Appeal no: SC/73/2009
Hearing Dates: 9th, 10th, 22nd & 23rd February 2010
Date of Judgment: 4th March 2010

SPECIAL IMMIGRATION APPEALS COMMISSION

OPEN JUDGMENT

Before:

THE HONOURABLE MR JUSTICE MITTING (Chairman)
SENIOR IMMIGRATION JUDGE LATTER
MR M JAMES

(LO)

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellants:	Mr R Hermer, QC & Mr E Grieves Tyndallwoods Solicitors
For the Respondent:	Mr T Eicke & Mr N Sheldon Instructed by the Treasury Solicitor for the Secretary of State
Special Advocate:	Mr M Khamisa, QC & Mr K Beal Instructed by the Special Advocates Support Office

The Hon. Mr Justice Mitting :

Background

1. LO is a 41 year old Jordanian national of Palestinian origin. He married a Jordanian woman in 1991. They have seven children aged from two to seventeen. He and his wife and, then, two children, arrived in the United Kingdom on 10 March 1995. He claimed asylum, listing them as his dependants. When interviewed by an immigration officer, he claimed to have been imprisoned by the Jordanian Intelligence Service for two months in or about June 1988 and accused of being a member of an Islamic organisation. When, after his release, the Jordanian Intelligence Service raided his family home in September 1988, he escaped. He left for Pakistan in 1989. He returned to Jordan in 1991 (to marry his wife) and then left again for Pakistan. While in Pakistan, he worked as a volunteer labourer for the Islamic Aid Committee, initially based in Peshawar and then in Islamabad. The director was Abu Al-Hasan Al-Madani. He was detained by the Pakistani authorities from 3 June 1994 to 18 December 1994 because, as an Arab, he was labelled as undesirable. He left Pakistan two days before he arrived in the United Kingdom, travelling via Thailand and Singapore. On 31 October 1996 his asylum claim was refused. He appealed to an adjudicator who dismissed his appeal on 17 December 1998. He was detained under immigration powers on 17 April 1999 (having earlier been released from a sentence of imprisonment, as to which see below). In documents which we have not seen, he made further representations under (then) paragraph 346 of the Immigration Rules and brought a claim for judicial review. He was granted asylum and indefinite

leave to remain on 26 July 1999, as a stateless person. He was released from immigration detention on the same day.

2. Meanwhile, he had embarked on the commission of a series of criminal offences, almost all involving dishonesty or the possession of false instruments. These are summarised in paragraph 9, below. He was released from his third and last prison sentence on 9 January 2006. On a date which we do not know, in late 2006, he was given notice of the Secretary of State's intention to deport him.

3. On 15 December 2006, LO left, with valid travel documents, for Nigeria, without his wife and children. In April 2007, his wife and three oldest children went to Nigeria to stay with him for just over a month. She and his oldest boy then returned to the United Kingdom. The two others remained for about six months, when they also returned. On 24 December 2008, LO was arrested and detained in Nigeria. He was deported to the United Kingdom on 22 January 2009. On 10 March 2009 he was notified of the decision of the Secretary of State that it would be conducive to the public good to deport him on national security grounds. He exercised his right of appeal to SIAC. He has been in immigration detention since his return. His application to SIAC for bail was refused on 30 April 2009. This is the hearing of his appeal against the decision to deport him.

Law

4. Mr Hermer QC, for LO makes two submissions, which he has not developed, to protect his right to appeal against SIAC's ruling: that sufficient detail of the closed case must be disclosed to LO to permit him to give effective

instructions about it to his own advocates and/or to the Special Advocates; that LO is entitled to deploy evidence on the "reversed closed evidence" principle (i.e., with the Secretary of State's representatives excluded from the hearing when evidence given on behalf of LO is adduced). We reject these submissions for the reasons set out in previous rulings.

5. Witness ZP had nothing to do with LO's case until, three weeks before the hearing, he set out to inform himself as fully about it as he could. Mr Hermer submits that, in consequence, the evidence which he can give is insufficient for SIAC's purposes. He submitted that SIAC should require "best analysis", which could only be given by the case officer or case officers who had dealt with LO's case. He drew an analogy with the requirement in public law proceedings that, when necessary, a document relied on by a public authority as significant to its decision, and not just a summary of the document, should be disclosed: *Tweed v Parades Commission for Northern Ireland* (2007) 1 AC 650 paragraphs 4 and 39, and *National Association of Health Stores v Department of Health* (2003) EWCA 3133 (Admin) paragraph 49. He submits that we should adopt the same approach as that adopted by the United States Courts of Appeals, District of Columbia Circuit, in *Parhat v Gat*es 20 June 2008, which held that a determinative fact in the appeal (the relationship of an Uighur Independence Group to Al Qaeda and the Taliban) was not sufficiently established by four US government intelligence documents which described the activities and relationships of the group as having "reportedly" occurred or as having been "suspected" of having taken place, without, in almost every instance, the source of the report or suspicion being identified (pp. 23-24). Because of those omissions, the Court held that it could not properly assess the

reliability of the assertions in the documents. We accept Mr Hermer's submission that, where possible, we should see the material upon which the assessments of the Security Service are made and that we should not be content to accept essentially unsourced assessments. It does not, however, follow that we need, in every case, or in this one, to hear from the case officer or case officers for an individual appellant. We can, in this open judgment, explain the approach which we adopt to the closed material with which we are supplied. We see the closed material upon which the Security Service recommends to the Secretary of State that the decision under appeal should be made, together with any subsequently generated or discovered closed material deployed to support or undermine that decision. If, in their opinion, the Special Advocates consider that the closed material produced is insufficient to permit SIAC to determine the outcome of the appeal justly, they can and do seek further closed disclosure. Further, SIAC itself is required by Rule 4(3) of the Special Immigration Appeals Commission (Procedure) Rules 2003 to satisfy itself that the material available to it enables it properly to determine the proceedings. Our closed judgments are invariably founded on a close analysis of this material. The Security Service witness has three principal functions: to explain and justify to SIAC the collective Security Service view about the case of an individual appellant and about particular aspects of it; to respond to challenges to that assessment by the Special Advocates (and, where possible, by the open advocates); and to make such further enquiries as the Special Advocates and SIAC may require in the course of the hearing. These duties can be satisfactorily performed only by a witness who has immersed himself or herself thoroughly in the details of the individual case, as witness

ZP has done, but do not generally require that the witness has been personally involved in the investigation into the individual appellant in whose case he or she gives evidence. Mr Hermer was understandably frustrated by witness ZP's unwillingness to answer many of his questions in the open session. His unwillingness did not stem from any lack of knowledge of relevant material, but from his anxiety not to reveal that which could not properly be put into the public domain. When the issues raised by Mr Hermer in open session were canvassed in greater detail in the closed session, witness ZP demonstrated the command of the closed material which we have come to expect of Security Service witnesses. We are satisfied that the material available to us enables us properly to determine the proceedings. Like the United States Court of Appeals, we would not be content with substantially unsourced assessments. In this case, as in all others up to now, we have been able to make findings as to past facts on balance of probabilities and to check the assessments of the Security Service against the detailed materials upon which they are founded.

National Security

6. The open case against LO is founded on three propositions: he travelled to Pakistan to engage in terrorism-related activity; he was and is a member of Jma'at Al-Muslimeen (JM) and maintains links to JM; he has raised funds through criminal means for JM's purposes. LO admits that he went to Pakistan in 1989 and stayed there, apart from a visit of uncertain duration to Jordan in 1991, until 8 March 1995. He says that he was working as a volunteer for Islamic Aid, a non-political humanitarian organisation sponsored by the Saudi Government. He took clothes, medical equipment and food to Afghan

families, by lorry. He admits that he became involved in JM in 1996, but has ceased to be involved since 2006. His involvement consisted only in attending group prayers and social events. He believes that JM has now been disbanded. In any event, it was no more than a talking-shop. He admits that he committed fraud, for which he served three separate prison sentences. He did not raise money for JM. The money which he raised through fraud was for the support of his family, directly, or via attempted failed business ventures.

7. We can only reach limited conclusions about his time in Pakistan. Principally by reason of his subsequent activities, we are satisfied that, by the time that he arrived in the United Kingdom, he was a committed Islamist extremist. Principally for that reason, we are unable to accept that his time in Pakistan was spent simply as a volunteer aid worker. In reaching that conclusion, we do not regard it as a significant fact that the director of the Islamic Aid Committee, identified by LO when interviewed by immigration officers in 1995, may have been a man listed on the United Nations asset freezing list.

8. We are not satisfied that JM was nothing but a talking-shop. We have set out a more detailed assessment of JM in the closed judgment, which cannot be repeated here. The detention and illness of its founder and one-time leader, Mohammed Al Rifai was bound to diminish its cohesion and effectiveness; but we do not accept that it has ceased to exist or to pose some threat to the national security of the United Kingdom. We do not accept LO's claim to have severed links with JM in 2006 and accept the assessment of the security service that he did retain such links. The reasons for this finding are set out in the closed judgment.

9. Mr Hermer submitted that the prosecution case summaries did not support the Security Service's conclusion that LO was engaged in large-scale fraud, let alone fraud with a terrorist-related purpose. We are satisfied, at least on balance of probabilities, that LO was engaged in large-scale fraud, in part with that purpose. Our reasons for that conclusion are in part set out in the closed judgment, but can, in part, be stated here. LO began to embark on crimes of dishonesty soon after his arrival in the United Kingdom. He was cautioned on 19 December 1996 for theft and kindred offences (441c). On 24 September 1997, police, intending to speak to him about an attempt to obtain a lawnmower by deception one week earlier, searched his car and house. They found twenty Tesco Clubcards cloned with other people's bank details, some of which had been put to fraudulent use. (186-188). His car was searched again on 26 January 1998. Quantities of new property in sales bags with receipts were found. The receipts had been made using compromised credit cards. Seven cloned Tesco Clubcards, encoded with MasterCard and Visa details were also found. On 30 July 1998 he was sentenced at Kingston Crown Court to a total of two years imprisonment for these offences. He was released on 28 January 1999. Deportation was recommended. (441d). His second prison sentence, also for two years, was imposed on 22 December 1999 at Kirkcaldy Sheriff Court. Mr Eicke, for the Secretary of State, suggested that this sentence was "deferred" – i.e. suspended. The PNC record shows that sentence was deferred from 6 to 22 December 1999, but then imposed with immediate effect. (441d). This is the second of the three sentences of imprisonment which LO admits having served. The date of his release is not known. On 11 April 2002 a search of the car which LO was then driving

revealed 20 blank plastic and Fina petrol cards all of which were cloned with credit card details. On 24 July 2002 LO was charged with having false instruments – the cloned cards – and bailed to appear at a Magistrates Court two days later. He did not attend (181). On 26 August 2004, a search warrant was executed at his house, where he was discovered hiding in the loft. In his car and in the house, quantities of new goods were found inside carrier bags with their receipts. They had been bought on three occasions in August using Switch Cards in the name of three different men. LO was charged and detained. (181 and 192-193). On 14 January 2005 at Kingston Crown Court, LO was sentenced to a total of 30 months imprisonment for the 2002 and 2004 offences and to three months imprisonment consecutive for an offence of assault with intent to resist arrest committed in 2002. (441e-f). He was released on 9 January 2006. In paragraph 19 of his witness statement dated 12 August 2009, LO admits that he raised money through fraud and, impliedly, did so on a scale sufficient to support failed business ventures. For reasons which are in part set out in the closed judgment, we are satisfied that LO's fraudulent activities extended far beyond the specific offences of which he was convicted. They simply provide a snapshot of his activities on a limited number of days. The closed material satisfies us that part of the proceeds of his fraudulent activity went to support JM and its terrorism-related activity.

10. For reasons which are set out in the closed judgment, we do not accept LO's contention that he ceased to be associated with JM and members of JM in 2006. Nor do we accept that he has not been engaged in terrorism-related activity whilst in the United Kingdom and elsewhere. We are satisfied, on balance of probabilities, that until his detention under immigration powers in

January 2009, he did undertake activities that did pose a threat to national security and that, if he were to be at liberty in the United Kingdom, he would continue to pose such a threat.