Appeal no: SC/54/2006
Hearing Dates: 30th October – 2nd November 2007
Date of Judgment: 23rd November 2007

IN THE SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

THE HONOURABLE MR JUSTICE MITTING (Chairman)
SENIOR IMMIGRATION JUDGE LANE
MR J LEDLIE

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PP

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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MR P O'CONNOR and MS F WEBBER (instructed by Messrs Tyndallwoods) appeared on behalf of the Appellant.

MS L GIOVANETTI and MR R PALMER (instructed by the Treasury Solicitor) appeared for the Secretary of State

MS J FARBEY and MS A DHIR (instructed by the Special Advocates' Support Office) appeared for the Secretary of State.

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OPEN JUDGMENT

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National Security :

1. In an annex to a note verbale dated 3rd December 2006 the Algerian Ministry of Justice identified the appellant as PP, an Algerian citizen, born on 19th August 1974 (the English translator of the note has misread the printed date in the French original) in Chlef, the son of Ahmed and Kheira S. On 30th October 2005, he departed the United Kingdom, using a genuine French passport, bearing his photograph, issued in the name Hocine Benaboura. On 18th November 2005, he returned to the UK, using the same passport, via Heathrow. At 8pm, he admitted his true identity and date of birth and claimed asylum. Thereafter, he has either been detained or subject to strict SIAC bail conditions. Whilst on bail, he has lived with Faduma Ali, a Dutch citizen of Somalian origin. By a letter dated 16th May 2006, the Secretary of State notified PP that he had decided that it was conducive to the public good to make a deportation order against him and certified that his decision was made in the interests of national security. By a notice of appeal dated 26th May 2006, the appellant appealed against that decision to SIAC.

2. Those facts are common ground. Little else is. For the reasons explained below, almost nothing that the appellant has said in various witness statements, and on oath at a bail hearing in SIAC on 19th December 2006, can be accepted as true or reliable, unless supported by other evidence or reliable information.

3. The national security case against the appellant is substantially contained in the judgment of 14th June 2006 of the Court of First Instance in Paris in the case of Marbah and 26 others; and on the inferences which can be drawn from the different accounts given by the appellant since 18th November 2005. PP was not a defendant in that trial. Statements were, however, made about him by many of the defendants and a small number of witnesses, which were referred to in the judgment. The first issue which we must, therefore, address, is what, if any, reliance can properly be placed upon that judgment and its contents.

4. Mr O'Connor QC submits that our approach to that material should be governed, or at least informed, by the evidential requirements of Article 6 (3)(d) of the European Convention on Human Rights. He submits that "by analogy" with non-derogating control order proceedings, this, and other, requirements of Article 6 must also apply to proceedings before SIAC. Save in reviewing an appellant's detention (which does not arise for decision at this stage of proceedings), we do not accept that submission. Proceedings to determine a challenge to a decision to deport a foreign national do not engage Article 6: Maaouia v France 33EHRR42 paragraph 40 (a decision of the Grand Chamber of the Strasburg Court, following a consistent line of Commission decisions to like effect). These proceedings fall squarely within that category. Rule 44 (2) and (3) of the Special Immigration Appeals Commission (Procedure) Rule 2003 SI2003 no. 1034 permits SIAC to receive evidence in documentary or any other form, and evidence that would not be admissible in a court of law. Because Article 6 does not apply to these proceedings, SIAC is neither required nor permitted to read down Rule 44 so as to ensure that it is compatible with Article 6(3)(d)ECHR under Section 3(1) Human Rights Act

1998. Nor is SIAC inhibited by Article 6(1) from placing reliance – even decisive reliance – on information provided by "witnesses" which PP cannot examine. These proceedings are not criminal proceedings. SIAC is entitled to rely on "sources of all kinds": per Lord Hope in A and others v SSHD 2005UKHL71.

5. We accept that in this, as in most cases before SIAC, we should make findings in relation to past facts on balance of probabilities. We accept that, where possible, fairness requires that specific acts which have already occurred should be proved to the civil standard of proof: per Lord Slynn in Rehman v SSHD 20031AC153 paragraph 22; but in so doing, we may take into account and rely on any material or evidence, whatever its source, provided that it is not proved to have been tainted by torture or, perhaps, ill-treatment. There is no suggestion that any of the persons who made statements upon which reliance was placed in the French judgment were tortured. We will deal with the claim of ill-treatment below.

6. Mr O'Connor made detailed oral and written submissions about the French proceedings. They can be distilled into two propositions:

   i) The evidence against PP is entirely contained in "out of court" statements made by defendants and others in the proceedings.

   ii) No reliance can safely be placed upon those statements.

7. The starting point for consideration of those submissions and the weight which can be placed upon the product of the French proceedings is the analysis of French criminal procedure conducted by Professor Jacqueline Hodgson for the Home Office in November 2006 (3/127-176). She is acknowledged as a (if not the) leading English authority on French criminal procedure. It focused on counterterrorist investigations. We accept its conclusions.

8. A suspect arrested by the police for a terrorist offence may be placed in garde a vue detention for questioning for up to 6 days. Detention for more than 24 hours must be authorised by a judge. The suspect may see a lawyer for 30 minutes at the start of detention, but not for 72 hours thereafter. Questioning is not tape-recorded. At the end of garde a vue detention, the Procureur must decide whether to release the suspect or send the case to the juge d'instruction for further investigation. The juge d'instruction has very wide powers. He will generally delegate further investigation to the police; but further questioning of the suspect is solely reserved to him. He questions the suspect, in the presence of the suspect's lawyer. The questioning is not tape recorded and answers are not taken down verbatim. The suspect is, however, given the opportunity to correct errors and is invited to sign the finished document. There is a specialist and centralised corps of procureurs and juges d'instruction who work closely with the Direction de la Surveillance du Territoire (DST). There is a high degree of trust between them. The opportunity for a suspect to challenge the reliability of information obtained by the DST and deployed against him in the proceedings is heavily circumscribed. It is, in particular, exceptionally difficult for a suspect to challenge the reliability of statements made by others which implicate him.

There are systemic breaches of Article 6 (3)(d)ECHR which have repeatedly lead the Strasburg court to find breaches of that Article in French cases.

9. Mr O'Connor relies on a further report dated 26th October 2007 by Michael McColgan, a solicitor in private practice. He was instructed to make direct contact with the French lawyers who represented PP's brothers, Khaled and Maamar, who were convicted defendants in the proceedings. He was provided with the "requisitoire". He also attended the hearing at the Court of Appeal in Paris on 22nd May 2007 of the prosecution appeal against the sentences imposed on some of the defendants. He was specifically asked to enquire into allegations that some of the defendants had been ill-treated. He draws specific attention to the subsidiary role played by defence advocates in the investigative and trial procedures. By comparing the requisitoire with the judgment, he concludes that the trial court placed heavy reliance upon the former. We have no reason to doubt that conclusion. Given the nature of French criminal procedure, it would be surprising if it had not done so.

10. The trial itself took place over 29 sessions between 20th March and 12th May 2006. The judgment records that lawyers for each of the defendants made submissions and were able to and did ask questions of the few live witnesses called, including a self-confessed Islamist extremist, Laurent Djoumakh. Mr McColgan states that, nonetheless, defence lawyers played a minor part in the evidential aspects of the case and that it was the president of the court who played the major role. Again, given the nature of a French criminal trial, we have no reason to doubt McColgan's observations.

11. Of particular interest is the approach taken by the court to claims of ill treatment by defendants. The court excluded self-incriminating statements made to Syrian interrogators by one defendant, Said Arif, both against him and his co-defendants, on the basis that it was "nearly certain" that they had been obtained by torture. All defendants, except Mourad Merabet and Hafsa Benchellali (the wife of Menad Benchellali) retracted the statements which they had made to the police and to the juge d'instruction. The court rejected their retraction in a laconic passage in the judgment at (3/92.). Mr McColgan finds the terseness of the court's reasoning "rather surprising and somewhat disturbing". We do not agree. It can be broken down into the following elements:

    i) Acts of violence claimed to have been committed whilst the defendants were remanded in police custody were unproven.

    ii) So too were claims of psychological pressure or "arrangements" with the juge d'instruction.

    iii) The statements made by each defendant were clear, but varied from one person to another.

    iv) The statements of the defendants were "concordant and particularly detailed".

v) Sometimes, they were repeated ("renouvelles") several times before the juge d'instruction.

These were conclusions which the court was entitled to reach. The brevity of its reasons does not demonstrate that it dealt with these claims peremptorily, as Mr McColgan states. In one critical respect – the concordance and variations in the defendants' statements – close scrutiny of the judgment demonstrates the opposite: it contains a detailed and persuasive analysis of the interaction between statements made by the defendants, which demonstrates that the court (and/or juge d'instruction) considered them with great care and attention to detail. Further, the comments made to Mr McColgan by Maitre Colombani, who acted for PP's brother Khaled, suggests that in his case no accusation of ill-treatment was made – merely that statements were sometimes taken late at night and in the absence of a legal representative or interpreter and were signed without full understanding of what had been written. Our conclusion is that we have no reason to believe that the statements accepted in evidence by the court were obtained as a result of ill-treatment or are intrinsically unreliable on that account.

12. Mr O'Connor makes further submissions about the reliance which can be placed upon the statements of the French defendants:

i) The traditional unwillingness of common law jurisdictions to place reliance on such statements should inform our judgment about these statements.

ii) PP had no opportunity in the French proceedings to challenge the statements made about him.

iii) The French court has made no express finding about PP.

13. There is some merit in each of these points. We would hesitate long before accepting an unsupported assertion made by one of the defendants about PP; but we do not accept that we are disentitled to place reliance upon what defendants said merely because the statements were not made at a trial in the presence of PP and were not the subject of an express finding by the court. Our judgment as to the conclusions which can safely be drawn from the French court judgment is set out below. It includes qualified reliance on some of the statements made by defendants, principally where they can be checked against other evidence and each other. One factor which we have taken into account in doing so is that there is a significant difference between out of court statements made to investigating police officers in England and Wales and the statements made by these defendants. The latter were (except for Khaled's statements made only to police interrogators) made or confirmed in proceedings before the juge d'instruction. They were made during an integral part of the criminal proceedings presided over by a judge. We are entitled to, and do, accept the rejection by the trial court of the defendants' attempts to retract their statements. Although PP did not have the opportunity during the trial to challenge the statements, he has had that opportunity in these proceedings. We do not regard ourselves as inhibited by common law principles in comparing concordant statements with each other and, where

appropriate, drawing appropriate conclusions from them. This is commonplace in civil law jurisdictions. Rule 44(3) of the Procedure Rules permits us to do the same.

14. 23 of the defendants appearing before the trial court, and one absent defendant were convicted of participation in a criminal organisation with the intention of planning an act of terrorism on the national territory of France between various dates, beginning in 1999 and ending on 4th April 2005. In 17 cases the offences were found to have been committed in the La Courneuve and Romainville districts of Seine Saint Denis. Of them, the relevant defendants for our purposes were: Mohamed Marbah, Merouane Benahmed, Ahmed Belhout, Nouredine Merabet, Menad Benchellali, Mohamed Benssalah, Mahmoud Slimani, Lahouari Mahamedi, Abderhamane Alam, Mohamed Ali Arous, Hacene Habbar and PP's two brothers, Maamar and Khaled. The conviction of these men provides a secure starting point for consideration of the material contained in the French judgment. A conviction by a court in the United Kingdom is relevant evidence in English criminal proceedings: Section 75 Police and Criminal Evidence Act 1984; even where the sole basis for it is the convicted defendant's own confessions: R v Hayter 20052CAR3. The conviction of these defendants by the French court is unambiguous. In each case, it found that it was proved, to a high standard, that each defendant had between the dates charged (which in each case included 2001 and 2002) participated in a criminal organisation in the districts of La Courneuve and Romainville with the intention of planning an act of terrorism. We are satisfied on balance of probabilities that each defendant did so.

15. The French judgment contains findings which are accepted by Mr O'Connor as reliable. DST investigators raided 10 Rue Honore de Balzac, La Courneuve and detained, amongst others, Benahmed, Belhout and Marbah. They also placed 144 and 150 Rue du Docteur David Rosenfeld, Romainville under video surveillance. They noticed constant comings and goings between the two and the frequent presence of Benchellali. They raided both flats on 24th December 2002 and arrested Benchellali Benssalah and a man ultimately acquitted of the principal offence, Bederrar. Other defendants were arrested on various dates subsequently. The investigators found the apparatus of terrorism at the three flats:

10 Rue Honore de Balzac

Money including 21,095 Euros

An NBC protection outfit

Identity and similar documents in various names other than those of the defendant who claimed ownership of them (Benahmed). The documents included a photocopy of the personal details from a French passport in the name of Hocine Benaboura and a copy of a birth certificate in the name Hocine Benaboura.

A 0.5 litre plastic bottle of ferric chloride (used to etch printed circuits)

Electronic equipment and instructions for their use. On subsequent analysis, the instructions were found to be for a remote command base for a relay via a telephone. The equipment included an electronic integrated circuit connected to a home-made contactor for a 9 volt battery and an electronic integrated circuit connected to two contactors for 9 volt batteries. These were found to be a remote command base for a relay via telephone and equipment typical of that used to operate equipment via a telephone link remotely. Ownership was claimed by Benahmed.

150 Avenue du Docteur Rosenfeld

(in a rucksack of which ownership was claimed by Benchellali), bottles containing glycerine and hydrogen peroxide

Electronic kitchen scales

A variety of identity and other documents, three of which are separately referred to below. The court concluded that many of the documents were falsified.

144 Avenue du Docteur Rosenfeld

A handwritten list of 11 chemical products found in a chemical physics catalogue

Equipment for the production of false documents, including an HP scanjet and a laminator

Sodium Chloride ampoules, a bottle of sulphuric acid and a 12 volt motor bike battery.

Expert analysis of the handwritten list of chemicals revealed that 5 of them, all but one in combination with other substances, could be used to prepare an explosive device of classic construction; that two could be used to produce an inflammable and highly toxic gas; and that three of the chemical products found (glycerine, sulphuric acid and hydrogen peroxide) could be used to manufacture nitro glycerine and/or TATP. The gas bottles and motorbike battery had been used in previous explosive devices deployed in France. The relays found at 10 Rue Honore de Balzac could activate a firing device.

16. This material satisfies us on balance of probabilities, as it did the French court, to a higher standard, that the three flats were the base of an active terrorist group which included Benahmed, Belhout, Marbah, Benchellali and Benssalah.

17. The French court also reached uncontroversial conclusions about the movement of some defendants in 2001 & 2002 (13/92-93). Preparations were made in the Spring 2001 for departure for the Caucasus. Amongst others, the following travelled to the Panksi Gorge in Georgia: Moutana (who died in Chechnya) on 1st June 2001, Merabet, in July 2001, Benchellali on 24th June 2001 and Benahmed in July 2001. Following their return on various dates between December 2001 and February 2002, there was a meeting in Barcelona

in March 2002, attended by, amongst others Benahmed, Benchellali and Merabet. Individual defendants spoke about the part which they and others played in these events: see Benahmed at (13/100). Mahamedi (who said he attended the "leaving party" for the group) (13/159), Benssalah (13/101), Benchellali (13/139-140) Benahmed (13/167-168), Marbah (13/109), Merabet (13/126) and Arous (13/176). Their admissions were confirmed by Djoumakh (13/69-70); by intercept evidence (on Arif's telephone in Berlin) (13/101-2); by a visa entry stamp for Georgia in a forged passport acknowledged to be his by Benahmed (13/0102); by records that Arif and Benahmed were stopped and questioned at Vienna airport on 19th February 2002 whilst in transit from Georgia to Spain (13/187); by the detention at Barcelona airport of Arif, Benahmed and Merabet (13/70); and by the opening of two bank accounts in Barcelona in March 2002 by Benchellali (13/133). We are satisfied that the French court's conclusions about these matters were securely founded. We accept, on balance of probabilities, that they occurred.

18. The sentences imposed by the French court indicate which of the defendants, in its view, were at the heart of the criminal organisation. Of those convicted of offences committed in the districts of La Courneuve and Romainville they were: Marbah (8 years), Benahmed (10 years), Belhout (8 years), Merabet (9 years), Benchellali (10 years), Benssalah (7 years) and Arous (7 years). The sentences imposed on the following defendants indicate that the court's view was that they were not quite so closely involved: Slimani (6 years), Mahamedi (6 years) Alam (5 years) and PP's brothers Maamar (2 years) and Khaled (3 years). We do not know the outcome of the review of their sentences on appeal, save that Maamar's sentence was increased by two years.

19. Several of the defendants spoke about the activities and intention of the group. Several sought to downplay their role. Save in one instance, none of those convicted of offences in the La Courneuve/Romainville districts, suggested that any of their activities were concealed from each other, or from others who visited or stayed in the flats. The single exception is PP's brothers Maamar's statement that, in July 2002 only Merabet had the right to go to La Courneuve (i.e. 10 Rue Honore de Balzac), because Benamed and Benchellali were "preparing explosives" (13/253). Examples of openness include Benssalah's comment that Benhmed, Slimani, PP, Marbah, Merabet and Belhout were "fundamentalists", "extremists" carrying out Jihad 13/151); that Slimani, though "a beginner in the group" talked of an attack on the Russian Embassy with chemicals stored at La Courneuve (13/172); Mahamedi's statement that Benahmed spoke of an attack on the Russian Consulate and that he (Mehamedi) observed Benahmed engaged in "DIY activity" at La Courneuve, which convinced him that "these individuals were doing dangerous things" (13/160); Slimani's statement that he was convinced that preparations were being made for an operation on French soil by Benahmed, Merabet, Benchellali and Belhout, and that the group were intending to attack the Russian Embassy in Paris (13/118-119); Arous's statement, when presented with the objects found in the 3 flats, that they were "to make a bomb" and that "those people were not having fun" (13/181); PP's brother Maamar's statement that Benahmed said at a meal at 144 Avenue du Docteur Rosenfeld in June 2002 attended by Belhout, Merabet and Benchellali, that they were to

carry out an act that would allow them to enter paradise (13/252); and PP's brother Khaled's statement that the group talked continuously about Jihad and, that an attack was to take place in France (13/260). Even the one acquitted defendant who lived at 10 Rue Honore de Balzac, Saliha Lebik, Benahmed's wife, saw the electronic equipment stored there and knew the extremist views of the inhabitants, including her husband. She was acquitted because the court doubted that she intended to participate in an arrangement established with the objective of committing acts of terrorism (13/121-122). These statements, even though made by defendants, are cogent evidence that the views and activities of the defendants at the heart of the group in the 3 flats would have been obvious to anyone who spent a significant time in their company in any of the flats – for the reasons given by the French court, that they are both varied and "concordant"; and for the additional reason that none of the makers of the statements had any discernable motive to make a false claim that the views and activities were obvious to them and others.

20. On the evidence and material so far referred to, we are satisfied on balance of probabilities of the following:

    i) There was an active terrorist group in 2001 & 2002 based in the three flats

    ii) Each of the defendants named in paragraph 14 belonged to it

    iii) The intentions and activities of the group would have been apparent to anyone who spent any significant time in their company, in particular any resident of any of the flats in 2001/2002.

21. The first indirect admission that PP had spent any time in any of the flats came in his unsigned, undated, statement, which bears the origination, revision or printing date of 6th July 2007. Up until that time, he claimed that he had never lived in Paris. In paragraphs 3.5 and 3.6 he states that he stayed for around 4 months with his brothers Maamar and Khaled (impliedly in Paris), after spending several months in Toulouse, impliedly in 1999/2000. Thereafter he travelled between France and Germany and, when in France would stay with his brothers – sometimes, for 2-3 months He does not identify his brothers' "place", but we do not understand him to dispute that it was one or more of the 3 flats. From his description of the people he met there and their activities, he hints that he thought they were up to no good. We understand these comments to be a guarded admission that he spent several months, at least, in one or more of the 3 flats. In evidence at the bail hearing on 19th December 2006, he denied living at 150 Avenue du Docteur Rosenfeld, but admitted visiting it (2F transcript 13/24-27) and knew that his brother lived at that address (14/22-23). We do not accept his denial that he ever lived at that address, for reasons which are explained below.

22. 10 of the defendants present at the trial who were convicted of offences committed in La Courneuve/Romainville identified PP as an active part of the group, as did one absent defendant (Faissal Marbah) and one witness (Djoumakh). They all refer to PP by his real name or by the name "Samir of Chlef". Djoumakh said that he met Marbah, PP and Moutana at 155

Boulevard Magenta, Paris, (13/69) and that he later learned from PP that Benahmed had left for Chechnya, with a false French passport in the name of Mansour (13/71). This was true: when questioned on 22nd March 2002 in Barcelona, Benahmed was found in possession of a forged passport in the name of Mansour, bearing Georgian visa stamps (13/102). Djoumakh also said that PP told him that Merabet had also left for Chechnya and he had only seen him again in May 2002 in Barbes (in the 18th Arrondissment of Paris to the south of Saint Denis) (13/71). Benssalah said that he was in contact with Benahmed, Slimani, PP, Marbah, Merabet and Belhout, all of whom were "fundamentalists" or "extremists" carrying out Jihad (13/151). Benahmed said that he first met PP in February or March 2001 at Benssalah's home and saw him several times again in Barbes in the company of his brother Maamar (13/167). Benssalah said that PP had gone to look for Slimani in April 2002, to take him to Romainville (13/171-2). Slimani named PP, amongst others, as one who had lived at Romainville with Benssalah and Merabet for two months (13/173). Arous said that, while he had stayed for a week in La Courneuve or at "150" in Romainville (Benssalah's home) there were there PP, Merabet and Belhout. (13/179). PP's brother Maamar came to visit him at "the squat" in Romainville (it seems 150 Avenue du Docteur Rosenfeld, Benssalah's home) "at least 4 or 5 times" (13/248). PP's brother Khaled said that he renewed contact with Benssalah, via his brother PP. He said that on two occasions during Ramadan (from the context of the statement, in 2002), his two brothers Maamar and PP took part in end of fast meals at "150" in Romainville, together with Benssalah, Merabet, Silami, Alam, Mahamedi and Slimani (13/257). This statement is unsupported by any other evidence, but if true, is of some significance. Ramadan began in 2002 on 5th November, 6 weeks before the first arrests. Khaled also said that in the summer of 2002, PP attended the celebration on the 7th day after the birth of Mahamedi's son, also attended by his brother Maamar, Benssalah, Merabet, Alam, Habbar, Benahmed and Slimani (13/257-258). Habbar said the same (13/265). Both said that the party took place at the flat in La Courneuve.

23. There is no reason to doubt the broad thrust of this evidence: that PP was frequently in the company of those at the heart of the offences committed in La Courneuve/Romainville in 20021 and 2002.

24. There is other, cogent, evidence of PP's association with those defendants and with 150 Rue du Docteur Rosenfeld, which does not depend upon the statements of defendants. The passport which PP was carrying when he returned to the United Kingdom on 18th November 2005 gave as the address of Hocine Benaboura, 150 Avenue du Docteur Rosenfeld 93230 Romainville France (12/12). PP has never told the truth about this document. In paragraph 7 of his first witness statement dated 30th November 2005, he stated that he was offered it (impliedly in Germany shortly before he left in September 2003) for 3,000 Euros by an agent. In paragraph 7 of his undated and unsigned witness statement faxed on 22nd February 2006 in support of his first bail application, he said that he bought it in 2002 in Frankfurt from a man he met at a football match. In his oral evidence on 19th December 2006, he reasserted the truth of that statement (transcript 10/26-27) and said that it was a source of comfort to him that his brother lived at the address stated in it (14/22-23). He

did not take the opportunity in his final undated statement (06/07/2007) to tell the truth about it. It was issued on 11th February 2002 (12/9). Amongst the documents recovered from 150 Avenue du Docteur Rosenfeld were a bank letter and a letter from a local employment agency in Romainville addressed to Hocine Benaboura, at that address (13/81) and an envelope from a radiological establishment in Muret containing a foot X-ray, bearing a label in PP's name (13/82). Mr O'Connor seeks to explain the latter document (we do not know whether the explanation was on instructions or improvised) by reference to the accident which PP claims to have sustained while playing football in Toulouse in (by inference) 2000 (see paragraph 3.3 of his last undated statement (06/06/2007). This is not consistent with the claim in that statement that he injured his back. On any view, the three documents recovered from 150 Avenue du Docteur Rosenfeld are consistent with, and strongly suggestive of, residence at the flat by PP in 2002. The probable explanation for the address in the passport is that that was where PP was living when it was issued. Other indisputable connections with members of the group are established by the following: when Merabet was arrested, PP's telephone number was found (it is not clear whether this was in the memory of his mobile telephone or otherwise) (13/126); a bank account was opened at BNP Romainville in the name Hocine Benaboura, for which purpose a double sided photocopy of a French national identity card in that name, bearing PP's photograph, was produced. Documents bearing the name Beddaidj, one of Benssalah's aliases were also produced (13/148-149). (Benssalah's explanation, which may be open to challenge, is that he opened the account for PP (13/150)). Finally, a police check on students on 8th November 2001 in Bagnolet, not far from La Courneuve/Romanville, revealed that Benssalah was with PP (13/148).

25. There is evidence about PP's activities as part of or on behalf of the group. Benssalah said that he forged a military record for him in the name Beddaidj (13/152). Arous said that Benssalah had "pointed them in the direction of PP to obtain false documents" (13/152); and that Benssalah told him (Arous) that PP had a driving licence, made up in his name, which he needed (13/179). PP's brother Maamar said that PP took false documents – mainly counterfeit national identity cards – to Benssalah's cousin in Toulouse every month (13/249). PP's brother Khaled said that PP was seeking people who were interested in forged documents (13/258-259). Habbar said that all the permanent occupants of the Romainville squat were involved in trafficking false papers and vehicles and that Merabet and PP sold German residency cards (13/266). Faissal Marbah said that PP was in charge of Schengen visas for Germany (13/273). Significant support is given these statements by a document recovered from 150 Avenue du Docteur Rosenfeld: a handwritten letter dated 5th December 2001 to Algiers addressed by Benahmed to Benssalah which refers, amongst other matters, "to a particular Samir who was to make them a French passport" (13/83). Apart from Samir Korchi mentioned once by Djoumakh (13/69) the only Samir referred to in the judgment is "Samir of Chlef", i.e. PP. Benahmed was writing to Benssalah, who came from Chlef. It is very likely that the reference was to PP. If so, it is, in common law terms, "real" evidence which confirms the statements that PP was involved in creating forged identity documents. The terms of this document and the opening of the bank account at BNP Romainville using a

photocopy of the Hocine Benaboura identity document and identity documents in the alias used by Benssalah (13/148-9 and 150), taken together are unlikely to be coincidental.

26. It is undoubtedly the case that, until confronted with the Secretary of State's first open statement, PP's case was that, since his departure from Algeria in 1999, he had been living with his brother in Germany, until he came to the United Kingdom in September 2003. He was concerned to ensure that the Secretary of State accepted what he said as true: see paragraph 10 of the witness statement of 30th November 2005, in which he states, "I have set out my true circumstances without suppressing any material facts in this statement". These deliberate lies can only have been told to conceal his presence, during at least much of 2001 and 2002 in the La Courneuve/Romainville districts of Seine Saint Denis, and his close connections with one or more of the three flats and with the core members of the group. Although his story has changed since then, it still contains highly significant lies: that he does not know any Islamist extremists; that he bought the false passport from a man at a football match in Frankfurt; that he has never lived in Paris (undated statement faxed on 22nd February 2006) (as to the obtaining of the passport, his evidence on oath on 19th December 2006); that he would not have tried to use the passport if he had known that "it had anything to do with those problems" (transcript of evidence on 19th December 2006 14/4-5), He must have known that his brothers had been arrested and, if Alam's statement is correct, telephoned him on 15th February 2003 to ask if Benahmed's wife had been released (13/242). Continuing to lie about these matters, and failing to answer, at all, in any statement, the detailed evidence concerning him in the French judgment are only explicable on the basis that he wishes to suppress, from the Secretary of State and SIAC, the truth about what he was doing in 2001/2002 in and from La Courneuve/Romainville.

27. All of this material and evidence, taken together, convinces us, on balance of probabilities that PP was a knowing participant in the active terrorist group based in the three flats, albeit not a central member of the group. His role was forgery and trafficking in false documents, not attack planning or bomb making. Even so, he represented, in 2001 and 2002 a threat to the national security of France. As such, he represented a danger to the national security of the United Kingdom (per Lord Woolf in SSHD v Rehman 2003IAC153 paragraph 40 (in the judgment of the Court of Appeal)).

28. What threat does PP now pose to the national security of the United Kingdom?. The assessment of the security service is based simply upon his activities in France: paragraph 23 of the amended first open statement. For the reasons which we have given, we agree with that assessment. It always remains open to an individual who has participated in terrorism-related activities to put them behind him and to cease to pose a risk to national security. This does, however, require convincing evidence of a change of heart. There is no evidence that PP has engaged in terrorism-related activities or associated himself with individuals suspected of such activities since he has been in the United Kingdom. We accept that in April 2004 he went through a religious ceremony of marriage with Faduma Ali, a Dutch national of Somali

origin and have no reason to doubt that their relationship is genuine. In support of his bail application, he was able to adduce evidence (in the form of witness statements) from individuals who had got to know him since his arrival in Kingston and/or his wedding, who spoke well of him. In addition, the group in which he participated in France has been comprehensively disrupted. These circumstances are capable of creating a background against which an assessment of the risk which PP poses could be favourably assessed; but such an assessment would require convincing evidence from him that he had recanted his former views and renounced his previous activities. There is none. He has, on the contrary, continued to try to mislead the Secretary of State about his motives and activities.

29. In his statement dated 30th November 2005, in which he claimed asylum, he maintained that he left Algeria because he had been beaten up by GIA members in 1999 and was unwilling to seek the protection of the Algerian state because he had contributed money to the GIA in 1997, under duress. He claimed to be an apolitical footballer. We do not believe this account. The only element which might be true is that he was hostile to the GIA, but that would only be because he belonged to a group of Islamists which split from the GIA in the 1990's, as Benahmed explained in the French proceedings (13/98-100). If he had been an apolitical footballer, he would not have joined the La Courneuve/Romainville group.

30. He has consistently claimed that he arrived in the United Kingdom in September 2003. However, on his return to the United Kingdom on 18th November 2005, he produced a letter from A C T Computers confirming that he had been employed by them as a computer hardware technician since March 2003. There are three possible explanations for this document: it is true; it is a forgery; as Mr O'Connor contends (whether on the basis of instructions or not, we do not know); it is genuine, but contains a mistaken date. Of the three possibilities, the third is the least likely. The first would be consistent with PP fleeing Paris soon after the flats were raided. We are unable to form any concluded view about which of these possibilities is correct. There is, however, no doubt that PP told a significant lie about his trip to Algeria at his screening interview on 19th November 2005: that he last saw all of his siblings on 16th November 2005 in Chlef. Two of his brothers Maamar and Khaled were in France, the latter in detention. He has never attempted to explain this lie. He, (and Faduma Ali) also lied about when he told her his real name. In paragraph 8 of his statement of 30th November 2005, he said that his wife did not know about his immigration status, because he was scared to reveal it as he thought it would ruin their relationship. In paragraph 13 of her statement dated 21st February 2006, she confirmed that she did not learn his real name until she visited him in detention following his return to the United Kingdom on 18th November 2005. Both subsequently retracted these statements.

31. As we have already explained, PP has consistently lied about the Hocine Benaboura passport, in particular, about how he acquired it. He has also failed to give a truthful explanation about its use. It bears two Arabic stamps, one of which clearly bears a date in 2002 (12/10). In paragraph 34 of his undated

witness statement faxed on 22nd February 2006, he states that "though the passport is stamped in 2002, it was not me. I only bought the passport in 2003". For the reasons which we have explained, we are satisfied, on balance of probabilities, that it was issued to him in 2002. This, together with his general untruthfulness, leads us even to doubt the claimed purpose of his visit to Algeria in 2005: to visit his ailing parents. We simply do not know what the true purpose of the visit was.

32. For the reasons which we have already explained, we are satisfied that his most recent statement (06/07/2007) apart from its grudging and indirect acceptance that he spent some time in the flats, also paints a largely false picture of his activities and (at least) former views.

33. PP has had ample opportunity to tell the truth and to deal with the detailed material against him. Given our findings as to his activities in 2001 and 2002, we have no confidence that the risk which he undoubtedly posed to the national security of the United Kingdom when he arrived, whenever that was, has gone or been reduced to a level at which it would not be conducive to the public good for him to be deported. We are satisfied that he was, and remains, a danger to national security.

34. We have not placed reliance against PP, on the police report of the finding of an entry in a name and address book found at Finsbury Park Mosque in January 2003, bearing PP's name and a Toulouse address (14A/1), because we have no information about its provenance and because it may do no more than confirm that PP was active in France, as we have found. Nor have we taken into account, in PP's favour, the absence of any extradition request by the French authorities, for reasons which are stated in the closed judgment. We place no reliance, for or against him, on the lack of evidence of activities in Germany.

35. Mr O'Connor and Miss Webber concede that, on the basis of our findings of fact, PP is excluded from the protection of the 1951 Convention relating to the status of refugees, by virtue of Article 1F(c) (read with Section 54 Immigration Asylum and Nationality Act 2006) and/or Article 33(2).

Safety on Return

36. By annex 1 to a note verbale dated 3rd December 2006, the Algerian Ministry of Justice gave the following assurances in relation to PP:

Criminal status in Algeria:

> The above-named person PP is known to the courts on account of his involvement in a case concerning the forgery of a French visa.
>
> Furthermore, according to that person's criminal record, he was sentenced on 7 March 1998 by the Tribunal d'Oran (Oran Court) to a two (02) month

suspended prison sentence and a fine of DZD 2,000 for forgery and the use of forgeries.

Should the above-named person be arrested in order that his status may be assessed on his return to Algeria, he will enjoy the following rights, assurances and guarantees as provided by the Constitution and the national laws currently in force concerning human rights:

a) The right to appear before a court so that the court may decide on the legality of his arrest or detention, the right to be informed of the charges against him and the right to be assisted by a lawyer of his choice and to have immediate contact with that lawyer.

b) He may receive free legal aid;

c) He may be placed in custody only by the competent judicial authorities;

d) In the event that he is the subject of criminal proceedings, he will be presumed to be innocent until his guilt has been established by due legal process;

e) The right to notify a relative of his arrest or detention;

f) The right to be examined by a doctor;

g) His human dignity will be respected under all circumstances.

37. The assurances are identical to those given in relation to a number of Algerian citizens who have been deported to Algeria or who have been the subject of proceedings before SIAC. The background against which assurances such as this and the reliance which can properly be placed upon them have been considered by SIAC, and the Court of Appeal, in BB (5th December 2006), U (14th May 2007), MT, RB & U (30th July 2007) and in the remitted appeals of Y, BB & U (2nd November 2007). It is unnecessary for us to repeat the conclusions reached there. We adopt them.

38. British authorities are ill-placed to assess the risk, if any, which PP would pose to the Algerian state on his return. Accordingly, on a precautionary basis, we must assume that there is a risk that he will be detained and prosecuted, possibly for offences contrary to Article 87 (A)(6) and/or 249 of the Algerian Penal Code. We have no reason to believe that he has, or might be thought to have, information of current operational value to the Algerian authorities. Accordingly, as in the cases of U & Y there is nothing in PP's individual circumstances which might increase the risk of torture or ill-treatment to the level at which it would become a real risk. We reject, as fanciful, the suggestion that, at the behest of United States Authorities, the DRS might ill-treat PP, or that they will disregard the assurances because of perceived hypocrisy by Western states.

39. Mr O'Connor and Miss Webber make no submissions in relation to the general situation is Algeria which have not already been considered by SIAC. It is unnecessary for us to address them. We have received evidence about two specific issues mentioned in the remitted appeals of Y, BB & U: the dismissal of 30 judges in 2006; and prison conditions. As to the former, it is now clear from press reports (2E/29, 35, 42 and 44) that the Minister of the Interior did not propose that 30 judges who had reached the retirement age of 60 stipulated in Article 88 of the Magistracy Statue of 6th September 2004 should have their term of office extended to 65 or 70. Article 88 provides that the Supreme Council of the Magistracy may, on a proposal by the Minister of Justice, and with the consent of the judge or at his request, extend his period of activity up to 70 years of age for judges of the Supreme Court and Council of State and up to 65 years of age for other judges. His decision was, accordingly, lawful. On no reasonable view can the statutory provision or the Minister of Justice's decision not to invoke it in the case of the 30 judges, lead to the conclusion that the Algerian judiciary lack institutional independence. As to the second matter, the source of Ms Pargeter's observation about prison overcrowding appears to be a report about comments made by a committee in charge of preparing a report about prison conditions in Algeria (2E/26). The report states: "the members of the committee made a number of remarks, the most important of which was the narrowness of dormitories as one dormitory is 25m sq. and houses more than 40 prisoners." As Ms Giovannetti demonstrates in her written submissions on safety on return, the committee members cannot have meant that the dormitory was 25 square meters because that would leave only 0.625m sq. for each prisoner. Something must have been lost in the reporting of the remarks.

40. Nothing in this new material or in information about PP's particular circumstances leads us to conclude that there is a real risk that, if interrogated, detained and prosecuted, he would be subject to ill-treatment of the kind prohibited by Article 3 whether in garde a vue detention or detention in prisons under the jurisdiction of the Minister of the Interior or would be subjected to a flagrantly unfair trial.

41. For the reasons stated, this appeal is dismissed.

MR JUSTICE MITTING