

Appeal No: SC/1/2002

Date of Judgment: 29th October 2003

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

The Honourable Mr Justice Ouseley, Chairman
Mr C M G Ockelton
Mr J Chester

A - APPELLANT

and

Secretary of State for the Home Department -RESPONDENT

For the Appellant: Mr B Emmerson QC, Mr R Hussain
Instructed by: Birnberg Peirce & Partners
Special Advocate: Mr R Scannell, Ms P Whipple
Instructed by: Mr S Trueman, Treasury Solicitor
For the Respondent: Mr W Williams QC, Mr S Catchpole QC
Instructed by: Ms L Smith, Treasury Solicitor

A

1. A was born on 9th February 1967 and is a citizen of Algeria. He appeals against decisions made on 18th December 2001 to certify him under section 21 of the 2001 Act, to refuse him indefinite leave to remain in the United Kingdom, to refuse to revoke a deportation order made against him, and to deport him.

History

2. A arrived in the United Kingdom on 31st July 1989 as a person who intended to make a visit of fifteen days. He was granted leave to enter as a visitor and then went on to work. He then began a short course of study. He applied to extend his visa for the purposes of study but that was refused. He then contracted a marriage to PK. That was a marriage of convenience. He had simultaneously a relationship with another woman, BD, a national of Poland. He has a number of children by her, the eldest, twins, born on 28th March 1991. In evidence before an Adjudicator in

1993, BD, who was then apparently a Roman Catholic, said that she intended to marry A as soon as possible. In his statement made for the purposes of this appeal, he says that she has converted to Islam and he describes her as his wife. We have not seen evidence relating to the marriage or to the divorce from A's first wife. A did not make an application for leave to remain on the basis of his first marriage.

3. On 29th July 1992, there was a decision to deport him as an overstayer. He appealed. His appeal was dismissed and a deportation order was signed on 13th September 1993. A went to Sweden and applied for asylum there. He was returned to the United Kingdom by the Swedish authorities. He then applied for asylum here on the basis of involvement in Al-Ansar, an Algerian newspaper printed and published in London. That application was refused. There was a further appeal, also dismissed, and we are told by the Secretary of State that by the time that judgment was made A had disappeared.
4. There was an incident in 1996 when a person was arrested in Manchester and found to have an altered French identity card in the name of Hakim Mezguiche and that person absconded before further investigations could be made. The Security Service assessed that that person was A and A now admits that this was so. It is not entirely clear from the open material before the Commission when A next came to the notice of the authorities in the United Kingdom.
5. So far as the immigration authorities are concerned, Mr Troake's statement is that his continued presence in the United Kingdom came to light when he was arrested by Bedfordshire Police on 16th February 2001. It is the case, however, that he had been interviewed by the Security Service in December 2000. In any event, during the spring of 2001 A made an application for indefinite leave to remain in the United Kingdom on the basis that his children had been in the United Kingdom for more than seven years. That application was, as we have said, rejected in December 2001 at the time of A's certification, and other associated immigration decisions were made at the same time.
6. A has no effective in-country right of appeal against the decision to deport him, but he has appealed on refugee and human rights grounds against the decision not to revoke the deportation order as well as appealing against his certification under section 25 of the 2001 Act.

Evidence

7. In A's appeal, as in the other appeals before the Commission, there is open and closed evidence from the Secretary of State. We have taken into account the copious documentary evidence from both sides and the oral evidence given on behalf of the Secretary of State. A himself has made a detailed written statement, but did not supplement it with oral evidence before the Commission. We do not count his failure to give oral evidence against him, but the lack of it may mean that it is more difficult for him to repel the Secretary of State's allegations.

8. We have, of course, read his statement in detail. In it, he gives his account of his activities in the United Kingdom and deals with some of the allegations and assessments in the open material against him. A number of features emerged to our minds very clearly from A's statement. First, he has been involved in criminal activities, both by way of contravening immigration legislation and more generally. Secondly, he appears to be unwilling to take any personal responsibility for those activities. In paragraphs 4 and 5 of his statement, he distances himself from any suggestion that it was his personal choice, whilst here as a visitor and overstayer and whilst married to another woman, to begin a relationship with BD. In paragraphs 12 and 13, he appears to distance himself from any personal responsibility for offences of fraud. Thirdly, as he makes clear in paragraph 8 of his statement, he has been prepared to lie for immigration purposes. Fourthly, we note in particular the passage at page 19 of his statement, which relates to events in the summer of 2000, and reads as follows:

"Up to this point, I did not have my address or my real name in any official record (by saying any record what I mean is the Police and the Home Office) because by that point I was hoping that by staying more than seven years, I could qualify for immigration status via a different route."

9. We suppose that A must have realised that his name was on Home Office files as a result of his immigration status: but this passage is a clear indication that A had been acting under an alias or aliases and had had contact with the Police and the Home Office in a name other than his own.
10. We have to say that the statement as a whole gives us no confidence that A is a person whose word is to be trusted.

The open case against A

11. Although we have to make our decision on the basis both of the open and of the closed material, it is important to indicate the case against A as it has been set out by the Secretary of State in open material, because that is the case that A knows that he has to meet. In assessing his statement and the other evidence and arguments submitted on his behalf, we remind ourselves always that he is not aware of the Secretary of State's closed material, but nevertheless that he is not operating entirely in a vacuum because of the open allegations: and we may test the Appellant's own case by the way he deals with those allegations.
12. The Secretary of State's case against A is summarised as follows:

(1) he belongs to and/or is a member of the GSPC, and previously was involved with the GIA;

(2) he has supported and assisted the GSPC (and previously the GIA) through his involvement in credit card fraud which is a main source of income in the United

Kingdom for the GSPC;

(3) from about August 2000, A took on an important role in procuring telecommunication equipment for the GSPC and the provision of logistical support for satellite phones by way of purchase and allocation of airtimes for those phones;

(4) he has also played an important part in procuring communications equipment and other equipment for the Mujahedin fighting in Chechnya ? that is to say the faction which until 2002 was under the command of Ibn Khattab.

13. Those are the allegations in general and they amount to an assessment that A took an important role in support activities for the GSPC within the United Kingdom and, more widely, for the objectives of Bin Laden and Al Qa'eda. The open material sets out in some detail A's dealings with telecommunications companies. It alleges at least three recently-used aliases, "Amine", "Hakim" and "John Caller". It also sets out a pattern of association with other individuals known or assessed to be involved in terrorist support activities.

Findings

(a) Purchase of telecommunications equipment

14. Stuart Castell's statement describes the purchase of a number of items of telecommunications equipment, including satellite telephones. The facts stated by Castell are not disputed by the Appellant, nor are the Security Service 's identifications of the persons he describes. We find as a fact that Abu Doha, assisted successively by Z, B and A, purchased the following items from Integrated Communications Solutions Limited between March 2000 and February 2001: 1 Nera Voyager car satellite telephone, 12 Nera satellite telephones, 1 Thrane satellite telephone, 26 France Telecoms sim cards with related airtime, 10 Stratos sim cards with related airtime, 5 Iridium handheld satellite telephones, and 1 satellite pager. The total cost was ?229,265.87. Payments were in cash, at first handed over at the company's premises, and later transferred to the company by its bankers, the cash having been deposited at banks in North London. All the contacts with the company, including the execution of documents such as receipts and acknowledgement of notices, were conducted under pseudonyms. The company's requirements for end-user certificates were in part satisfied by a letter from what now appears to be a defunct charity, and Castell's statement also identifies a document which appears to be a forgery, having been made up from the letterhead of his own company. The destination of the equipment was clearly the subject of some prevarication by its purchasers.
15. As we say, the facts in the statement are not contested and it is clear to us that the purchasers of the equipment were all concerned that they themselves should not be readily traced and that the company should not know the purpose for which they were buying the equipment. It appears also that during the period that A was involved, he and Abu Doha were prepared to do whatever was

necessary to secure the supplies they wanted. Although we accept that Abu Doha was the guiding force in each of the transactions, it is also clear that Z, B and A were not merely translators. They were engaged on the enterprise with Abu Doha.

16. We have already mentioned Abu Doha in the context of discussing the grouping around him in the generic part of this judgment. Mr Williams, in his submissions in these appeals, said that Abu Doha provided what he called "a good example" of the link between the Chechen jihad and the Islamic extremist agenda pursued by Osama Bin Laden. He said that Abu Doha was a senior member of an Algerian Mujahaddin training network in Afghanistan linked to Al Qa'eda and then subsequently came to the United Kingdom and provided logistical support for Chechnya. Prior to his arrest, he had had links to the GSPC.
17. In Afghanistan, he had held a senior position in training camps organising the passage of Mujahaddin volunteers to and from those camps. He had a wide range of extremist Islamic contacts inside and outside the United Kingdom, including links to individuals involved in terrorist operations. He was involved in a number of extremist agendas. By being in the United Kingdom, he had brought cohesion to Algerian extremists based here and he had strengthened the existing links with individuals associated with the terrorist training facilities in Afghanistan and in Pakistan. Those camps are the single most easily identified common denominator for terrorist operations (both successful and unsuccessful) mounted by Al Qa'eda. Much of the information about Abu Doha in the open case comes from an affidavit sworn by an agent of the Federal Bureau of Investigation in the United States, detailing proceedings against Ressay in relation to the Los Angeles International Airport plot. Mr Emmerson submitted that the information should be regarded as unreliable because it had been given by Ressay only following a plea bargaining agreement under which the severity of his punishment was limited, provided that he gave information about others involved in this and other plots. We cannot, however, see any reason for doubting the accuracy of the actual information given by Ressay about Abu Doha, particularly bearing in mind that Ressay risks an escalation of penalty for the crime to which he has pleaded guilty if any of the information should turn out to be untrue.
18. Ressay has said that he went to Afghanistan in the spring of 1998 to receive training for terrorist activities in furtherance of the Islamic jihad. One of the others who attended with him was Abu Doha. At Khalden camp, they studied scenarios related to bombing various United States targets including airports, and various United States interests abroad. While Ressay was in the camps, he had extensive contact with Abu Doha. He understood that Doha's responsibilities were to facilitate trainees' travel into and out of Afghanistan and into the camps. He would obtain various forms of false identification and travel documents. He was also involved with establishing means of communication between the camps. There were specific discussions about carrying out a bombing in the United States close to the millennium celebrations. Abu Doha participated in those discussions. He agreed to help facilitate the travel of members of the cell to Canada so that they could participate in the proposed US operation, and also to facilitate their travel away from the North American continent after the operation, so that they could hide in either Europe or Algeria.

19. Ressam reported Abu Doha's attempts to assist a number of members of the cell in attempting to travel to Canada. In particular, in one occasion he asked Ressam to provide a false French passport for use in this way. Specific arrangements were made between Ressam and Abu Doha for Doha to assist in Ressam's travel after the latter had completed the planned terrorist operation in the United States. When Ressam was arrested, he had with him a card bearing a number which he said was the one he used in order to contact Abu Doha, and telephone records show that he made two calls to that number in the two weeks before his arrest.
20. Abu Doha himself was arrested in early 2001. Following his arrest, searches revealed passports and faked identification documents at his home. They included a document with a visa to enter Pakistan, bearing Abu Doha's photograph but in another name. Also recovered were documents detailing explosives of the same sort as were found in Ressam's car when he was arrested. Abu Doha appears to have been linked also with another individual, Khalil Said Khalil Dhiq, who was also arrested in late 1999, so further disrupting plans for millennium activities. Amongst his correspondence there were several references to Abu Doha under his pseudonym of Dr Halgera or Hider.
21. It is those facts, amongst others, upon which the United States Government seeks the extradition of Abu Doha from the United Kingdom. Whether or not that application is successful, the Respondent is entitled to take the view that contact (of anything other than an accidental or plainly innocent basis) with Abu Doha is contact with a senior terrorist linked to Al Qa'eda. That contact is of itself reasonable ground for the relevant suspicion and belief. A's contact with Abu Doha was not accidental, innocent or unknown. It was contact by which he assisted Abu Doha in his activities as a terrorist.

(b) The link between A and B

22. The Secretary of State alleges that A and B were well-known to each other and that A took over B's activities when the latter was arrested and imprisoned for motoring offences. A claims that he hardly knew B at all. In his statement, A admits that he was with B when B was arrested but gives an explanation for that: B had offered to drive him to Manchester, where he was hoping to buy a car. No other details (for example why it was necessary to go all that way in order to buy a car, or why he should be given a lift by a person he hardly knew) are offered. When B was arrested, the police surrendered B's car and its contents to A. No explanation of that is offered either. There is open Security Service evidence of a visit by B to A's house. Essentially, A claims that the only occasions he saw B were those where their meetings were observed. We regard this as wholly implausible.

(c) A's succession to B

23. As A's statement makes clear, after B's arrest he had (for whatever reason) property of B's in his

possession. He was approached and asked to carry out various tasks in relation to the purchase of equipment from Stuart Castell's company and other concerns. On A's account, these approaches were entirely unexpected because he did not know the person who was approaching him and he did not know (except as a passing acquaintance) B who had done this work previously. But if A's account of the facts or of his own beliefs were to be accepted, the position would be as follows: high-grade, unusual and expensive equipment was being bought in cash for shipment abroad. Those who bought it were concealing their names and were, to an extent, involved in evading export restrictions. Whatever the purpose of these transactions, it would have been essential to use a person who was entirely trustworthy, was associated with the cause, was able to keep a confidence, was able to put on an appropriate front when engaged in dealings with the companies, and who had all the other features necessary in a valued associate. Yet it is suggested that A became involved in these activities simply on the basis of his having answered a telephone of B's which had fortuitously come into his possession.

24. Again, we regard this as wholly incredible. Even if the Secretary of State's allegation about the intentions behind the purchasing of the equipment were wrong, it is quite clear that A was recruited for, involved in and trusted in an activity which it was not intended should see the full light of day. That he was well-known to and trusted by both Abu Doha, who used him, and B, who must have authorised him to have his telephone, car and other possessions, is, in our view, obvious.
25. In the face of the Secretary of State's allegations about the real purpose for which the telecommunications equipment was bought, A asserts only his interest in the general Chechen struggle. Despite his close involvement in the purchases, he offers no further detail of the actual process by which the equipment was to reach the destination which he claims for it. His general attitude is that of claimed ignorance except of those matters where he knows that denial would be pointless. Although he refers to other material which he says was found in his possession and has not been part of the Secretary of State's case, he provides no details of it. Although there is material supporting the Secretary of State's allegation that A's interests were and are in the GIA, the GSPC and in the universal jihad, the material before us does not suggest that A had a particular interest in the general Chechen struggle, such that he would endanger his own liberty by engaging in deceit and fraud and other criminal activities to support it. His interest is in the wider jihadist agenda.

(d) Other procurement

26. The Secretary of State lists in his open case a number of other procurement activities in which A has been involved, including export to Azerbaijan and Georgia and transfer of money to Georgia. So far as the transfer of money is concerned, A has provided an explanation for the destination of that money. There is no more reason to accept A's word on this matter than on any of the other matters in which he has sought to distance himself from events upon which the Secretary of State bases his allegations. Suffice it to say for present purposes that the evidence of other procurement and transfer activities does not affect the conclusions we have reached on the evidence relating to

the telecommunications equipment. Viewed in the context of his activities and contacts, these money transfers can reasonably be seen as supportive of terrorist groups including the Chechen Arab Mujahaddin.

(e) Conclusions

27. In the circumstances we have set out, it appears to us that the Secretary of State has ample ground for suspicion that A's procurement activities were directed to the support of the extremist Arab Islamist faction fighting in Chechnya. That support arises from A's connexions with and support of the GSPC. We emphasise, as is the case with other appeals as well, that it is the accumulation of factors, each lending support to the others rather than undermining other points, providing colour and context for the activities seen as a whole which is persuasive; it would be wrong to take a piece in isolation, thereby to diminish its significance and to miss the larger picture. The generic judgment supports these conclusions. These are activities falling centrally within the derogation. A has provided only implausible denials and has failed to offer credible alternative explanations. That is sufficient to determine his appeal, without making any further reference to the Secretary of State's other allegations which, as was acknowledged in the open statement and in open evidence before the Commission, can be properly sustained only by examination of the closed material.
28. We find that the Secretary of State had and has reasonable grounds for suspecting that A is an international terrorist as defined in the 2001 Act and for believing that his presence in the United Kingdom is a risk to national security. His appeal under the 2001 Act is therefore dismissed. His appeals against the decision not to revoke the deportation order, and to refuse his indefinite leave to remain (upon which he has the burden of proof) are also dismissed: there is no basis for any conclusion that his exclusion would not be in the public interest. The response of the Secretary of State is proportionate.