

IN THE SPECIAL IMMIGRATION APPEALS COMMISSION

Field House
Breams Buildings
London
EC4A 1WR

Date of Decision: Wednesday 30th July 2008

Before :

THE HONOURABLE MR JUSTICE NEWMAN (as he then was)
SENIOR IMMIGRATION JUDGE BATISTE
MR C. SMITH

Between :

B

Appellant

- and -

**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Respondent

OPEN JUDGMENT

Judgment:

1. The appellant is an Algerian national. He is appealing against an order made by the Secretary of State under section 3(5) of the Immigration Act 1971, that it will be conducive to the public good that he should be deported, on the grounds that his removal is in the interests of national security. The appellant was notified of the intention to make a deportation order against him and he issued his Notice of Appeal on 17th August 2005.

2. We shall come to the chronology of events spanning many years, which have concerned the appellant but, for the moment, must record the immediate history which has given rise to the delay between the commencement of the appeal hearing on 17th July 2006 and the date of this judgment. At the commencement of the hearing it was agreed that the case fell into two parts: (1) the national security case and (2) the safety on return case. For a number of reasons, including one personal to the appellant, it was agreed that the safety on return case could not be dealt with. The factor peculiar to the appellant's case is that there were then (and remain) issues in connection with his identity which seriously impede the conclusion of the case. The Algerian authorities have not accepted that he is an Algerian national or, if he is, who he is. That remains the position. The appellant has resolutely refused to disclose his identity. The Commission has considered applications by the Secretary of State and ordered him to disclose his identity. Despite the orders from the Commission, the position has not advanced. The Commission has now been asked, despite the lack of progress over the last 18 months, to give

its judgment on the national security case. When this judgment and the closed judgment have been delivered there will be a directions hearing and the future progress of the appeal will be decided.

3. The following steps in the appeal have been completed. Evidence has been considered in connection with the national security case and submissions were made on that issue. The Commission then moved into closed session. At the end of the proceedings on the national security issue the Commission determined that the national security case should await the conclusion of the proceedings on safety to return. Having received a request to proceed, the Commission accepts that judgments should be delivered on the national security case.

THE OPEN CASE

Brief Chronology

4. The appellant arrived in the United Kingdom illegally in 1993. In October 1994 he was arrested on immigration and criminal charges, the criminal charges being in connection with a Department of Social Security fraud, but he absconded shortly afterwards. At the time of his arrest he gave his name as “Nolidoni”. On 25th November 1994 he applied for political asylum having claimed to have entered the United Kingdom in November 1994 using the name “Pierre Dumond”. In June 1995 he was re-arrested in relation to the immigration and criminal charges for which he was first arrested in October 1994. He denied having used the name Nolidoni and denied having previously been arrested. Following this re-arrest he spent a year in HMP Rochester. He was next arrested on 12th May 1998 in the course of a series of

arrests in connection with the Algerian terrorist organisation known as GIA. He was released without charge. On 5th June 1998 he was arrested for a second time but was released without charge. In 2000, as the Commission was subsequently to find in the course of proceedings to which we will refer, he was actively involved in the procurement of telecommunications equipment together with one Abu Doha and in the provision of airtime for satellite telephones. Between 23rd August 2000 and 9th October 2000 he was in prison having been arrested for driving whilst disqualified and sentenced to three months' imprisonment. In December 2001 he was imprisoned for a further four months for driving offences.

5. On 5th February 2002 he was detained under section 21 of the Anti Terrorist & Security Act (the "ACTSA") and he was detained from this time until 11th March 2005 when he was released from detention but made subject to a Control Order. From August 2005 he was detained pending deportation, but on 11th April 2006 he was granted bail subject to conditions. The conditions were not met.

His Mental Condition

6. Between 17th November 2004 and his release from detention on 11th March 2005 he was detained in Broadmoor Hospital. Between 12th March 2005 and 11th August 2005 when subject to a Control Order, but for one night, he was an in-patient at the Royal Free Hospital. On 11th August 2005, having been detained administratively pending deportation, an emergency bail application was refused and on 8th September 2005 he was transferred to Broadmoor. In February 2006 he was transferred to HMP Long Lartin. Thereafter he was

transferred back to Broadmoor until bail was granted on 11th April 2006 but in July 2006 he was still in Broadmoor.

The Oral Submissions for the Appellant

7. On 17th July 2006 Ms Gareth Peirce appeared for the appellant and succinctly advanced submissions by reference to written argument which the Commission had previously received. The core of the case addressed the need to test the evidence against four questions:-

(1) whether the particular risk previously considered to be posed by the appellant had altered during the course of up to 4½ years of imprisonment and/or control in the community?

(2) whether the activities of groups or associated individuals have been disrupted or otherwise altered either in the United Kingdom or abroad?

(3) whether previous intelligence relied upon has subsequently proven to be unreliable and/or otherwise discredited?

(4) whether material relied upon by the Secretary of State may, on the balance of probabilities, have been obtained by torture?

8. Underlining much of the appellant's case was the contention that the continuing mental decline of the appellant since he was first certificated by the Secretary of State in early 2002 called for a re-appraisal of the extent to which

he could be said to be a risk to national security. As a result of his detention in hospital and in prison, there are voluminous medical reports in connection with the appellant. Ms Peirce submitted that it was for the Commission to address the question of the impact of his clear ongoing lengthy history of mental health fragility, particularly since, she submitted, there had been a failure on the part of the Secretary of State to date to pay it any or any sufficient regard. As a result of his detention, there was no dispute that there was a lack of evidence of his involvement in any Islamic extremist activity since he was first detained. The question which it was submitted the Commission should have in mind was whether the appellant had the capacity to be involved or was minded to be involved and whether he was the sort of person who would now even contemplate becoming involved in terrorist activity.

9. Particular reliance was placed upon the contents of prison medical records which Dr Taylor of The North London Forensic Service at Enfield had taken into account. The appellant was referred to Dr Taylor by Dr Cummins at Belmarsh. The reports disclose that he was regularly interviewed by a nurse and that by April 2002 Belmarsh Healthcare was observing classic signs of depression which were recorded. The appellant was losing weight, finding it hard to cope with custody and he was put on anti-depressant medication. It then appeared that he developed morbid thoughts, suspiciousness and hopelessness, which become considerably exacerbated over the next two years until there seem to have been florid psychotic symptoms showing signs of paranoia, suspicions, believing that everyone was in a conspiracy against him. These manifestations were acknowledged to be such, it was said both by the

Commission and by the Secretary of State, to be beyond those which could be handled in Belmarsh. He made one suicide attempt. When bail was opposed he was transferred to Broadmoor Hospital.

10. It will be necessary to return to some aspects of the psychiatric evidence when dealing with the case for the Secretary of State.

Special Advocates' Statement

11. The Special Advocates produced a written statement dated 17th July 2006 for the benefit of the Commission. They stated that, having heard the opening of the appeal by Ms Gareth Peirce and having noted that she did not propose to cross-examine the Secretary of State's national security witness or to make any detailed submissions on that aspect of the case, they now concluded that the primary attention which was to be given to the case by the appellant's representatives would be on the issue of safety on return. Having considered their position in connection with these proceedings, they concluded that it would not further the interests of the appellant for them to cross-examine the Secretary of State's national security witness or make submissions on that aspect of the case. It followed that their involvement in the hearing would be confined to issues in connection with the safety on return. It can be recorded in this open judgment that, at the commencement of the closed session, the role of the Special Advocates was fully discussed. For the reasons given in the statement, they did not cross-examine in the closed session. More particularly, as a result of a direction from the Commission, the Secretary of State lodged further submissions dated 31 July 2006 directed to (1) the

medical evidence and (2) the material date for the Commission to consider the national security case.

12. They recorded that they had discharged their functions in relation to the material relied upon in support of the Secretary of State's national security case in connection with Rule 38 and the procedure in respect of disclosure of closed material to the appellant. They had scrutinised the material produced by the Secretary of State in an endeavour to identify any material which may have emanated from the use of torture and which thereby fell within the scope of the Commission's duty of inquiry, as identified by the House of Lords in *A and Others v SSHD* (No. 2) [2005] 3 WLR 1249. They had, where judged appropriate, raised queries and requests of the Secretary of State arising out of the closed material.

Evidence Which May Have Been Obtained By Torture

13. The appellant relied on written submissions on the implications of the House of Lords' decision in *A* regarding what steps are necessary for the Commission to take in order to comply with the investigatory obligation identified by the House of Lords. Given that it was acknowledged by the Secretary of State that the appellant was involved in obtaining logistical support for Chechnyan rebels, it was submitted that the question went to what investigation had been made of the origins of information about Chechnyan rebels. In essence, the appellant was not in possession of any further information in order to advance specific submissions on the torture issue in relation to the appeal. The appellant submitted that in so far as the Secretary of State relied upon material which had emanated from the Russian Federation and a consequent obligation

to determine that the material had definitely not emanated from “detainee reporting”. Reliance was also placed upon the judgment of Workman DJ in the *Government of the Russian Federation v Ahmed Zakaev* of 13th November 2005.

Inferences From Any Failure To Give Evidence

14. The Commission had the benefit of an unsigned statement from the appellant but there had been no evidence called from him. He had exercised his choice not to give evidence. Reliance was placed upon the generic judgment of the Commission dated 29th October 2003, paragraph 117, and it was submitted that the threshold for drawing an inference from the silence of the appellant had not been reached. In this regard, reliance was also placed upon the medical evidence which, at the very least, pointed to the fact that he was very unwell. The Commission was helpfully provided with an Appendix containing submissions on the issue of evidence alleged to have been obtained by torture used in the case of another Algerian deportee.

The case for the Secretary of State

15. Counsel for the Secretary of State had prepared detailed written submissions which had been placed before the Commission in advance of the hearing and there was very little that Ms Neenan thought it necessary to add to those written submissions dated 14 July 2006. In response to the submission as to the impact of the appellant’s mental state on the risk that he was said to present, she made two points: first, that past conduct was plainly relevant to the future risk which he poses and, secondly, that, absent the constraints imposed by detention or bail conditions, his abilities to continue with his

activities would, in her submission, be unaffected. It was not necessary in the light of the position that had been taken in connection with evidence which may have been obtained by torture to advance submissions in the open hearing and the case rested upon the admission into evidence of the evidence of the witness, witness A, who had produced a first open statement on behalf of the Secretary of State and supporting documents in November 2005. In addition, the proceedings in relation to the Control Order and the certification appeal were included and the matter was left for determination upon those matters raised in oral argument by way of evidence and the written submissions.

The National Security Case for the Secretary of State

16. The agreed starting point was the Commission's judgment in the certification appeal, being a judgment dated 29th October 2003. Paragraphs 5, 6 and 7 of the Commission's judgment were relied upon in particular. In substance, the Commission had concluded that the appellant, using a false name and working with Abu Doha, purchased a considerable amount of telecommunications equipment in the period between May 2000 and his arrest for traffic offences in August 2000, including 20 high frequency hopping radios, a portable antenna and airtime for Inmarsat satellite telephones. It was then and it now remains the Secretary of State's case that the equipment was procured for use by extremists in Chechnya and by the GSPC in Algeria. The appellant had not given any explanation for his purchase of this equipment. He had not denied an association with Abu Doha, Sofiane Kebilene and a person identified as A. The equipment was purchased in false names and there was association with others suspected terrorists. The Commission took account of the fact that the

appellant had chosen to answer none of the questions and it concluded that the Secretary of State's grounds were well founded and reasonable. In particular, it is to be noted that the Commission concluded, from the open evidence of his associations and his activities, that he was a member of the GIA and later became a member of the GSPC.

17. The appellant's certification was required to be reviewed and in its judgment on the first review dated 2nd July 2004 the Commission stated:

“We accept that the GSPC remains an active terrorist organisation linked to the state of emergency and that there remain associates of B who are at large. B was a trusted and senior member of the GSPC, who was not deterred by previous periods of detention from carrying on his terrorist support activities and that he would be able and willing to resume these activities should he be released. There are contacts with whom he would link up. The certificate is properly maintained.”

18. In the judgment of the second review dated 9th December 2004 the Commission concluded:

“It was assessed that the past terrorist activities, undeterred by arrest and detention, would be resumed on release. The GSPC was relevant to the threat to the United Kingdom, as were networks associated with Abu Doha and Abu Qatada. It is supported by closed material. The material, which we accept, shows that the certificate is properly maintained”.

19. In the light of the findings, it is unsurprising that the core submissions for the appellant were directed to the present position and consideration of the changed circumstances since these terminations and findings and, on the part of the national security case, it was for the Commission to consider for itself the material which underlay the earlier decisions and satisfy itself as to the weight which it could give to them.

The Secretary of State's case on the medical reports

20. It was pointed out (correctly) that the medical reports which had been served on behalf of the appellant in relation to his applications for bail, which were relied upon by the appellant on the appeal, had been considered by Ouseley J. on 11th April 2006 at the hearing of the appellant's bail application. The application was principally concerned with the appellant's refusal to eat. The Secretary of State relied upon them and on the contents of the reports of Dr Payne. For example, in connection with the refusal to eat, Dr Payne had observed in his report of 27th March 2006:

“It is clear that he never intended to eat prison food following his return to HMP Belmarsh in February 2006 and therefore his food refusal cannot be accounted for by any assumed subsequent deterioration in his mental health.”

21. Ouseley J. stated, when granting bail in principle:

“18. We are content for present purposes to start with SIAC's past judgment under the ACTSA, its subsequent reviews and the updating material. We consider that the Secretary of State has on present material a proper case that there is a risk to national security created by the applicant's presence in the United Kingdom.

19. There are elements of abscond risk because he is familiar with false documents and identities with availability of money and with useful contacts, and even if there is a degree of change

in his personality we do not accept that his views are so changed in reality that he would not over time re-engage increasingly fully in his past activities”.

22. It was submitted that the appellant would re-engage increasingly in his past activities and that an analysis of the reports disclosed a proper and sufficient factual basis for so concluding. Alternatively, relying upon case law, in particular the judgment in *Home Secretary v Rehman* [2003] 1 AC 153, there was a real possibility that he would engage in activities which would be harmful to national security.
23. There was no dispute about the legal approach to be adopted. It is unnecessary, therefore, to recite the law at any length. The Commission has paid regard, in particular, to the passage of the Court of Appeal’s judgment in *Rehman* which was expressly approved by the House of Lords (paragraphs 21-25, Lord Slynn, paragraph 29, Lord Steyn and paragraphs 48-49, Lord Hoffmann). The Commission notes that the character of the decision is one particularly appropriate for the executive to determine for the reasons given by Lord Slynn in paragraph 26 of his Opinion in *Rehman*.
24. Before stating the Commission’s conclusions on the first and principal question set out at paragraph 7 above, it will be convenient to take the other issues now. In turn the questions at 7(2), 7(3) and 7(4):

7(2) The question relates to the activities of those with whom the appellant was found to have associated. The Commission received no evidence of disruption, save that to be inferred from the detention of some of the associates. It regards the suggestion that, as a result of “disruption”, there was no longer a danger he would be involved in terrorist

activities to be a speculative and untenable proposition. Assuming, but without there being any evidence of any meaningful disruption, that any group had been affected by arrests and detentions, the suggested conclusion does not follow from the assumed premise. The Secretary of State was entitled to consider the danger presented by the appellant returning to terrorist activity, not activity within any particular group.

7(3) There was nothing in the open or closed material to undermine the reliability of the evidence which was available.

7(4) No basis for an inquiry was made out.

7(1) The Commission, having considered the submissions dated 31 July 2006, has reached the following conclusions.

25. The appellant has intermittently experienced psychological difficulties since the age of 15. Dr Payne, Consultant Forensic Psychiatrist at Broadmoor Hospital, records that these difficulties “have most consistently been described as characteristic of a depressive disorder...His difficulties have recurred in the community in the UK, in HMP Belmarsh, in Broadmoor Hospital and in HMP Long Lartin”. At the age of 15 the appellant received hospital treatment and medication for depression (Admission CPA Meeting Summary dated 13th December 2005). Following his arrests in the UK in 1998, Dr Payne records that:

“He subsequently developed post-traumatic symptoms in relation to the circumstances of these arrests and has reported flashbacks and nightmares, particularly in relation to the light from torches and being threatened with firearms. He has reported that he attended the Traumatic Stress Clinic at University College Hospital and was also seen by a doctor from

the Medical Foundation for the Victims of Torture. At one point he also attended the Tottenham Mews Resource Centre in Camden, where he was seen by a duty worker and was found to be distressed and a possible diagnosis of paranoid psychosis was suggested. During this time he was [sic] also saw a number of GP's, but has indicated that he used aliases in his contacts with services".

26. In Dr Taylor's report of 30th July 2004 the following appears:

"Since these two incidents [the arrests in 1998], he has experienced recurrent post-traumatic symptoms including nightmares. The frequency of the nightmares is worse when he is feeling low in mood. Nightmares are occurring weekly and at times, frequently as every one to three nights. He wakes up sweating and has nightmares of policemen in masks. He experiences voices of the police talking amongst themselves. There have been times since the incident when Mr Boutemine reported feeling suicidal. On one occasion he said he intended to jump off a bridge, but that a stranger who was passing by talked to him and persuaded him not to jump. He suffers from headaches and tension, and sometimes feels like banging his head against the wall because of a "ringing in his head". Following these incidents he used to go to large parks in the City as he felt safer being away from buildings. He describes being aroused and hypervigilant, and that he tended to move around feeling paranoid that others were watching him and following him. He avoids watching television programmes involving the police because they remind him of the incidents. He finds it difficult being in an environment with prison officers because this triggers his memory of the previous episodes".

27. The Commission regard it as significant that, whilst labouring under mental health difficulties, the appellant played a leading role in facilitating communications for Algerian terrorists, as well as being responsible for the procurement of false documentation and high technology equipment. In particular, during 2000 the appellant played an important role in the purchase of telecommunications equipment and the purchase of airtime to support the use of satellite phones.

28. Further, it is important to note that at his admission to Broadmoor Hospital in December 2005 “his mental state at that time was difficult to determine given the influence of his reaction to his current situation (his fear of deportation to Algeria), his tendency to exaggerate symptoms of psychological distress and his suspiciousness of psychiatric services” (Dr Payne). In terms of diagnosis, at the Admission CPA Meeting on 13th December 2005 “it was concluded that whilst it is likely that he has a recurrent depressive disorder with relapses that are mild to moderate in severity, as well as some post-traumatic symptoms; his current presentation is significantly influenced by his current circumstances, particularly the uncertainty about possible deportation to Algeria, his concerns about his personal safety and his vested interest in being viewed as mentally unwell, to the extent that it is likely that he has significantly exaggerated his symptoms at times”.
29. Yet further, the Commission is satisfied that material exists which demonstrates that the appellant is able to function:

“It is clear that he never intended to eat prison food following his return to HMP Belmarsh in February 2006 and therefore his food refusal cannot be accounted for by any assumed subsequent deterioration in his mental health. His suspiciousness in relation to the Home Office and prison authorities is understandable given his treatment by the UK authorities over the last four years. He is not suspicious of other prisoners on the Detainee Unit and with the listener and his solicitor and therefore it is unlikely that his beliefs are delusional. His behaviour on the Health Care Centre, including making himself drinks, requests for phone calls and visits, and interactions on the Detainee Unit and with the listener and his solicitor, does not suggest that he is suffering from a significant depressive illness. It seems clear from what he has said that he would eat if not detained in prison. I am not therefore convinced that he has a mental disorder of a nature or degree which would warrant his detention in hospital for medical treatment and therefore that he is detainable under the Act. In

addition his failure to co-operate with health care services at HMP Long Lartin must be, at least in part, either a protest or an attempt to manipulate the authorities”.

30. In his letter of 7th April 2006, Dr Payne noted that there have been no concerns from the nursing staff at Broadmoor about the appellant’s mental health and that he did not require treatment in hospital for a mental disorder. In the context of the appellant’s reluctance to trust anyone other than his legal team, Dr Payne stated:

“I would therefore continue to support his application for bail as the only realistic means of him obtaining support and treatment that is likely to be beneficial to his mental health”.

31. The Commission is satisfied that a clear inference can be drawn from the medical reports, namely that release from detention (particularly if coupled with the appellant remaining in the UK) will result in an improvement in his mental health. It is of note that the appellant’s most stable period in his recent history is said to have been when he was a voluntary psychiatric patient at the Royal Free Hospital between 12th March 2005 and 11th August 2005 (Dr Taylor’s letter of 24th March 2006).

32. In summary, the Commission is satisfied that the Secretary of State’s case on the risk to national security has been made out and that the appellant could and would be able to continue to undertake terrorist-related activities including:-

- a. Procuring high technology equipment;
- b. Procuring false documentation; and
- c. Providing assistance to other terrorists.

In reaching this conclusion no inference has been drawn from the appellant's failure to give evidence and no connection with any evidence which might have been obtained by torture was identified.

33. The Commission has delivered a closed judgement in connection with this appeal. There is nothing in the closed material or the judgment which contradicts the conclusions reached above or which assists the appellant's case. On the contrary, the following paragraphs from the closed judgment can be taken to be read as part of the open judgment.

“1. The closed session of the hearing commenced with a discussion about the role left for the Special Advocates having regard to the stage and character of the appeal. In particular:-”

- (1) The split nature of the appeal, namely safety on return being left over for a further date;
- (2) The absence of cross-examination of the defendant's security witness; and
- (3) The submissions advanced on the appeal, namely that the earlier findings and determinations and the material upon which they were based had, by reason of the passage of time and the appellant's mental condition, ceased to provide a sufficient basis for a conclusion that he was a risk to national security. In addition, the Commission obtained from Counsel for the Secretary of State and the Special Advocates agreement as to the relevant date which the nature of the security risk said to be presented by the appellant was to be assessed. It was agreed that the date of the Commission's final determination was the relevant date. The Commission notes that at that date, namely July 2006, it was assumed that the case on safety on return would be heard within months.

2. The Commission has already recorded in the open judgment the decision which was reached by the Special Advocates, but wishes to record in this judgment that it scrutinised the issue of their

withdrawal. The Commission was concerned to ensure that the extent of its inquiry was not affected by the absence of representation or which could identify any relevant factors in and test the case for the Secretary of State. After discussion, the Commission was satisfied that the critical issue with which it was concerned turned upon the relationship between an assessment of the threat disclosed by the historic material and the impact which the voluminous psychiatric material could have upon that material's former cogency. To a large degree this balance was something which was capable of being considered in the open part of the appeal.

3. The above relationship had not been addressed in argument either in the open appeal or in the closed material save that the challenge had been laid by Ms Peirce on behalf of the appellant in these terms, namely that the Secretary of State had in reaching his conclusion failed to pay account or any sufficient account to the impact of the psychiatric evidence. Before the departure of the Special Advocates from active part in the proceedings the Commission considered it necessary to decide whether the issue which it is identified above could be advanced by cross-examination of the witness for the Secretary of State.....

4. As a result of the identification of this particular issue, Counsel for the Secretary of State agreed that it would be necessary to place before the Commission in the open proceedings a more precise submission in connection with the case advanced on behalf of the appellant. This Counsel for the Secretary of State did in submissions dated 31 July 2006 and it has been taken account of in the open judgment.

7. Counsel for the Secretary of State, as we have already recorded, served written submissions in connection with the issue raised by the medical evidence and the risk that there was that, if he was released, because of his release from incarceration, he could engage in terrorist activity again. The Secretary of State's submissions were available to the appellant's advisers. The Commission has already stated its conclusion in the open judgment and there is nothing that is needed to be added here.

Delay since July 2006

8. A suggestion was advanced to the Commission that it should deliver an interim determination on the

national security issue. The Commission rejected the suggestion for it considered it undesirable to give rise to the possibility of an interim appeal and the delay which would ensue, which delay would be beyond the months then expected in which a final determination would be possible. The Commission also decided that it should not state a conclusion with a view to giving its reasons later. Because of the delay which has now ensued between 2006 and the date of promulgation of this judgment and the open judgment, the Commission must record that it found the national security case to be made out at the conclusion of the hearing in July 2006.

The present position

9. As the correspondence presently before the Commission discloses, a deadlock has prevailed in connection with the further hearing of this appeal. The deadlock has resulted from the failure and refusal of the appellant to comply with Orders of the Commission that he disclose his identity. There being an issue as to his identity, there has been a question as to whether he can be returned to Algeria or anywhere else. That being so, the hearing of the issue on safety on return has not proceeded. In considering whether Orders requiring the appellant to disclose his identity were appropriate the Commission has taken account of the psychiatric evidence which was placed before it. Having considered the evidence, it nevertheless has concluded that it was appropriate that an Order should be made. The Commission at present can only conclude that the appellant is deliberately refusing to disclose his identity in order to thwart the future progress of this appeal. As such, the Commission must state that it regards his conduct in this regard to be material to the risk he presently continues to present to national security. A deliberate refusal to respond to a lawful Order is a material failure capable of supporting the conclusion that he has not relinquished his commitment to terrorist causes and evidences a material refusal to accept the force of law within the United Kingdom. Further, the Commission is satisfied that his conduct is capable of amounting to an abuse of the due processes of law which he has invoked by pursuing this appeal.

Conclusion

10. For all the above reasons and despite the period of delay, the Commission is satisfied that there is nothing which has been placed before it to alter the conclusion it reached in July 2006. Thus, its present

assessment is that the risk to national security presented by the appellant prevails. It should also record that had it not had the evidence which has satisfied it and which adds to the present position it would have felt that a serious issue was raised as to whether, by reason of the failure to comply with a lawful Order, the passage of time in the delay should enure in any way to the benefit of an appellant in an appeal such as this. The Commission is firmly of the view that this appeal must be brought before the Commission again for final disposal in one way or another and, if there are any other matters which are relevant by reason of a change of circumstance since July 2006, the Commission will have an opportunity of then considering that material.