algeria, and moved between there and France the appellant left again. He went first to Mecca, and then in September 1991 to Yemen. In Yemen he had a teaching job in a primary school in Ibb, and later one in Sana'a. When his job in Yemen was terminated in 1993 he went back to Pakistan. He stayed from January until September. He taught for the Tamir Organisation, again in refugee camps, staying in Peshawar. There followed another period in Yemen, until 1995, when he again obtained a teaching job. Thereafter, the appellant went to Sierra Leone, where he worked for the "Africa Muslim Agency", based in Kuwait.

The Evidence before us

8. On 5 February we heard the evidence in this reconsideration. The appellant did not give evidence, although he was present. Despite what was said to Senior Immigration Judge Goldstein, we did not hear from Mr Boudjema Bounoua. There was a witness present, Samir Touaiti, who had written a letter to the appellant's solicitor in which he said:-

> "I am writing to you as a witness for AF I knew him since 1993 and 1994 when I met him in Yemen. He worked there as a teacher in primary schools. I believe that AF will be at risk in Algeria if he moved there because he worked as a teacher for a relief organisation in Pakistan and I will be happy to attend the full hearing who (sic) will take place on Thursday 5 February 2009 as a witness."

9. A copy of this letter had been sent to Mr Blundell, who said he did not wish to ask the witness any questions about the letter but he did want the Tribunal to know that, despite asking for further details from the appellant's solicitor, he had been unable to find any trace of Mr Touaiti and therefore had no idea who he is. He had previously warned Ms Fielden that he was going to say that but she did not wish to ask the witness any questions.

10. The bulk of the day was taken up by evidence from Dr Seddon. Dr Seddon had produced three reports. The first dated 18 October 2005, was before the Immigration Judge. The second was an updated report dated 30 November 2006 which post-dated the Immigration Judge's hearing. The third was a report signed on 3 February 2009. In each report he sets out his credentials as an expert. We accept that he is well qualified to give expert evidence about Algeria.

Dr Seddon's First Report

11. In section two Dr Seddon set out the appellant's account, not all of which was subsequently accepted by the Tribunal. The third section of the report contained Dr Seddon's comments about the reasons given for refusing the appellant's claim. An Appendix set out the appellant's history and placed it in the context of political developments in Algeria and the significance of the areas where the appellant had been. In particular in paragraph 3.8 he dealt with the organisations that the appellant worked for. He said that the "Social Reform Organisation", which he believed was also referred to in the literature as "The Social Reform Society", is an Islamic

charitable organisation based in Kuwait. He said that it is one of fifteen organisations listed by the Russian Government as terrorist organisations. He said that Russian law enforcement bodies first became interested in its activities in Moscow in 2002 and the authorities took steps to close down the operation in spring 2003 although a Supreme Court hearing was postponed due to the absence of the organisation's Moscow Director.

12. Dr Seddon said he could not find details of the World Islamic Relief Organisation but concluded that it was almost certainly a mistranslation and should have been the "International Islamic Relief Organisation" ("ILRO"). He said that is a well-known Islamic charity operating from Jeddah. He said that the Secretary General of the Muslim World League has stated publicly that the ILRO is the "operational arm" of the Muslim World League, which, importantly, was founded by the founders of Al Qaeda. One of the September 11 2001 hijackers worked for the ILRO in the United States.

13. The Tamir Organisation is also an Islamic charitable organisation based in Kuwait. Dr Seddon said that it could easily be confused with the Pakistani "Umma Tamir-e-Nau". That organisation is listed in the United States Terrorist Exclusion List as a terrorist organisation.

14. The African Muslim Agency, for which the appellant claims to have worked in Sierra Leone, provides relief in African countries. Dr Seddon said it is part of the Safa Group and is based in Virginia. He described the Safa Group as a complex coalition of overlapping companies registered in Northern Virginia and controlled by individuals who have shown support for terrorists and/or terrorist front organisations.

15. In the Appendix, Dr Seddon dealt with the rise in Islamic fundamentalism and its connection with Afghanistan. It seemed to us from his later evidence that this was important explanatory evidence of the Algerians' attitude towards various Middle Eastern countries. He recorded how, as early as 1979 after Soviet troops entered Afghanistan, an organisation called Makhab al-Khidomat ("MAK"), translated as 'the Office of Services', was established to support the many young Muslims from the Arab world who were fighting with the Afghan Mujahedeen. He said that, during the 1980s, particularly the second half, many such young men, including from Algeria, passed through the hands of the MAK to fight with the Mujahedeen. He estimated that there may have been as many as 15,000 to 25,000 Arab volunteers. It was in 1986 that Osama bin Laden set up his own training camp for Arabs from the Gulf. In 1988 that was developed, with Egyptian colleagues, into Al Qaeda which translates as "The Base". It started as a loose network of Arabs committed to holy war. At around this time Saudi Arabia gave considerable financial and other assistance to the Mujahedeen, and Osama bin Laden brought considerable resources to help with the Islamist opposition in Afghanistan. Dr Seddon estimated that 3,000 Algerians were involved.

16. During 1988 and 1991 Islamists, notably the Islamic Salvation Front ("FIS"), began to gain strength and support inside Algeria. Whilst some were attracted to fighting in Afghanistan, others remained in Algeria to oppose the Algerian Government. When the Russians withdrew from Afghanistan in 1989/90 some of those who had been fighting there returned to Algeria and reinforced the Islamists who had been engaged in the armed struggle to overthrow the existing state. Dr Seddon said that it is significant that the appellant was in Pakistan during period 1998 and 1999, working closely with Afghan refugees on the Afghan/Pakistan border, for a Saudi-based relief organisation, and furthermore that he returned to Algeria just as the Islamist opposition was becoming visibly stronger.

17. By 1990 the Algerian authorities were becoming increasingly concerned about the strength of support for the fundamentalist Islamist opposition, which gained further ground in 1991, winning the first round of parliamentary elections in December. The existing government declared a state of emergency in February 1992 and cancelled the second round of elections, and banned Islamist groups. This proved to be the start of the major conflict between the armed paramilitary Islamist opposition groups and the Algerian Government.

18. The report referred to Osama bin Laden's move to Saudi Arabia at the end of the war against the Soviet troops in Afghanistan. Whilst there he began to organise to launch a jihad against the US military presence in Saudi Arabia. He left for Sudan when the Saudi Government sought to arrest him. The appellant was in Saudi Arabia at the time when Osama bin Laden was attempting to launch that struggle.

19. When Osama bin Laden went to Sudan, the appellant moved back to Pakistan and the Afghan refugee camps. Dr Seddon quoted from a book "Afghan Wars" which described how charitable organisations mushroomed and that many were involved in teaching radical or fundamentalist versions of Sunni Islam to the displaced Afghan population in Pakistan. The author of the book considered that had led to the development of the Taliban. Around 1993, the appellant said, the Algerian authorities asked the Pakistan Government to return all Algerians who were in that part of Pakistan. He said that one of the main reasons was the fear of large-scale radicalisation of those Algerians who remained in Pakistan, with the possibility of their involvement with emerging fundamentalists like the Taliban and their later return to Algeria to join the paramilitary opposition. At paragraph A1.15 it is said that the Algerians wanted their citizens from Pakistan extradited and returned so they could be dealt with on return and not allowed to filter back unofficially and start covert operations. The appellant said it was learning of this that caused him to move to Yemen at a time when fundamentalism was on the rise there. It is unclear from that section of the report whether Dr Seddon had independent evidence of the Algerian authorities asking for Algerians to be returned, or whether he was merely repeating the appellant's assertion.

20. Dr Seddon referred to the Yemeni Government's increasing concern about the extent of Saudi support for radical Islamist groups and of Arabs returning from the Afghan

conflict to work with active groups within the country. This was at the time when the appellant was living and working in Yemen. He gave details of terrorist activity in Yemen between 1996 and 1997. He referred to an incident in which an Algerian who had been living in Britain, and five young British Muslims, were arrested in connection with a plot to bomb the British Consulate. Dr Seddon suggested that, although the appellant had left Yemen by then, to the Algerian authorities the significance of his stay there is likely to be informed by their general perception of Yemen.

21. The final part of the Appendix (A1.22 to A1.34) dealt with the security situation at that time in Algeria. We do not refer to that because matters have moved on considerably in the last three years.

Dr Seddon's Second and Third Reports

22. Dr Seddon's second report was an updating report. It dealt largely with circumstances in Algeria, in particular the Charter for Peace and National Reconciliation and the question of return with assurances. Again, things have moved on since 2006 and there is little in that report which is now of current interest. As with the first report we have read it in its entirety. The changes in Algeria are acknowledged in the third report (at paragraph 3.2). Dr Seddon also acknowledged the Algerian cases decided by the Special Immigration Appeals Commission and a recent Country Guidance Case HS (Terrorist suspect – risk) Algeria CG [2008] UKAIT 00048. At Section 4 Dr Seddon discussed the Charter for Peace and National Reconciliation, highlighting the fact that, not only did it provide for an amnesty for many Islamist militants, but also had the effect of making it difficult, if not impossible to challenge past human rights abuses by the authorities. The precise terms of the Charter are not relevant to this appeal but can be found in Y v Secretary of State for the Home Department [2006] UKSIAC 36/2004 ('Y'). Dr Seddon reported in paragraph 4.5 that both Human Rights Watch and Amnesty International argue that preventing investigation of past human rights abuses has given a green light to those who committed them, to continue.

23. In Section 5 Dr Seddon dealt with the continuing Algerian commitment to fighting terrorism. In paragraph 5.2 he reported that security in Algeria has been tightened as a result of fears by the Algerian Government, and the United States, that operations by extremist Islamist groups in Southern Algeria have increased in recent years. This is said to be notably at the hands of the Groupe Salafist pour la Prédication et la Combat (Salafist Cell and Combat Party) ("GSPC") which is now re-named Al Qaeda in the Islamic Maghreb. In 5.3 he cited a number of terrorist acts that occurred during 2007 and in 2008, much of it claimed by Al Qaeda in the Islamic Maghreb. In paragraph 5.4 he said:-

> "The security forces in Algeria (and notably the DRS) continue, as a result to implement a strategy of counter insurgency with little regard for the law or for human rights. The risk of being subject to harassment and persecution by the security forces on suspicion of being in some way sympathetic to or involved with the armed Islamic groups is still

> very real. Those known to be, and those thought to be, associated with Islamist groups have in the past frequently and often indiscriminately been arrested, detained, tortured and in some cases subject to extrajudicial execution. An Amnesty International visit to Algeria from 6 to 25 May 2005 referred to torture being defined as a criminal offence and to a reduction in allegations of torture and ill-treatment by the police and gendarmerie. But the AI mission did receive a significant number of allegations of torture and ill-treatment by the DRS. Torture included beatings and the 'chiffon' treatment. The AI mission noted that such torture generally takes place in secret locations impossible for the detainee to locate. Torture is frequently not recorded by doctors examining detainees".

He went on in paragraph 5.5 to refer to Amnesty International's July 2006 report on torture by the Algerian military security, and a US State Department Report of 2006 which highlighted the activities of the Department du Renséignement de la Securité ("DRS") and the impunity under which it operates. Human Rights Watch described to a UN Human Rights Committee, in 2007, how the DRS operations were "almost untouchable"; and legal safeguards were all but routinely disregarded by the DRS, according to Amnesty. Dr Seddon then went on to make some observations about the Tribunal's determination in HS (Algeria) which quoted from the same background material and to which we will come separately in the course of considering the submissions.

24. Dr Seddon observed that, unlike the appellants in the SIAC cases, if this appellant were to be returned to Algeria he would not have the benefit of either general assurances or individual specific assurances from the Algerian authorities or monitoring by the British Embassy. Dr Seddon's report concluded that, with his apparent support for Islamic charities (because he has worked for them) and the fact he has lived for a considerable time outside Algeria, both in Europe, the Middle East and West Africa in a context where he could have had ample opportunity to make contact with and associate with Islamic militants; and that as he has sought asylum on more than one occasion, there is a strong possibility that he will be detained. If so that would quite probably be 'garde a vue', when the appellant can be held for up to twelve days and during which he is likely to be ill-treated, and possibly tortured. Dr Seddon concluded, that the appellant would be at serious risk of ill-treatment and torture during such a long prolonged period of detention.

Dr Seddon's Oral Evidence

25. Dr Seddon started by telling us that it was generally accepted that a returnee without a passport to Algeria would travel on a laissez passer which would immediately identify him as a failed asylum seeker. He had it from a variety of sources that it would be routine for such a person to be detained for longer than normal and, as the appellant had been out of the country for a long time, travelled widely in the Middle East and was a failed asylum seeker, the authorities would be interested to know where he had been and why he had claimed asylum twice. His profile would strike them as unusual. He thought that, whilst it is not a matter of certainty, the immigration authorities would start the questioning of the appellant but, in view of

his distinctive profile, they would quickly bring in either the Judicial Police or DRS. It would be one of them that would decide if further detention was appropriate. He thought that in the appellant's case it would probably be the DRS, because there may be reasonable suspicion of illegitimate activity. The DRS has a number of detention facilities. He said DRS is the subject of much discussion, in particular about its relationship with the other security services. He described the DRS as the harshest of the intelligence agencies and said it was under only limited control of the Justice Department. Both Amnesty and Human Rights Watch have researched the DRS and believe that it uses ill-treatment and torture as part of their interrogation methods. He felt that the appellant's case depended to a large extent on the likelihood of detention by the DRS. Asked whether detention by the judicial police would be acceptable, Dr Seddon thought that the problems were particularly with the DRS. Whereas the judiciary and the police no longer operate as independently as they once did, and although the conditions in prisons are improving, it does not mean that torture does not continue to some extent. The fact that the appellant has been travelling abroad, and had contact with Islamic charities, and has been in Sierra Leone meant, in Dr Seddon's view, that it would be thought more appropriate for the DRS to investigate him as the Judicial Police tend to deal with internal matters. He said there are also other more shadowy governmental, or paragraph-governmental, agencies that little is known about.

26. Dr Seddon ran through the organisations with which the appellant had been associated but did not say anything beyond what was in his reports. He added that what mattered was not whether the appellant had actually been involved in fundraising for terrorism through those organisations but simply the fact that he had worked for them. That was significant because the Algerian authorities would want to know whether he had associated with terrorists. He said that some of the organisations actually had been involved with terrorist activities and not just funding. He suggested that claiming asylum twice illustrated a possible fear of returning to Algeria.

27. He was taken to his most recent report and asked whether the risk on return to Algeria was greater now, than it would have been two or three years ago. Dr Seddon said that in 2003, 2004 and 2005 things were improving and the Algerians were getting on top of the Islamist threat. As a result the reasons for ill-treating people had begun to reduce. However, in 2007 GSPC made explicit links to Al Qaeda, and there was an upsurge in incidents within Algeria throughout 2007 and 2008. That led to a different picture from that of three or four years ago. He said, whilst the United Kingdom had returned some high profile Algerians, that was through SIAC. This case is different in that the appellant has not been identified as a threat within the UK and therefore had not been given specific assurances by Algeria which would give a degree of protection. There is no suggestion of monitoring by the British Embassy for the appellant.

28. Dr Seddon was shown the Amnesty International Report for 2007 (produced by the respondent) where it is said:-

> "There were persistent reports of torture and ill-treatment of suspects detained by the authorities and accused of terrorism related activities and there were concerns over the fairness of trials and terrorism related and politically motivated cases."

Under the heading "Violations in Counter Terrorism" the report said that torture continued to be used with impunity, with persistent reports of torture and other ill-treatment of people in the custody of the DRS. He was also shown the 2008 report where the passage does not appear and was asked if things had improved. He said that he had brought the situation up-to-date, from paragraph 5.5 of his most recent report. He noted a reference, in the 2008 Amnesty Report, to secret detention centres continuing to be used. Asked whether the SIAC cases, Y, BB and U v Secretary of State for the Home Department [2007] UKSIAC 32/2005 and PP v Secretary of State for the Home Department [2007] UKSIAC 54/2006 (handed down on 2 November and 23 November respectively) made any difference to his views about the conclusions in HS Algeria, Dr Seddon said those were all cases where there were specific assurances by the Algerian Government, whereas the appellant would have none. He said whilst he was still sceptical that deportation with assurances and monitoring were the answer, undoubtedly those that did have the benefit of them were better off. He felt that those cases did not show any change to the risks to this appellant. Asked whether the DRS was under control, or whether it still acted with impunity, Dr Seddon said that the evidence appeared to be that it is still autonomous, that it has its own secret detention centres and that there is no external monitoring. He said Amnesty continues to express concern. There is a debate about whether the position of the DRS is intentional or unintentional within the structure of the Algerian authorities but, whichever, it is credible to say that it is autonomous.

29. Dr Seddon was cross-examined by Mr Blundell. The latter started by referring him to paragraph 3.7 of his first report. There he had said that there was corroborating evidence to show that the Algerian authorities had been particularly concerned about Algerian nationals living and working in Pakistan since the emergence of Al Qaeda, and its recruitment and training of the "Afghan Arabs". He was asked what evidence was referred to in the report which linked to that comment. Dr Seddon said that, since 1990, Algeria has expressed concerns and the Algerian representatives in Peshawar were asked to keep tabs on the Algerians in Pakistan. Dr Seddon said there had been a series of references in the press which he acknowledged he had not documented but which showed increasing concerns about Algerians returning from Afghanistan and Chechnya and then joining Islamist movements in Algeria. He said that, over the period, there had been specific concerns about the involvement of Algerian nationals in international jihad especially in Chechnya.

30. He was then taken to paragraph A.13. There he said there were an estimated 3,000 Algerian nationals who had been involved in Afghanistan and which the Algerian authorities had been keen to repatriate, and had requested Pakistan to help. Asked if there was any evidence about the results of that request, Dr Seddon did not know. Asked whether he thought it was relevant to know what had happened to those returnees from Pakistan, Dr Seddon said that concerns were raised in 1991. FIS were

successful in the elections, and it was only when FIS looked like coming to power that a state of emergency was declared. He said that was fifteen years ago, and we are now in a different period. He said that Algerian concerns are now about links to international dissent and international terrorism. When it was put to him that there was little international terrorism at the time that Pakistan was being asked to assist, Dr Seddon said the Algerians have been concerned about the international dimension for about fifteen years. Pressed, Dr Seddon said that he had no evidence about when the 3,000 went back. He emphasised that he did not say that there was no evidence, merely that he did not have it. He accepted that he probably should have looked into the issue.

31. He was then taken to paragraph 3.8 of the first report where he set out the information he had about the various organisations for which the appellant had worked. He was asked to what extent it could be said that these were organisations which had "gone bad" in later years, and whether they could have been innocuous when the appellant was associated with them. Dr Seddon said that evidence about their activities only becomes available once they appear on the radar. No doubt the appellant would say that they were legitimate when he was working with them. Dr Seddon said he was not arguing that all the organisations were funding terrorism, but, in 2009, the Algerian authorities would find the appellant's past association with these organisations suspicious. At least some of them were involved in terrorism even if others were legitimate. It was in 2002 when the Social Reform Society had been identified as a terrorist organisation but, he said, there would no doubt have been a time lag between the onset of their activity and their being identified. He emphasised that it was not just one organisation, but all those for which the appellant worked, which appeared suspect. There was nothing to say that they were involved when the appellant was with them. For example, Al Qaeda only emerged in 1993 and the appellant was in the area when they were in their emerging period. He did not think that if the appellant were to say that the organisations were legitimate when he was working for them that would be determinative because the Algerians would look at what they know now.

32. Mr Blundell put it to Dr Seddon that he put weight, in paragraphs 3.10, 3.14 and 3.15 of his first report, on the appellant's assertion that he was known to the regime and on a blacklist. Also, at paragraphs 2.2 and 2.3 of the second report there is the assertion that the appellant believed the Algerian authorities considered him a threat to state security and that he was told he was wanted by the Algerian authorities. He was reminded that those assertions had not been accepted by the Tribunal and asked whether he appreciated that, and whether it would have made a difference to the conclusions at the end of his second report. Dr Seddon said it would have made no difference to the broad conclusions. He said there was evidence to suggest the appellant had been under some sort of surveillance, for example his wife was detained and that was the same sort of evidence. He said that his conclusions today about risk would not materially change if all that aspect was not credible. His conclusion was that the risk is because of the appellant's profile and not because he was being tracked. His vulnerability from his association with the organisations and

his seventeen year absence would be enough, in Dr Seddon's opinion, to create an unacceptable risk.

33. It was put to Dr Seddon that it was significant that there were no examples, in any report, of people having encountered adverse attention in circumstances similar to the appellant's. Dr Seddon said he had not been able to find any evidence of individuals with a similar profile, despite looking. When it was put to him that the appellant cannot have been unique, to have been working with charities in Pakistan, Dr Seddon said that what is unusual about the appellant is the range of places and organisations, namely Pakistan, Yemen and Saudi Arabia (he could have added Sierra Leone). At the time there were Algerians in Pakistan and Algerians fighting in Afghanistan. Mr Blundell asked again whether, as Amnesty International, UNHCR and Human Rights Watch have focused so much on human rights in Algeria, he would have expected to have seen published examples of people returning after working for Islamic charities. Dr Seddon said that he had found no such reference in anything, including reports from Algerian NGOs, to a comparable case to that of the appellant. He did not know whether he had missed them but he did not think so, but said that even NGOs do not see everything. He emphasised again the appellant's persistent and distinctive profile.

34. Mr Blundell asked Dr Seddon whether there was any evidence to support the assertions, in his paragraph 3.16, that those suspected of possible involvement with terrorist groups are treated harshly, that brutal ill-treatment and torture of political detainees continues, and extrajudicial killings had not entirely ceased. Dr Seddon said the evidence was referred to at paragraph A1.32 which was a reference to Human Rights Watch and Amnesty International Reports, both for 2003, and from paragraph A1.25 to A1.32 there were other references. He said the reports that he referred to cover 2001 to 2005. Mr Blundell suggested the reports were as old as 2002/2003, and then referred to the SIAC case of Y where, at paragraph 341, it was said that torture was markedly declining. Asked whether he could associate himself with the conclusions in Y, which was handed down on 24 August 2006, Dr Seddon said that the range of SIAC comments were in his view unduly optimistic, but he broadly agreed with it. He said that between 2003 and 2006 there had been a general feeling of optimism that the government was overcoming the threats from terrorism, although it was only right to say that there were continuing reports, throughout 2006 and 2007, and the Amnesty report of 2008, which said that torture was continuing. He acknowledged that there has been pressure from outside Algeria, not least by the UK Government, to improve matters but that did not mean that abuses did not continue. Even within Algeria there is discussion about the need for a continuing state of emergency but, certainly in 2005, things were improving. He observed that SIAC were prepared to accept that there was insufficient risk, particularly if assurances were given, but he still considered that was over confident. He reiterated that, since early 2007 there have been the new links to Al Qaeda abroad, and an upsurge in bombings between 2007 and 2008. He suggested that in those circumstances it was not surprising that some sections of the security forces continued to ill-treat people, albeit on a reduced scale, and albeit that they were more

accountable. He also suggested that the introduction of the Charter has its darker side because it also provides immunity not just for terrorists, but for security services. [For details of the 'Charter' and the 'Ordonnance' see the SIAC judgement in Y]

35. Dr Seddon was taken to the US State Department Report on Algeria (dated 11 March 2008) (at page 20 in the respondent's bundle). Mr Blundell suggested that it should be read in conjunction with the Amnesty Report. He asked whether the immunity that was given to the security forces referred to what went on in the past, in the 1990s. Dr Seddon accepted that, strictly, the Charter referred to previous violations of human rights but said that the modification of the law in 2006, to make torture unlawful, did not mean there was no longer impunity in reality. He acknowledged that progress had been made, and he hoped that things were improving, but said that it was difficult for the political authorities to penetrate some aspects of the state apparatus. He said he was not sure if the DRS was a rogue organisation, or whether it was deliberately allowed to operate outside the rule of law. He acknowledged that, at least in theory, there is now the possibility of redress for victims of torture.

36. Dr Seddon was asked whether he had seen, and incorporated, the 2007 and 2008 Amnesty reports before he finished writing his third report. He said he had seen the 2007 report and should perhaps have included it although it said little different from the past. Mr Blundell suggested that there was nothing similar to the 2007 reference to persistent reports of torture in the 2008 report. Dr Seddon said he thought that what Mr Blundell produced was only a summary of the report. (He said it was too short to be the full report). Nevertheless, there was still reference to the ongoing use of secret detention. It was put to him that the 2008 report, and the examples given in support, did not refer to torture and indeed one referred to a detainee being well treated. Dr Seddon did not consider the latter reference to be of any assistance to the respondent. He said that when read carefully the 2008 report said the detainee's mother had been told by the police he was being well treated, yet she had no idea where he was being held. He suggested that showed there was still a problem with the DRS. Mr Blundell suggested that, even if the reports from Amnesty were summaries, there was no repeat of the words about continuing reports of torture in the 2008 version, Dr Seddon replied that he did not read it the same way. Although the situation was improving, he said the DRS remains a real issue. He referred to the November 2007 Country of Origin Information Report ("COIR"), at paragraph 8.09, which we observed refers to a 2006 Amnesty report. (On the first day of the hearing the parties believed there was no 2008 COIR but that transpired to be wrong and it was produced at the adjourned hearing.) Asked if there were any reports in 2008, similar to the ones to which he had referred from 2007 in his report, Dr Seddon said that he had not expressly referred to any. Those that he had seen, continued to say that torture continues to take place and, although there has been a slight shift in the language, it still continues. Dr Seddon did not think that UNHCR had produced a similar paper since its position paper of 2004. He had looked for one because the UNHCR occupy a privileged position and "are less prone to see problems where there are not any". Asked what he meant by that, he said that the UNHCR are less prone to focus on human rights abuses, and their reports carry a wider perspective,

than some others. He accepted that "a lot of water had gone under the bridge" since the UNHCR 2004 Position Paper.

37. Asked again about the observations by SIAC, that torture was declining, Dr Seddon said he had been persuaded that, in those cases with personal assurances, the evidence has suggested that those returned to Algeria had not been ill-treated or tortured. But he emphasised this appellant would have no such personal assurance. He said that even with assurances there was no guarantee. When he was reminded that the Tribunal does not deal in guaranteed safety, he said that in his view SIAC's confidence was over optimistic although "so far so good". He was reminded that the Commission in BB, paragraph 8, had referred to his bleak conclusions about Algeria and Mr Blundell was asked whether he was pessimistic. Dr Seddon said the observation represented differences of interpretation of trends in Algeria. Although he had to accept that SIAC had been right in regard to assurances, he did not think that his view was any more bleak than was justified. He said that progress is slow as regards improvements in human rights. He said that another expert (Hugh Roberts) had also been described as bleak by the commission. There was a difference in view between the two of them and Messrs Layden and Oakden who gave evidence to the Commission but who were involved in the returns process as FCO employees. He did not think that the views were as far apart as was being suggested.

38. Mr Blundell put to him the difference between this appellant and HS. In HS it was perceived that the British security services had an interest in him, whereas there was no evidence of such interest in the appellant either here or in Holland. He was asked if that was relevant. Dr Seddon did not think it was, because the cases were different. The appellant had not been identified in that way in the United Kingdom but what is relevant is the impression that the appellant will give when he returns. Dr Seddon accepted that the Algerian authorities would be aware that the asylum system is abused on occasion.

39. In relation to the passage of time since the appellant was involved with organisations outside Algeria, Dr Seddon was asked if the involvement was now so remote that it would not be a problem for the appellant. Dr Seddon said it was the period of time that the appellant had been out of Algeria, as well as the fact he was in the Middle East. The Algerian authorities will want to know what he has been doing since his time there. They would be interested to know whether he has maintained his links with the people he met. It was also not irrelevant that he had been backwards and forwards to Europe during the 1990s.

40. In re-examination Ms Fielden asked about the significance of Peshawar and what made the Algerians want the Pakistanis to keep special tabs on its citizens. Dr Seddon said it was the area where Al Qaeda was being established, it was known as the centre of links with Islamic activity and was also the centre of the Afghan refugee camps that had been established in the 1980s. Al Qaeda was set up to assist Arabs fighting in Afghanistan. She asked whether the "water that had flowed under the bridge" since the 2004 UNHCR report meant that the appellant was better off. Dr

Seddon said that, if anything, he was probably worse off because of the rising concern about bombings in Algeria.

41. Asked by the Tribunal, Dr Seddon said he did not have any evidence one way or the other as to whether the ICRC now have access to the DRS detention centres (see paragraph 204 of Y). He did not think there was any evidence one way or the other.

Submissions

42. Both Mr Blundell and Ms Fielden made submissions. In addition Ms Fielden submitted a skeleton argument and an "addition to skeleton argument". She produced two Amnesty International reports which had been handed to her when she visited their offices. She had not had time to consider those reports and both parties were given two weeks from the end of the hearing to put in written submissions about them.

Respondent's Submissions

43. Mr Blundell started by looking at various Special Immigration Appeals Commission ("SIAC") decisions about Algeria, starting with Y. The decision was handed down on 24 August 2006. Mr Blundell urged us to take note of the account of the background material that was before the Commission and referred to paragraphs 181 to 211, all of which he relied upon. In particular he relied upon paragraph 341 in which the Commission said:-

> "The first important feature of the background material is the very large decline in the level of violence of the last few years: the number of deaths is much reduced, and we infer that the same is also true of the number of acts of violence resulting in injuries short of death; terrorist activity is no longer experienced in urban areas but is confined to the rural or mountainous areas of a very large country; there have been no disappearances for two years, and we regard these politically motivated disappearances, on whichever side, as a signal of the level of terrorist activity and the ferocity of the response, and their cessation as a sign of the return of peace and stability. *The incidents of torture and its severity is markedly declining, as is arbitrary arrest and detention.* The response of the security forces is obviously affected by the level of the terrorist threat which it is dealing with thus, as Algeria emerges from a decade of civil war and insurgency, the reducing level of violence reduces the abuses committed by the security forces. The perceived justification for them on both sides diminishes. This is not a short term reduction. It is a settled direction for the evolution of Algerian politics which reflects war weariness, changes in the outlook of government, and a degree of military success against groups which have lost popular support through the atrocities which they committed." (Mr Blundell's emphasis)

At paragraph 276 there was reference to the evidence before the Commission as to the release of 2,025 people as a result of the Charter and Ordonnance provisions, a reference to 85 people who had surrendered themselves and "dozens" who had returned to Algeria, all at the beginning of 2006. Mr Blundell suggested that the

Charter and Ordonnance (full particulars of which are in the Commission's judgment) had benefited the human rights situation generally in Algeria.

44. He did, however, caution us that this decision is now two or three years old. He observed that he was going to criticise Dr Seddon for relying on some sources which were two or three years old and asked rhetorically why, if so, he (Mr Blundell) should then be allowed to do so. The reason is, he said, that the Commission's view about the improving human rights situation in Algeria has been borne out subsequently. He observed that in HS Ms Webber, for that appellant was critical of the upbeat picture which Y had painted but Mr Blundell asserted that the predictions in Y had been borne out over the following years.

45. Mr Blundell referred to paragraphs 212 to 218 of Y which dealt with the evidence from Dr Joffé, in particular the Commission considered Dr Joffé to have a view that was too bleak when he had looked at the background situation in Algeria at the time. A different division of the Commission made a similar observation about Dr Seddon's view, in paragraph 8 of BB v Secretary of State for the Home Department [2006] UKSIAC 39/2005 (handed down 5 December 2006). He had produced a report for the Commission, dated 13 November 2006, in which he considered that the Commission's conclusions in Y were erroneous. The Commission said:-

> "The bleak conclusion which he draws that it is unsafe to return any person alleged to have been involved in Islamist extremist activities to Algeria – is belied by what has in fact occurred: the release of the 2,500 detainees, including persons convicted of terrorist offences committed within Algeria, under the Charter and Ordonnance; the return, on 17 September 2006 of Rabah Kebir, the head of the Executive Agency of FIS; and the return of "I" and "V" of which more later, on 16 and 17 June 2006; and at the intergovernmental level, the signature, on 11 July 2006 by the UK and Algeria of four Conventions, on extradition, judicial co-operation in civil and commercial matters, the circulation and readmission of persons and mutual legal assistance in criminal matters; and President Bouteflika's acknowledgement and assurance of the Algerian Government's approval of the contents of the Prime Minister's letter of the same date. His letter contained the following statement:
>
> > 'This exchange of letters underscores the absolute commitment of our two governments to human rights and fundamental freedoms …'
>
> By longstanding Diplomatic Convention, President Bouteflika's acknowledgement and approval of a letter containing those words, amounts to a commitment on the part of the Algerian Government to respect those rights."

46. His next reference was to G v Secretary of State for the Home Department [2007] UKSIAC 2/2005 (handed down on 8 February 2007) where, in paragraph 10, the Commission said:-

> "In fact, it has not been suggested on behalf of G that the relevant parts of the open generic ATSCA judgment were or are wrong, and so we feel free to adopt them. It has not been suggested that the findings of fact in Y as to changes in Algerian society and

> the political situation in Algeria were mistaken, and again we shall adopt them, although we have of course borne in mind the differences between G's case and that of Y. The principal issue in BB was the same as that before us, namely the reliability of the assurances that have been given to the UK Government by the Algerian Government in relation to G and persons in a similar position whom the Home Secretary wishes to return to Algeria. It is of persuasive authority, but we have formed our own view on that issue".

[It is of course the case that this appellant would be returned without any assurances]

It is apparent from both that paragraph, and paragraph 23, that the findings in Y were taken as the starting point in G when it came to studying the objective material. Paragraph 23 of G contained a number of references to paragraphs in Y which Mr Blundell also relied upon.

47. In G, the Commission said there were a number of important propositions which were not in dispute. They appear in paragraph 26. The first is that changes in Algerian society have led to a reduction in torture and other ill-treatment of suspects and detainees although the Commission noted that:

> "According to an Amnesty International Report of July 2006, which was not disputed, torture and other ill-treatment continued to be used systematically by the 'military security' (i.e. the DRS). See too the UNHCR position of December 2004".

Mr Blundell said it was his case that the reference to torture and ill-treatment was no longer an appropriate observation. He observed that that reference in G was built on the Amnesty International Report of 2006 and the UNHCR position paper in 2004. As to the latter, Dr Seddon accepted in evidence that a "lot of water had gone under the bridge since then". Mr Blundell anticipated that Ms Fielden would rely on paragraph 26(d) of G in which it was said to be common ground that Algerian citizens suspected of terrorism who are returned to Algeria would, in the absence of assurances be at real risk of torture and other ill-treatment. He argued that this case was not similar to that of G and that the appellant would not be at risk of torture if returned without an assurance. He reminded us that the personal circumstances of G are to be found at paragraphs 11 to 17 of the Commission's judgment. He referred in particular to paragraph 14 where it was said, "The closed material confirms our view that there is indeed reasonable suspicion that [G] is an international terrorist within the meaning of Section 21 of the ATCSA …".

48. Mr Blundell then turned to U v Secretary of State for the Home Department [2007] UKSIAC SC 32 [2005] which was handed down on 14 May 2007. In paragraph 13 the Commission said that it was adopting the findings of the earlier judgments and then summarised matters as follows:

> "Algeria is making a sincere, broadly supported and generally successful attempt to transform itself from a war torn authoritarian state to a normally functioning civil society; solemn diplomatic assurances given by the Algerian State to the British Government about individual deportees are reliable and can safely be accepted".

He argued that this decision is an important one because it came after the Commission's earlier view had been tested by the return of a number of individuals. Those individuals are referred to in paragraph 14 of the judgment and include reference to "Q" who was returned without assurances. The Tribunal observed that although Q did not have the benefit of an assurance he was returned very much at the same time as the others. He went back to Algeria on 20 January 2007 and the others, with assurances, were K on 24 January, H on 26 January and P on 27 January. In relation to Q, it was said at paragraph 15 of U:

> "He was detained by DRS Officers. On 26 January 2007 Amnesty International expressed publicly its concern that Q is at risk of torture."

There is reference in paragraph 17 of U reporting that Q had heard the screams of other people being tortured, but in paragraph 18 the Commission concluded that the statements from a former diplomat who had been involved in the deportation with assurances ("DWA") programme painted a different picture from the evidence which the appellant had sought to adduce. It concluded that Q, whilst in detention was well, but not happy about being detained, and that he had been treated with respect and not received any inhuman or degrading treatment. There is reference to the experience in detention of both V and U who reported that they had found their detention "very hard" but had not suggested they had been subjected to torture or ill-treatment. One of them had subsequently enquired about obtaining a new Algerian passport.

49. Mr Blundell considered that paragraph 37(ii) of U was important when considering Dr Seddon's evidence. There it is said that:

> "The Algerian State has fulfilled to the letter those parts of its assurances to the British Government which can be conclusively verified…".

The Commission also said, at paragraph 37(iii):

> "It is necessary to obtain such assurances in relation to an individual deportee for his safety on return to be reasonably assured".

Mr Blundell anticipated that Ms Fielden would rely on that and asked us to treat the assertion with a broad brush approach and look at it in the context of the SIAC cases.

50. He then referred to paragraph 40, in which the Commission said:-

> "It cannot sensibly be claimed that there is a consistent pattern of gross and systematic violation of the rights which could be guaranteed by Article 3 if Algeria were a Convention State, of prisoners detained pending trial for offences, including terrorist offences".

He argued that this was in line with the current evidence and broadly supported by Dr Seddon's evidence.

51. The next authority was Y, BB and U, handed down on 2 November 2007. Mr Blundell asserted that this was an important case, heard on remittal from the Court of Appeal. He said it was not considered, so far as he was able to tell, in HS, and concerned safety on return. He argued that Dr Seddon had suggested that the DRS is a law unto itself but mentioned that in paragraph 10 of Y, BB and U the Commission said:

> "We much prefer and accept the view of Mr Layden that he has seen no evidence of lack of support by any element of the Algerian Executive, including the armed forces, for the reconciliation process."

It is perhaps important to note, as Ms Fielden was to say later, that at paragraph 7 the Commission said:-

> "We accept that the Executive is the most powerful element within the Algerian Polity; that the armed services and the DRS are independent political actors like, for example, the military in Turkey".

Ms Fielden was to argue that, the way in which paragraph 7 is expressed, casts doubt as to whether the Commission was including the DRS as part of the armed services in paragraph 10. Mr Blundell referred to the Commission's conclusions, at paragraph 22, that the policy of peace and reconciliation and national consensus had been put under strain but had held. The Commission said the Algerian state had not responded in an authoritarian or lawless manner. Reported ill-treatment, by the DRS, of persons in their custody had not increased and that there had only been two instances that the Commission referred to. He argued that this passage bore out that the Algerian State was no longer adopting a policy of biting back and that, despite the fluctuations there, the state has not resorted to ill-treatment. In paragraph 28 of Y, BB and U there is reference to there being nothing in Y's circumstances which would increase the risk of torture or ill-treatment to the level at which that became a real risk. He acknowledged that there is reference to risk both in the Amnesty International 2008 Report, and by Dr Seddon, but he reminded us that it was for us to assess the risk. He argued that any risk was not a real risk.

52. Finally, in relation to the SIAC cases he referred to PP v Secretary of State for the Home Department [2007] UKSIAC 54/2006, handed down on 23 November 2007. He said this post-dated HS and still followed Y. The Commission observed that neither Counsel before it made any submissions in relation to the general situation in Algeria which had not already been considered by SIAC. That showed that Y, BB and U was still correct at that date.

53. Mr Blundell then turned to HS and said that it is a decision which should be treated with some caution. He said that because he regarded it as being based on some old material and reminded us that Dr Seddon had accepted that a lot of water had gone

under the bridge since that older material was published. There was reference in paragraph 21, to the 2004 UNHCR position paper. There was reference at paragraph 22 to Dr Joffé's report which had referred to the wide practice of torture of those suspected of membership of dissident groups; and to Dr Joffé's view that, notwithstanding the proposals by President Bouteflika to introduce a spirit of national conciliation, there was still the clear view that "throat cutters could not be forgiven, i.e. extremists and those accused of contacts with terrorism". Mr Blundell said this went in the opposite direction from the decisions in SIAC by whom his (Dr Joffé's) assessment had been characterised as bleak.

54. He argued that Ms Webber's submissions (in HS) had been generally accepted by the Tribunal. She was recorded as having argued that "it was inherently unlikely that Algeria would liberalise its laws and practices at a time when terrorism was worsening". He argued again that this went broadly contrary to the SIAC findings. He referred to paragraph 123 in which there was reference to the DRS acting with uncontrolled brutality, which he argued appeared to have been reached without considering the broad improvements and the amount of torture perpetrated by the DRS. He referred to Y, BB and U (paragraph 22) where there were only the two identifiable examples of such torture. He said that HS was unusual in a Country Guidance Case in that it did not have an index and so it was not possible to see the age of the material that was considered.

55. He also argued that there was an error in the Tribunal's approach because, at paragraphs 121 and 122 there are references to guarantees of safety. He acknowledged that in paragraph 122 of HS there was reference to some evidence of ongoing malpractice by the DRS but he argued that, in reality, that did not result in a real risk of prohibited ill-treatment to this appellant. He argued that paragraph 104 of HS contained the correct test; that is whether "his profile will cause the Algerian authorities to view him as being of current operational value/interest". Obviously, it is necessary, if the answer is yes, to ask if there is a real risk of ill-treatment. Mr Blundell argued that the appellant's profile was nothing like as high as the profile of HS, which was detailed in paragraph 107. The appellant in HS had been accused in the national press, including the BBC, of a fraud:

> "which detectives feared was being used to fund international terrorism".

That was not the case here and he argued that this appellant's relationship with doubtful organisations was a great deal longer ago than HS's possible involvement.

56. He then turned to Dr Seddon's evidence. He said Dr Seddon had not given evidence at most of the SIAC hearings or HS. Mr Blundell accepted that he takes a proper interest in Algeria and monitors it closely. He accepted that he was a proper expert and has been prepared to accept the shortcomings in his report put to him in cross-examination (ante). But, he was described by SIAC in BB as having a bleak approach and Mr Blundell asserted that he is pessimistic about Algeria. Dr Seddon readily accepted that he errs on the 'down side' when making his assessments. Dr Seddon's

acceptance that he had been corrected about the safety on return with assurances could be said to bear out that his earlier pessimism was unfounded. Dr Seddon had suggested that SIAC was unduly optimistic and over confident about the future but accepted it now appears that they were realistic.

57. Turning to the three reports which were before us, Mr Blundell referred to paragraph 2.32 of the second report, where it is apparent that Dr Seddon predicated his opinion on the veracity of the appellant's account, whereas the cause as advanced by the appellant is now different. In the third report, he said Dr Seddon suggested that it is the appellant's links with the organisations abroad, and not the fact that he claimed to have been told by the Algerian authorities in Yemen that he was a wanted man in Algeria, that are relevant. In arguing that Dr Seddon had accepted his shortcomings during cross-examination, Mr Blundell mentioned that he had referred to the activities of the Arab militia (the Afghan Arabs) at paragraph 3.7 of his report and in his Annex at 1.3. However, when asked what had happened to the 3,000 Algerians who were said to have been involved, he had to accept he had conducted no research into that, and also accepted that it was an important, and relevant, issue. Mr Blundell argued that another shortcoming was the fact that the appellant's work for Islamic charities was part of his profile but, when Dr Seddon was asked for examples of anyone else who had worked for such charities, he was unable to point to anyone who had had difficulties as a result. He said that he had checked and not found anything despite the fact that there were up to 3,000 Algerians in the area of Pakistan, and a flow of them returning, at around the time that Al Qaeda was being set up.

58. His last point was that, in the third report, Dr Seddon made comments about impunity which he now accepted were incorrect. In paragraphs 4.1 to 4.5 he echoed the concerns of Amnesty International and Human Rights Watch about that. But, when he was referred to page 20 of the objective evidence, part of the US State Department Report, he had to accept that there was now a legal provision for the punishment of those who perpetrate torture. He also accepted that SIAC had spoken of a marked decline in that activity and accepted that was correct. He had not been able to find recent sources reporting widespread persistent and systematic use of torture and, although the references in paragraph 5.5 of his report refer to that, the section needs to be seen in light of the fact he now accepts there is no evidence of its continuation. When he was being cross-examined he was referred to the Amnesty International 2008 report. It was put to him that that only said there was some risk that those in DRS detention may be tortured. His response was to say that there was no guarantee that they would not be. Mr Blundell asserted that that was not the correct test. In summary, he argued that the burden was on the appellant, who was unable to show that he would be of current operational interest to the Algerian Executive and that there was no evidence that his involvement with the charities years ago would demonstrate any risk. He also argued that there was no evidence that the Dutch or the UK authorities had shown any interest in those activities. There is no evidence to show that simply making an asylum claim abroad generates a real risk of serious ill-treatment. Even if the appellant were of interest to the authorities,

given the marked decline in torture and ill-treatment, and even if he was detained by the DRS, there is not a real risk that he would be subject to serious ill-treatment.

Ms Fielden's Submissions

59. In replying to Mr Blundell, Ms Fielden dealt first with to his reference to Y and the assertion that incidents of torture were declining. She referred to the date of Y, and said that Dr Seddon had made it clear when he was giving evidence that there was an air of optimism in 2004 to 2006 because the Algerians thought that they had control of terrorism, and therefore conditions were improving. Mr Blundell had linked the Y finding to the observations that both Dr Joffé and Dr Seddon had been said to be bleak but, she reminded us, SIAC was focused on assurances. Dr Seddon seems to have accepted that, in general, there has been positive progress by Algeria, and it was a welcome development that the assurances had so far protected those who had returned. She argued that Dr Seddon was right when he accepted that one can produce problems by being over sceptical, but said that one can also get things wrong by being over optimistic. He was bleak from the point of view of wishing to protect those who were returning, and at a time when it was too soon to know whether the assurances would work. Referring to paragraph 8 of BB, and the reference to the release of terrorists, Miss Fielden reminded us that Dr Seddon had said that Algeria was less concerned about indigenous terrorists now, and was more concerned with people who were involved in international terrorism. Referring to the finding of the Commission in paragraph 23 of G, that there had been important social, political and legal changes in Algeria, she reminded us that although Y had been the correct starting point, conditions had reverted back to some extent; that we were now in 2009 with all that had happened in international terrorism since 2007. Dr Seddon had said in his 2009 report that matters would probably be worse now, for the appellant, than they would have been two years ago.

60. Turning to paragraph 26(b) of G she argued that the reference to a reduction in torture was accepted by Dr Seddon, but his concern was that there is still enough for there to be a real risk to the appellant. What Dr Seddon said is that the appellant would be questioned by the authorities at the airport and it would rapidly be realised that there had been an international aspect to his activities and, that with his travels abroad, he would quickly be transferred to the DRS. Dr Seddon had highlighted the secret detention facilities which were not accessible to external monitoring.

61. She then turned to the 2004 UNHCR Report and the fact Dr Seddon had said a lot of water had gone under the bridge since then. She asserted that the water ebbed and flowed. Things had not only got better. She was anxious to remind us that the SIAC cases almost exclusively involved people who would be returning with assurances and/or monitoring by the British Embassy but neither of those advantages were open to this appellant. Dr Seddon had not agreed with the proposition that the appellant would be better off without an assurance on the basis that meant he had a less high profile. That is because it would be necessary to interrogate the appellant in order to find out what he had been doing, and the DRS have carte blanche if there are no assurances.

62. Turning to the reference in paragraph 14 of G, to someone perceived as an international terrorist, Ms Fielden argued that it is exactly what the appellant is likely to be suspected of because of his movements, and the organisations and people he had worked with, and the possibility that he had maintained links with them. She argued that it was the suspicion of those links to international terrorism which would be in the mind of the authorities. Referring to paragraph 13 of U, where it was suggested that Algeria is making sincere broadly supported and generally successful attempts to transform itself, she argued that Dr Seddon accepted that, but his view was that the country had not got to its destination yet. She said that what really matters is what would happen in practice, not what the country aspires to. She picked up the point that Q, who was returned without assurances, and who was referred to in U, was returned almost as part of a group. The fact that others who were returned at about the same time and were being watched, and did have the protection of assurances, may well have afforded Q some protection.

63. Paragraph 17 of U gave details of where U had been (Afghanistan, Switzerland, Greece and London). She argued that the appellant had actually travelled more widely and had worked with some known suspected organisations. She argued that the appellant's profile is unique and would ring alarm bells which would give rise to the authorities wanting to know if he had kept up his links.

64. Referring to U, paragraph 40, where the Commission said that it could not sensibly be claimed that there is a pattern of gross and systematic violation of the rights of those prisoners detained pending trial, she asserted that was not the appellant's case. He would not necessarily be detained pending trial, his concern is what would happen to him at the preceding stage when investigations were being carried out.

65. Returning to Y, BB and U, at paragraph 10, she questioned whether the Commission's acceptance of Mr Leydon's evidence did in fact refer to the DRS. She said that because of the point recorded in Mr Blundell's submissions about the reference in paragraph, 7. She reminded us, in relation to paragraph 22, that Dr Seddon's concerns were about those viewed as being involved with international terrorism, not domestic terrorism, and it is international terrorism that has caused the authorities tighten their security, seeking those who have links abroad in places such as Pakistan.

66. Turning to the 2008 Amnesty International Report, she said that the report did not say there was no longer a risk of ill-treatment or torture, indeed it referred to an existing risk. Dr Seddon accepted things were better, but said that they had not resolved completely.

67. Dealing with HS, at paragraph 123, and the criticised observation that the DRS has been known to act with "uncontrolled brutality", she said that showed the general improvement did not mean the appellant was not at risk. She accepted that refugee law does not deal in guarantees, but suggested that the Tribunal in HS were saying that the fact there is no guarantee a person will be safe is the same as saying that there is some risk. The standard of proof then governs how that is assessed. Dealing

with some of the alleged shortcomings in Dr Seddon's evidence, Ms Fielden said she did not understand why he was criticised about the 3,000 people who were said to have been with the Afghan Arabs. At the time that those 3,000 were identified Algeria had not really been aware of the rising problems. It was only at the later election, when the Islamists appeared to have won, that the authorities became really concerned. Referring to Mr Blundell's description of Dr Seddon's evidence having shortcomings, in the sense that there were no examples of what had happened to those 3,000 people, she pointed out that this appellant had not just worked for one charity but several. She again emphasised his unique profile having worked for what she described as a "plethora of 'iffy' organisations". Dr Seddon had never come across anyone with an equivalent background to the appellant. She referred then to the fact that there is now legal provision making torture illegal in Algeria. She emphasised that that was of little concern to the appellant because he was interested in what actually happens in practice. She argued that it is not unreasonable to suggest that somebody was acting with impunity when the reality is that they can misbehave as long as "no one was looking". She argued that Mr Blundell was wrong to say there was no reason why the appellant would be of any operational interest now because his activities were so long ago; the authorities do not know whether he had maintained his earlier links and they do not know what he had been doing during his years in the United Kingdom and Holland. The fact that the charities for which he worked are fronts for terrorist organisations, and some are now terrorist organisations themselves, is enough to flag up cause for concern by the authorities. The fact there had been no interest by the Dutch and UK authorities (so far as we are aware) does not mean the Algerians may not express an interest.

68. In her skeleton Ms Fielden reminded us that the appellant had worked for a number of Islamic organisations in countries regarded as hotbeds of Islamic radicalism such as Pakistan, Saudi Arabia and Yemen. Although the organisations included schools, Afghan refugee camps and Islamic charities there is a general belief that those organisations are conduits for funding of terrorist groups. There was reference in Dr Seddon's reports to the precise identity of those organisations and what is thought about them, not by just Algeria. Even the appellant's journeys to France were at a time when Islamist groups were establishing themselves there. When he was in Sierra Leone, the organisation the appellant was working for was an Islamic charity based in Kuwait. To the extent that the evidence was accepted by the Immigration Judge, there was a suggestion that the appellant had expressed anti-establishment views at the mosque in Algeria before he left in 1991. She argued that his two asylum claims abroad could only add to the Algerian authorities' suspicions. The evidence was that the appellant's brother had been questioned about his whereabouts and was later shot dead by a gendarme, and that the appellant's wife had problems leaving Algeria having returned there after they had married. It is said she was asked about the appellant's whereabouts and it was suggested that he learned the Algerian authorities had a file on him.

69. In her skeleton she argued that, although the Immigration Judge rejected the appellant's claim to have been wanted in Algeria, he did not actually reject the evidence that the Algerian Secret Service had a dossier about him. The skeleton also

argued that the appellant's wife's evidence was not expressly disbelieved save to the extent that the Immigration Judge found her account was not compatible with the appellant being wanted. The skeleton asserts that Dr Seddon had said in his earlier report (which was before the Immigration Judge) that the evidence suggested (or even strongly indicated) that both the appellant and his wife had been blacklisted by the Algerian authorities because of their stay in Pakistan. It did not appear the Immigration Judge had taken that into account. The skeleton also argued that the Immigration Judge did not make any finding about Dr Seddon's view that the appellant's motive for travelling was economic betterment. Ms Fielden asserted that the Immigration Judge did not disbelieve the essential ingredients of the appellant's claim and concluded her skeleton argument by suggesting that with the appellant's particular accepted history he would be viewed with great suspicion by the authorities on return, that he would at least be suspected of links with international terrorism and would therefore be at serious risk of ill-treatment and torture during interrogation and thereafter.

70. In her "addition to the skeleton", prepared after the first day of the hearing she again emphasised that the real risk is that the appellant will be questioned on arrival in Algeria. Given the interrogation methods likely to be used he would reveal sufficient to warrant further detention. Dr Seddon had thought it most likely that the DRS would be involved because of their interest in matters other than internal ones. Much of the material in the addition to the skeleton was covered by Ms Fielden in her response to Mr Blundell's submissions. She dealt with the difference in wording between the Amnesty International Reports of 2007 and 2008, in particular Dr Seddon's observation that the later report refers to a woman being told by the Judicial Police that her son was being well treated by the DRS, and that in the next sentence it was said to be unclear where her son was being held. She argued that Dr Seddon's message is a simple one, things are improving in Algeria but have not improved to the extent that the DRS no longer uses ill-treatment and torture to which there is a real risk the appellant will be subject. She argued that the fact there is now available redress for those who suffer inhuman or degrading treatment or torture, does not help because that redress would only happen after the event and was not much protection.

71. Her skeleton dealt with the differences as Dr Seddon saw them between the facts in HS and the appellant. He considered the factors were very different, because in HS press coverage identified HS as a terrorist suspect, whereas in this case it was his long period abroad. He was of the view that the appellant would not be treated as an "old case" because of the current international terrorist threat, and because any maintained links would be highly significant in the eyes of the Algerian authorities. She reminded us that Peshawar is known as a centre of terrorist links and that is where the appellant had been working.

72. She reminded us that even if the organisations were benign when the appellant was working for them that is not particularly relevant if they have now become known for their terrorist activities. Their names alone would be sufficient to cause interest in the appellant.

73. The skeleton emphasised that the Immigration Judge did not appear to have taken into account parts of Dr Seddon's earlier report, and the suggestion that the appellant had been blacklisted by the Algerian authorities. Ms Fielden suggested that undermined the Immigration Judge's conclusion about the interest of the Algerian authorities in the past. But the skeleton went on to say that it was Dr Seddon's clear view that the risk on return does not so depend on past issues, because the risk would be triggered by his detention followed by inevitable interrogation following disclosure of his suspicious history abroad. She reminded us that Dr Seddon did not want to be tied too closely to the case of HS because there are differences as well as similarities between the appellant and HS. She emphasised again that the appellant had not only worked for a number of suspicious organisations but his work took him to a number of countries all of which were of special concern so far as terrorism was concerned, namely Pakistan, Yemen and Saudi Arabia. She said it is perhaps unsurprising that Dr Seddon had been able to find anybody with a similar background. He had observed that one does not hear about them until they surface in a court system. He said that in his fifteen years' work in this area he has not come across anyone with a profile like this where an appellant has worked for a series of charities in such key countries. Finally, the addition to the skeleton explained that the Amnesty Reports produced at the hearing were complete reports. When she called at Amnesty to make enquiries about them, Ms Fielden was provided with two further documents which we gave to both parties to make written submissions within two weeks from 12 February.

Submissions on Late Documents

74. We received written submissions from both sides on the two Amnesty documents produced by Ms Fielden at the final hearing. The first was Amnesty International's "Submissions to the UN Universal Periodic Review" and was dated 28 November 2007. The other was their briefing to the Committee Against Torture dated 17 April 2008. In order to assess these documents it is important to appreciate their purpose and the period with which they dealt. Mr Blundell had analysed that and made the following submissions about the documents. We adopt his shorthand to describe the documents as the "AI submission" and the "AI briefing". The earlier document, the AI submission, was Amnesty's input into a Universal Periodic Review carried out by the Human Rights Council, a body set up by the UN General Assembly. Mr Blundell pointed out in his submission that the AI submission does not contain any indication as to the period which it is intended to cover. He had therefore obtained a fact sheet from the United Nations which he submitted, and which dealt with the Universal Periodic Review. That fact sheet showed that the process is carried out under the auspices of the Human Rights Council and looks at the human rights records of all 192 Member States of the United Nations once every four years. He submitted that the AI submission was not specifically directed to a particular reporting period and that it appeared, from the text of the submissions, that it had not sought to confine itself to any specific period. It included express references to a "body of evidence" about activities of the DRS in the 1990s.

75. It is the case that the Universal Periodic Review was set up by a resolution of the UN General Assembly dated March 2006 with the intention that the human rights records of every country would be reviewed by 2011 with a review thereafter of each member state once every four years. the AI submission was in relation to the first review.

76. As to the AI briefing, Mr Blundell submitted that this document contained Amnesty's submissions to the Committee Against Torture which was considering its third Period Report about Algeria. Although the AI briefing itself does not refer to the period covered by the third Period Report, Mr Blundell had obtained a copy of it. It is apparent that the report covers the period November 1996 to January 2006. He supposed that the AI briefing covered the same period and drew our attention to the fact that it deals with enforced disappearances during the 1990s but also refers the reader to previous Amnesty International reports for further information. He asked us to consider that the briefing summarised Amnesty's concerns throughout the reporting period and was not simply a review of the current situation. We are by no means satisfied that his analysis of the period covered by the document is correct. The copy of the third Periodic Report produced by the Committee Against Torture, under the auspices of the United Nations, is dated 10 February 2006, whereas the copy of the Amnesty briefing appears to have been embargoed until 17 April 2008. The briefing paper cannot have been intended as input for the third Periodic Report. The introduction to the AI briefing indicates that it was submitted for reconsideration by the Committee Against Torture during the course of its "fourth …. examination of Algeria's third Periodic Report". We take it therefore that the briefing was intended to build on the committee's report and bring it more up-to-date. That is apparent from the material in the AI briefing some, but by no means all of which, post dates the committee's report. The case studies included in the AI briefing include a number of events in 2007, but also deportations to Algeria by the United Kingdom since 2006, including Q and H. Mr Blundell asked us to consider the documents as a summary of Amnesty's concerns throughout the reporting period rather than a review of the current position. In doing so he reminded us that references to torture being "widespread or systematic" in DRS detention had disappeared from the 2008 Amnesty report, having been previously in the 2007 report.

77. He also produced the September 2008 COIR on Algeria but did not wish to make any submissions on it. He also confirmed that he did not wish to make any submissions following RB (Algeria) and OO (Jordan) v SSHD [2009] UKHL 10, which was handed down after the hearing of this reconsideration had been concluded.

78. In her submissions Ms Fielden acknowledged that the Amnesty submission referred to the level of violence having decreased by comparison with the 1990s, but drew our attention to the fact that it still maintained that DRS continues to be responsible for secret detentions and to commit torture with impunity. It said the barracks used by DRS for detentions are not inspected by bodies independent of the military. She referred to the fact that detainees are often forced to sign a report containing a confession, which also contained a declaration that they had been well treated. She said it is known that detainees are threatened by DRS officials and told that they should not disclose how they were treated. She submitted that, even if they do,

complaints about torture or ill treatment are not investigated and the perpetrator is not held accountable. There was criticism in the submission at page 2 of the Charter adopted in 2006, which declared that complaints against security forces would be inadmissible in court. She asserted that the result has been to confer complete immunity for the perpetrators of human rights abuses. However, we do not accept that the Charter has had that effect for all allegations. The provision was regarded as a balance for the amnesty provided to citizens and, it is clear from paragraph 344 of Y v SSHD, that the immunity for the security services related to past acts. The Commission in Y recognised the shortcomings of the Charter and explained some of the reasons for them. Ms Fielden asserted that the report suggested there is a continued a risk of torture and other ill-treatment if a person's background is such that the security forces would wish to interrogate.

79. As to the Amnesty briefing, there is further reference to impunity for past violations but Ms Fielden referred to references throughout the report to serious human rights abuses having decreased, save in relation to counter-terrorism measures where torture and ill-treatment continue to be committed. She referred to the treatment of one Ikhlef as an example of a conviction based solely on a statement made during incommunicado custody of the DRS. The Ikhlef case was dealt with at paragraph 313 of Y. She emphasised that the report stressed, at page 19, that the purpose of any torture or other ill-treatment was largely to extract information or confessions about international terrorism. She gave as an example of a detainee complaining he had been ill-treated and forced to sign an interrogation report, without reading it, that of Mohammed Benyamima (dealt with in Y at paragraph 309).

80. In relation to Q, who was one of those deported with assurances (and referred to in paragraphs 13 to 19 of U v SSHD), the report suggests that Q, contrary to what had been recorded in U, had been ill-treated in DRS detention and that there had been no investigation. She summarised her submissions by saying the new material confirms that, notwithstanding the general reduction in the level of torture and ill-treatment of detainees, the DRS continues to be responsible for secret detentions and continues to commit torture with impunity in the context of counter terrorism.

Conclusions

81. In considering the appeal we have had regard to the fact that the burden of proof is on the appellant and the standard of proof is 'reasonable likelihood' or 'real risk'.

82. We set out here a brief summary of the appellant's movements since first leaving Algeria. We accept the unchallenged evidence of Dr Seddon as to the identity and significance of the organisations and places the appellant worked for, and in. They are as follows. After completing his military service the appellant, a schoolteacher, claims to have gone to Pakistan to assist with teaching Afghan refugees on the Afghan/Pakistani border. He was there for ten months from September 1989 teaching Arabic and living in Rawalpindi. The organisation that he was employed by for some seven months, the Social Reform Society, is described as an Islamic charitable organisation based in Kuwait. It is one of fifteen organisations listed by

the Russian Government as a terrorist organisation, albeit that the Russians did not become interested in the organisation's activities in Moscow until 2002. Still in Pakistan, he then went to Peshawar when he either continued to work for the same organisation or the World Islamic Relief Organisation based in Jeddah. The latter organisation is said to be the operational arm of the Muslim World League, an organisation founded by the people who later founded Al Qaeda. One of the September 11 2001 hijackers worked for that organisation in the United States. The period when the appellant was in Pakistan was roughly when Al Qaeda was started, having emerged from the training camps for Arabs wishing to fight with the Mujahedeen.

83. In 1991, having first been to Mecca, the appellant went to Yemen where he taught in Ibb and then Sana'a. Little is known about who he was working for in Yemen, only that he was there until 1993 teaching in primary schools.

84. After travelling again to Saudi Arabia in April 1993, he married an Algerian woman in Jeddah where he had remained for approximately seven months. According to Dr Seddon, it was during that period that Osama bin Laden, having returned to Saudi Arabia, was attempting to launch a struggle against the US military presence.

85. In 1993 the appellant returned with his wife to Pakistan in 1993 where he remained for nine months teaching in refugee camps for the Tamir organisation. Dr Seddon described the Tamir organization as an Islamic charitable organisation based in Kuwait. He said it could easily be confused with a Pakistani organisation with a similar name and which is on the United States' Terrorist Exclusion list as a terrorist organisation. He did not say whether, in reality, there is any link between the two organisations. The appellant went back to Pakistan because his job in Yemen had been terminated in his absence. It was during this period that it is said that the Government of Algeria had asked for all Algerians in the border region to return to Algeria. Because of his concerns about that request the appellant went back to Yemen in September 1993 and remained there until 1995. We were not told for whom the appellant was working in Yemen on this occasion either, but Dr Seddon observed that it was during this period that Islamic fundamentalism was on the rise in Yemen. The appellant again says that he was teaching. At the end of that period the appellant, having said that he had failed to obtain a renewal of his passport, forged a new expiry date in it and went to Sierra Leone. There, he worked for the Safa Group which was described by Dr Seddon as a complex coalition of overlapping companies registered in Northern Virginia and controlled by known individuals who have shown support for terrorists and terrorist front organisations. The appellant said he left Yemen because residents who had been to Pakistan were being arrested. In Sierra Leone he worked for Africa Muslims Agency doing poor relief work. He left Sierra Leone in 1996 before the false date in his passport was reached but was arrested in Amsterdam because it was noticed that he had tampered with the passport. He then unsuccessfully claimed asylum, but, when he was faced with removal to either Sierra Leone or Algeria in 2003, he came to the United Kingdom and again claimed asylum.

86. During the period back in Algeria, after his first visit to Pakistan, the appellant travelled to France on more than one occasion. He has mostly been out of Algeria since 1989, save for the brief period when he returned after the first Pakistan trip. He has therefore been out of the country for nearly twenty years.

87. The appellant claims that the reason for his travelling was employment and economic betterment. Dr Seddon has, as we have recorded, dealt with the increase in Islamic fundamentalism in Algeria throughout this period and more recently the Algerian's change of emphasis from internal terrorism to international terrorism.

88. Following the decision in IK v SSHD [2004] UKIAT 00312 we must assume that the appellant would not be expected to lie when he returned to Algeria and therefore that this history would quickly become known to the Algerian authorities.

89. Dr Seddon has said that the Algerian authorities would be interested to know, not only what the appellant had been doing in the Middle East, but also what he had been doing during his time in Holland and the UK, and whether he had maintained any contact with those he had met in the past. It was Dr Seddon's view that niceties such as whether the organisations for which the appellant worked, and which have since been identified with terrorism, were involved in those activities when the appellant worked for them would not assist him. Dr Seddon's argument, which we accept, is that his profile would give rise to considerable suspicion and it was Dr Seddon's evidence that he had never come across anyone with such a profile before.

90. We accept that the appellant's movements would give rise to such suspicion upon his return to Algeria. For all we know they may have given rise to suspicion in the United Kingdom. The pattern of movement, the timing in relation to the rise of fundamentalism and terrorist activity is marked. We accept that there are both similarities and differences between the appellant and the appellant in HS. The main difference is that there has not been any public statement in the press about this appellant. But, on the other hand, he would return on a laissez passer which the authorities in the United Kingdom would have had to obtain from the Algerian Embassy. That would draw attention to him on return. A returnee should not be expected to lie (see, for example, IK (Turkey) [2004] UKIAT 00312) and it is unclear what the Algerian authorities know about the appellant. We know he visited the Algerian Embassy in Yemen to renew his passport and that he registered his marriage at the Embassy in Saudi Arabia.

91. We cannot know what course would be taken by the authorities when the appellant returns to Algeria. Dr Seddon has suggested that, of all the Algerian security forces, the DRS is the one most likely to be brought in to investigate the appellant because of his international links and the suspicion that they may be to international terrorism. Whilst we have no way of knowing if that is correct we accept there is a reasonable likelihood that it is.

92. There was some dispute at the hearing as to the extent to which the Immigration Judge had accepted that the appellant was "known" or wanted" in Algeria. The

appellant had claimed to have been told that a case has been opened against him and others who had been in Pakistan as long ago as 1991. The Immigration Judge did not expressly make a finding about that but said he placed little weight on the assertion that there was a dossier or file on him. He rejected the appellant's assertion that he had been told by the Algerian Embassy in Yemen, when he went to renew his passport, that he was wanted. He did not make an express finding on whether the appellant's wife had been interrogated when she left Algeria, simply saying that he did not accept she would have left her son behind if she had been aware that the authorities were interested in the appellant. He made no finding about Dr Seddon's view that the appellant may have been blacklisted. In our judgment that omission is not material in this appeal. We say that because the main thrust of his case now is based on it becoming known to the Algerian authorities that he has been in the various countries that he has, and his long absence from Algeria. We find that is sufficient for him to succeed for the reasons which follow. If there were a dossier on him, or if he was wanted, that could only add to the risk. In cross-examination Mr Blundell elicited the fact that Dr Seddon had no evidence to show that the Algerian authorities had been particularly concerned about Algerian nationals living and working in Pakistan since the emergence of Al Qaeda but we need to remind ourselves that that concern was the 1990s. As Dr Seddon said, it was then in a different context. Dr Seddon's answer to a number of particular criticisms made by Mr Blundell was that it is the appellant's profile that would cause him difficulties regardless, for example, of whether he had been known to the regime or on a blacklist. Dr Seddon did accept that he had no examples of people in circumstances similar to the appellant having encountered adverse attention. He was able to answer Mr Blundell's observation, that there must be no shortage of people who had worked with charities in Pakistan, by saying that the appellant stands out because of the range of places and organisations that he has worked in and for. He conceded that he had been unable to find reference to anyone having difficulty having returned from working for Islamic charities in any reports from Amnesty, UNHCR, Human Rights Watch or Algerian NGOs but again, emphasised the appellant's distinctive profile.

93. The main question for us therefore is whether there is a real risk (not just a possibility) that the appellant will be seriously ill-treated whilst in the hands of the DRS. It is his case that he will be. It was not his case that there was a reasonable likelihood of mistreatment at the hands of any other part of the Algerian Security or judicial apparatus.

94. The question of torture (and inhuman or degrading treatment or other serious harm) has been the subject of considerable attention in the context of Algeria. That is because a number of SIAC cases, and the Court of Appeal, have considered risks to returning Algerians with actual or suspected links to terrorism. However, caution is required because the SIAC cases did not simply involve people who were to be returned with such links. They were people who had what the respondent considered to be the safeguards of memoranda of understanding and monitoring by the British Embassy. The question for SIAC was therefore whether, notwithstanding those apparent safeguards there was still a real risk that the returnees would be

seriously mistreated. To that extent the SIAC cases were not focused on the risk of serious ill-treatment in the hands of the DRS in the absence of such safeguards. In the event, SIAC considered the safeguards were sufficient to protect the returnees. We accept that Q returned without safeguards, but regard his case as untypical as he returned at a time when the international spotlight was on the Algerian authorites because of the other returnees who featured in the SIAC cases and who did have the safeguards.

95. In HS this Tribunal concluded that without such safeguards, for a person who was identified to the Algerian authorities as a person who may have links to terrorism, there would be a real risk of mistreatment. Mr Blundell sought to argue that HS should not be relied upon and that is something we deal with later.

96. In relation to the risks to the appellant if he were to be returned to Algeria and fall into the hands of the DRS, we did not find that the evidence in Mr Touaiti's letter took the matter any further. It is not known who he is. Nor is it known upon what basis he believes that the appellant would be at risk upon return because he had worked as a teacher for a relief organisation in Pakistan.

97. The general thrust of Dr Seddon's evidence was that whilst he accepted that incidents of torture and mistreatment of detainees generally were much improved, he observed that there had been a number of terrorist acts occurring in 2007 and 2008 which have caused the security forces (notably the DRS) to implement a state of counter insurgency which has little regard for the law and for human rights. He said he was uncertain whether the DRS operated outside the law because they were 'a law unto themselves' or whether they had the tacit approval of the authorities. He said opinions vary. We have not found the wealth of evidence which relates to periods before 2007 to be of particular assistance because of the changing scene. Much of that change is reflected by the observations of the Commission in Y v SSHD. We accept that in the past the DRS has had a formidable reputation for mistreating those who fall into its hands in secret and unknown locations. The question is whether those activities still continue and whether there is a reasonable likelihood that the appellant will be subjected to serious ill-treatment now on return. We accept that, to an extent, what has happened in the past informs the present but it cannot be assumed that things do not change. In 2007 Human Rights Watch described to a UN Human Rights Committee how it regarded DRS operations as "almost untouchable" and said that legal safeguards were all but routinely disregarded according to Amnesty.

98. In his oral evidence Dr Seddon accepted that conditions in prisons were improving and that the judiciary and the police no longer operate as independently (i.e. without proper scrutiny) as they once did. He did not consider that to mean that torture did not continue to happen to some extent. Having said that things had been improving in 2003, 2004 and 2005, as the Algerians got on top of the Islamist threat, there had been the upsurge in the incidents in Algeria from 2007, and the Amnesty report for 2007 referred to persistent reports of torture and ill-treatment of suspects detained by the authorities and accused of terrorism related activities. He had to accept that a

similar passage did not appear in the 2008 report although he did point to the passage in which it is said that detention in secret locations continues.

99. Dr Seddon had thought that SIAC had been unduly optimistic in its assessment of conditions in Algeria and in particular where it observed in Y that torture was markedly declining. But, he had to agree that, following the return of various SIAC appellants, the Commission had been proved generally right. He acknowledged that his views had been described as bleak by the Commission (as had Dr Joffe's), but maintained that he was justified in taking a less optimistic view of Algeria than the Commission had, especially following the upsurge of bombings in 2007/2008.

100. We were struck by the paucity of evidence about the way in which detainees in the hands of the DRS are treated. There does not appear to be any up-to-date material. The impression given is that there have been terrible problems for those detained by the DRS in the past but that the general situation in Algeria (not confined to DRS) has improved markedly. There has been the criminalisation of torture and an increased transparency. The most recent evidence appears to be the Amnesty report where references to continuing concerns about torture were not expressly repeated in the 2008 report, but they do report that the DRS continues to detain people incommunicado at secret locations. In other words, the evidence is not that serious ill-treatment has stopped, it is that the evidence has gone silent on the issue. The two more recent Amnesty reports are similar. We treat them with some caution because, as Mr Blundell has pointed out, it is not clear what period they cover, much of the evidence cited is old. The passage on secret detentions, and torture in the context of the fight against terrorism, in the Amnesty submission speaks of problems in the 1990s. The Amnesty briefing has a section on torture facilities and counter-terrorism measures and in particular the powers of the DRS. It does not contain any current evidence as to its current activities.

101. When Mr Blundell came to consider the SIAC authorities he mentioned that in G (handed down 8 February 2007) the Commission had said that according to Amnesty in 2006, in a report that was not disputed, torture and ill-treatment continue to be used systematically by the DRS. Mr Blundell argued that that was no longer an appropriate observation. Furthermore, in G at paragraph 26(d) the Commission accepted that Algerian citizens suspected of terrorism would, in the absence of assurances, be at real risk of torture and other ill-treatment. We take it as showing that, as late as 8 February 2007 there could have been no question of returning this appellant if there were a real risk that he would be interrogated by the DRS. Mr Blundell argued, but we do not accept, that the appellant would be treated differently from G because the Commission's judgment in G said that there was reasonable suspicion that G was an international terrorist. The appellant's case, as we have accepted, is that with his profile he would be so suspected even though (we accept) he would not arrive in Algeria with an adverse judgment of the Special Immigration Appeal Commission on that issue.

102. When referring to U v SSHD Mr Blundell argued that the decision was important because it came after a number of individuals had been returned to Algeria. Those

individuals, K, H and P were not the subject of serious ill-treatment. However, they cannot be compared to the appellant because they all returned with assurances and the offer of monitoring from the British Embassy. Q is different, because he did not have such assurances. Q was returned at the same time as those others but we do not think he should be treated as an ordinary returnee. He may well have benefited from the period of high profile returns when the spotlight was on Algeria. The Commission, at paragraphs 17 and 18, referred to what happened to Q and concluded that whilst he was in detention he had been treated with respect and not received any inhuman or degrading treatment. We treat that finding of the Commission with caution because Q is referred to in the subsequent Amnesty briefing at page 8, that document being prepared almost a year later than the judgment in U. Q was sentenced to imprisonment in November 2007 having, according to Amnesty, been tried in an Algerian Court and convicted of belonging to a terrorist network operating abroad. Amnesty claim that his conviction was based on interrogation reports prepared by the DRS which he had been forced to sign without knowing the content. He and a co-accused both said they had been ill-treated by the DRS. The co-accused, who made the same assertions was H, who did have the benefit of assurances. The information from Amnesty is unsourced and we treat the allegations made by Q and H with some circumspection but do note that the convictions came some time after the Commission's judgment. There may have been evidence provided to Amnesty which was not available to the Commission. Mr Blundell considered that paragraph 37 of U was important because it said that the Algerians had fulfilled to the letter the assurances given to the British Government. We do not understand why Mr Blundell regarded that as significant because there is an absence of assurances in this appeal. The need for assurances was confirmed in paragraph 37(3), where the Commission found that it was necessary to obtain such assurances for an individual deportee's safety on return to be reasonably assured. Although Mr Blundell referred to paragraph 40 of U, in which the Commission had said, "It cannot sensibly be claimed that there is a consistent pattern of a gross and systematic violation of the rights which would be guaranteed by Article 3 if Algeria were a Convention state", that is not relevant to this case because the observation related to prison conditions pending trial. The appellant does not rely on prison conditions in support of his claim, rather the risk when he is being interrogated following arrival.

103. Y, BB and U was a remitted case from the Court of Appeal and came after the Tribunal's decision in HS. The most important passage in the SIAC judgment, to which he referred was, in our judgement, that which said (in paragraph 22), "Reported ill-treatment, by the DRS, of persons in their custody had not increased." It then said, "There are no substantial grounds for believing the conditions generally in Algeria give rise to a real risk that any of the appellants will be subjected to treatment which would, if it were to occur in a Convention State, put that State in breach of its obligations under Article 3 …". At first blush that appears to assist the respondent's case but it must be recalled that the appellants in Y, BB and U all had the benefit of assurances and an offer of monitoring and that was the context that the Commission was considering their cases. What was said in paragraph 22 was that

there were no substantial grounds for believing that conditions generally in Algeria would give rise to a real risk that any of those appellants would be subject to such treatment when returned with the benefit of assurances.

104. Mr Blundell's submission on PP was that by November 2007 the situation remained unchanged.

105. We then turn to HS which Mr Blundell thought had been decided without reference to Y, BB and U or PP. His first main criticism is that the findings in HS went contrary to the general direction of the SIAC cases which demonstrated a general improvement. Having now indicated that we do not share Mr Blundell's interpretation of the two most recent Commission determinations, much of what he said about HS has lost its importance. It is true to say that the Tribunal relied to some extent on the UNHCR position paper at 2004 and that Dr Seddon had acknowledged a lot of water had gone under the bridge since then. Before us he also said that the water both ebbed and flowed. Since about 2007 the general situation in Algeria has deteriorated as a result of the increase in terrorist activity. There is no evidence that there has been a continuing level of general improvement for those who find themselves in the hands of the DRS.

106. Mr Blundell's other criticism of the determination in HS is that it referred, in paragraph 121, to 'guaranteeing disinterest; and ensuring disinterest'. Also that in paragraph 122 the Tribunal said there was "no guarantee the appellant will be protected from any such malpractice". Mr Blundell argued that refugee law does not deal in guarantees and the proper question was whether there would be a real risk. The respondent did not appeal the decision in HS in which the appellant succeeded. We interpret those observations in HS as being the obverse of the 'real risk coin'. Of course something less than a guarantee would be a risk, less than a real risk. When the determination is read as a whole it is clear that the Tribunal was considering real risk, or reasonable likelihood.

107. In summary, our judgement is this. The appellant is a person who is reasonably likely to be suspected of links to terrorism when he is returned, with a laissez passer, to Algeria, following a twenty year absence. The suspicion will arise simply from the places he has been in, and the organisations for which he has worked and he will not be able to disguise that and hide it from the authorities. Consequently it is reasonably likely he will be referred to the DRS.

108. Historically, there is no doubt whatsoever that the DRS have had a justified reputation for seriously mistreating, to the extent of torturing and inflicting inhuman and degrading treatment, detainees in secret detention centres. We are not satisfied that any of the SIAC appellants who have been returned with assurances, and who have largely been reasonably treated, are any sort of indicator about the way that a returnee without assurances and the benefit of monitoring by the British Embassy would be treated. At no time did the Commission say that it will be safe to return any of the appellants without assurances; it merely said that with assurances they were satisfied there was not a real risk they would be so mistreated. Every one of the

appeals has been decided in that context. In the earlier Commission cases it was expressly said that without assurances it would not be safe to return the appellant. The later cases have simply said that returning them with assurances continued to be safe. We do not accept that the Amnesty briefing about the treatment of Q and H undermines that reasoning. The report is unsourced and we have no evidence as to the form of ill-treatment said to have been handed out to them.

109. Although the 2008 Amnesty Report did not expressly refer to torture continuing at the same rate as it had previously said, it did refer to continuing incommunicado and secret detention. We do not to take the absence of an express reference to torture (as opposed to a positive reference to a cessation or reduction), to mean that it is now safe to return the appellant when it would not have been previously. At its highest the evidence about torture has gone quiet but we are not persuaded that the DRS has materially changed. We accept that conditions throughout the rest of the legal and security systems may well have improved due to increased transparency and monitoring, but there is still no evidence that the DRS has opened its doors to external monitoring, nor that it has become accountable in any meaningful way.

110. If the language used in HS gave the impression that HS won his appeal because there was no guarantee of his safety then we do not adopt it. On the evidence which we have seen (and which was seen in HS), allowing for the passage of time and two subsequent SIAC cases, we are satisfied that there is a real risk that this appellant will be subjected to inhuman or degrading treatment and/or torture at the hands of the DRS when he is returned to Algeria for the reasons we have given.

Summary

i). An appellant who can establish that he has a history that suggests he may have connections to international terrorism is at real risk of being detained on arrival in Algeria, and investigated

ii). It is reasonably likely that when the suspicion is of international terrorism such a returnee will be passed into the hands of the DRS for further interrogation.

iii) The historic evidence about the DRS's propensity to use torture as a means of interrogation, together with the continuing absence of any evidence of accountability or monitoring strongly suggests that, in the absence of evidence to the contrary, the DRS still uses torture and other serious ill-treatment in its places of secret incommunicado detention.

Decision

i) The appeal is allowed on asylum grounds.

ii) The appeal is allowed on Article 3 ECHR grounds.

Signed

Senior Immigration Judge Mather

SCHEDULE OF BACKGROUND EVIDENCE CONSIDERED BY THE TRIBUNAL

A substantial number of documents in bundles for hearings in 2005 and 2006 to which neither party referred

News Item (unspecified source) headed '26 Arabs refuse to go to their homelands'	12.4.??
Article in Le Soir d'Algerie on Anti Terrorist Law	3.10.92
News Item Asharq Al-Awsat Newspaper	10.1.94
Memo from the Commissioner of Afghan Refugees	16.4.94
UNHCR/Accord Algeria Country Report - Extracts	12.6.01
Amnesty International - report covering events January to December 2004	28.11.04
UNHCR Algeria Bulletin 1/2005	00.12.04
Algeria Watch web report 'Rights groups to guard against abuse'.	2005
Article New York Times "One Man and a Global Web of Violence	14.1.05
US Department of State Report on Human Rights Practices 2004	28.2.05
Amnesty International 'Possible secret detention/fear of torture'	7.3.05
Radio Netherlands 'Report on Algeria's 'disappeared' attacked'	5.4.05
Human Rights Watch article 'Algeria: Impunity Should Not Be Price Of Reconciliation'	3.9.05
Reuters Report 'Rebel Amnesty won't end Algeria strife'	11.9.05
HJT Research 'Six Killed In Latest Violence'	15.9.05
BBC News website 'Algerian Detainees 'face torture''	16.9.05
News Item from Khaleej Times online - Reconciliation or Obfuscation	25.9.05
Freedom House press release 'Algeria Amnesty Provides Neither Truth nor Justice	28.9.05
Radio Free Europe 'Algeria: Will Referendum On Amnesty End Civil War'	28.9.05
IPS News item 'Crimes get a dubious pardon'	1.10.05
HJT Research item	4.10.05
Expert Report by David Seddon	18.10.05
United Nations Third Periodic Reports of States Parties	16.1.06
Home Office Operational Guidance Note - Algeria	22.5.06
Expert Report by David Seddon	30.11.06
Amnesty International Report - Algeria	2007
Country of Origin Information Report - Algeria	2.11.07
Amnesty International Submission to the UN Universal Periodic Review	28.11.07
Amnesty International Report - Algeria	2008
US Department of State Report on Human Rights Practices 2007	11.3.08
Amnesty International Briefing to the Committee Against Torture	17.4.08
Country of Origin Information Report - Algeria	30.9.08
UNHCR Human Rights Council factsheet on the Universal Periodic Review	Nov 2008
Expert Report by David Seddon	3.2.09