Appeal no: SC/101/2011
Hearing Dates: 12th – 14th April 2011
Date of Judgment: 10th May 2011

SPECIAL IMMIGRATION APPEALS COMMISSION

OPEN JUDGMENT

Before:

THE HONOURABLE MR JUSTICE MITTING (Chairman)
SENIOR IMMIGRATION JUDGE ALLEN
MR M G TAYLOR, CBE, DL

(M1)

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellants:	Mr T Otty QC & Ms Weston Instructed by Birnberg Peirce & Partners
For the Respondent:	Mr N Sheldon & Mr R Jones Instructed by the Treasury Solicitor for the Secretary of State
Special Advocate:	Mr M Birnbaum QC & Mr Z Ahmad Instructed by the Special Advocates Support Office

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Mr Justice Mitting :

Background

1. The appellant is a 34 year old Italian national. He was born of Italian parents in Naples. He came to the United Kingdom, aged 19, to learn English. From soon after his arrival until November 2009, he worked in a variety of jobs, all but one at Gatwick Airport. He then undertook a TEFL course in Hove. Since that finished he has been in receipt of state benefits. For the last five years, until his detention on 15th October 2010, he has lived in Crawley.

2. He was brought up as a Christian, but ceased to believe in the Christian faith some time after his arrival in the United Kingdom. He converted to Islam in, he thinks, February 2006. A friend, Khurram Yousaf introduced him to his sister, a Pakistani national, in 2006. They had a Muslim marriage ceremony in May 2006. She returned to Pakistan about three weeks later. He visited her and her mother in Rawalpindi between 2nd October and 27th November 2006. His wife returned to the United Kingdom in 2007. They were married in a civil ceremony on 4th August 2007. She was granted five years' leave to remain. Despite his conversion to Islam and marriage to a Muslim wife, he remains on good terms with his parents and siblings, all of whom remain in Italy. They have two daughters, born on 7th September 2008 and 8th September 2010.

3. Until soon after he ceased paid employment, in November 2009, the appellant and his family lived in privately rented accommodation. His wife told Renee Cohen, who met her for the first time on 11th November 2010, that they could then no longer afford the rent. A friend allowed them to live in his house for two months, while he was out of the country. When he returned, they were placed in temporary accommodation by the local authority, for about one month. They lost that accommodation in, it seems, September 2010. They then went to live with her brother, in a two bedroom flat, with him, his wife, four children and mother.

4. On 15th October 2010, the Secretary of State determined that if the appellant were to be allowed to remain in the United Kingdom he would pose a genuine, present, and sufficiently serious threat to the interests of public security and decided that it was imperative in the interests of public security that he be removed from the United Kingdom. The decision was notified to him, and he was detained, on 15th October 2010. Because the Secretary of State personally certified that the decision was taken wholly or in part in reliance on information that should not be made public in the interests of national security, his right of appeal lay to SIAC. He gave notice of appeal on 22nd October 2010.

Law

5. The appellant is an EEA national who had resided in the United Kingdom for a continuous period of at least ten years prior to 15th October 2010. Accordingly, the decision to remove him can only be justified on "imperative grounds of public security" under Regulation 21(4)(a) of the Immigration

(Economic Area) Regulations 2006. Regulation 21(5) specifies the principles to be applied. For present purposes, the relevant principles are:

(a) Proportionality

(b) The decision must be based exclusively on the personal conduct of the appellant.

(c) That conduct must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

The fourth principle (d) is implicit in the first three, and adds nothing to them. Regulation 21(6) requires us to take account of the appellant's age and family and economic situation, his fourteen years residence in the United Kingdom, his social and cultural integration into the United Kingdom and the extent of his links with Italy. In a case such as this, in which the Secretary of State's decision is founded upon the threat alleged to be posed by the appellant to public security, the determinative principles are the first three.

6. We have made findings about past events on balance of probabilities, for the reasons explained in ZZ v SSHD SC/63/2007, 30th June 2008. Those findings must inform our view about the threat, if any, posed by this appellant to public security. In reaching that view, we must give great weight to the view of the Secretary of State, informed by her security advisers, about what type of conduct is capable of giving rise to a threat to public security; but we must decide, for ourselves, whether the personal conduct of the appellant represents a genuine, present and sufficiently serious threat affecting a fundamental interest of society and, if so, whether the decision to remove him complies with the principle of proportionality.

The threat alleged to be posed to public security by the appellant

7. At the heart of the Secretary of State's case is the assessment that the appellant undertook one trip to Pakistan in 2008 and attempted two more in 2009 and 2010, for a terrorism-related purpose: training in a camp in the Federally Administered Tribal Areas of Pakistan (FATA). Subsidiary assessments are that he undertook a TEFL course in early 2010, to make foreign travel easier, holds extremist views and has an unhealthy interest in the acquisition of weapons. It is common ground, or, if not, our view, that unless the Secretary of State's case on the issue of travel to Pakistan is made out, her decision cannot stand.

2008

8. On 28th/29th May 2008, the appellant flew from Heathrow to Islamabad. He returned to the United Kingdom on 18th August 2008. The Secretary of State's case is that he "coordinated" his travel with a group of extremist associates,

Waseem Gulzar, Amar Ali, Mohammed Parvais Khan, Adnan Darr, Faisal Sarwar and Lamine and Ibrahim Adam. We are satisfied, on balance of probabilities, that a group, comprising all of those named except the appellant, did travel to Pakistan for terrorism-related purposes – training or fighting in the FATA – for the reasons set out in the control order reviews in the cases of BG and BH and in the SIAC appeal of HS. It is unnecessary for us to repeat the detailed findings made in those judgments. The dates of travel of the appellant overlapped, but did not precisely coincide with theirs. The appellant's case is that he flew to Pakistan to be with his wife, who had flown out before him, and to help with essential renovation of the house of his mother in law in Rawalpindi. His wife returned to the United Kingdom on 16 June, before it would be too late for her to do so, in view of the impending birth of their first daughter in early September 2008. While there, he underwent a circumcision, which went wrong, on 2nd July 2008, at the Safari Hospital in Rawalpindi. He spent part of the remaining weeks recuperating. Of those who flew out for other purposes, he knew only Gulzar and Khan, neither intimately. His journey had nothing to do with theirs.

9. We accept that much of what the appellant says about his trip to Pakistan in 2008 is true. In particular, we accept that he did travel to Rawalpindi to see his wife and mother in law; that he did have a circumcision which went wrong on 2nd July 2008; and that he did assist in the renovation of his mother in law's house. We accept that his purposes in travelling to Pakistan included his wish to see his wife and mother in law and to help renovate her house. But, for reasons which are, and can only be, set out in the closed judgment, we are satisfied that those were not his only purposes. He was on closer terms with Gulzar than he has admitted. He intended to undertake terrorism-related training, almost certainly in the FATA. For that reason, he stayed behind in Rawalpindi after his wife had left. We are not satisfied on balance of probabilities that he did in fact reach a camp or receive training. The appellant was dependent on others to do so. The disruption of the group in Jhelum on 24/25 June 2008, and the premature and abrupt departure of Gulzar, deprived him of the means of doing so. In summary, although we are not satisfied that his travel in 2008 was coordinated with the group of named individuals, his presence in Pakistan at the same time as them was not a coincidence: he went there for the purpose which some of them, at least achieved, but did not fulfil it. This finding informs, and is, in hindsight, informed by, the events of 2009.

2009

10. At the request of Mr Otty QC, we have undertaken a careful and detailed analysis of the planned, but aborted, trip of Gulzar, Khan and Ali to Pakistan in 2009. For the reasons set out in the closed judgment, we are satisfied that each of them planned to travel to Pakistan for the purpose of undertaking terrorism-related activity – training in and/or fighting from the FATA. Each booked a flight to Islamabad on 17th or 18th March 2009. We accept the assessment of the Security Service that meetings between the three of them on 23rd February 2009 at the Bar.B.Base restaurant in Ilford and on 4th March 2009 at the Grill restaurant in Ilford were to plan for their trip. It was disrupted on 14th March 2009 when, as Ali said in a witness statement in other

proceedings, his mother confiscated his passport. Gulzar then rearranged his flight for 1st May 2009. Khan alone attempted to travel to Pakistan on 18 March 2009, possibly because he had a plausible and genuine additional purpose – to visit his wife in Buner – but was stopped and arrested at the airport and his passport confiscated. On 24th and 25th March 2009 measures were taken in respect of Khan and Ali respectively which inhibited their departure from the United Kingdom.

11. The appellant obtained a Pakistani visa valid from 10th March 2009 to 9th September 2009. He and a man he admits to be a close friend, Ismail Smith booked flights to Islamabad for 18th March 2009. The appellant's booking was made on 13th March 2009. Their flights, like that of Gulzar, were re-booked – for 2nd and 3rd May respectively. All three – Gulzar, the appellant and Smith – ultimately cancelled their re-booked flights. We are satisfied, on balance of probabilities, that the original booking, rebooking and final cancellation of the flights of all three was not a coincidence: the purpose of the appellant and of Smith in booking flights on 18th March 2009 was the same as that of Gulzar, Khan and Ali – to go to Pakistan to undertake training in and/or fighting from the FATA; the cancellation and rebooking of their flights for 1st, 2nd and 3rd May resulted from the disruption of their plans caused and revealed by the confiscation of Ali's passport by his mother; and the ultimate cancellation of their booking resulted from the further disruption caused by the stopping and arrest of Khan and by the measures taken in respect of him and Ali.

12. In reaching that conclusion, we have relied significantly upon closed material. We have also relied on the changes in the account of those events given by the appellant. We have not drawn any inference adverse to him from the fact that he has chosen not to give oral evidence and be cross-examined; but we are satisfied that the changes in his accounts are not the result of faulty memory or confusion, but of lies deliberately told to conceal the true purpose of his trip. We set out the changes below.

13. On 15th August 2010, the appellant was stopped and interviewed at Gatwick Airport, on his return from Naples. When asked about the Pakistan visa for 10th March 2009, he stated that he and his family were planning to take a trip to Pakistan to see his wife's family in Rawalpindi. The reasons which he gave for the cancellation were work, financial and family commitments. He said that no flights were booked.

14. In his witness statement of 27th January 2011, prepared for the purpose of this appeal, he gave a different account: he was planning to travel with Smith. "As the SSHD undoubtedly knows we were trying to find second wives". After three paragraphs in which he explained their reasons for doing so, he stated, in paragraph 43:

> "Ismail had told me about a few marriage websites and persuaded me to go on them. At some point I became a member of singlemuslim.com. I was looking for a woman who had her own money as I had financial problems. I was a member for six months but was only charged for three. I had a Bangladeshi woman who I was intending to marry in 2009 but it fell

> through. She had a son and was a divorcee. My wife hacked into my account and found my profile. She went mad. Although I had told her at the beginning that I might take a second wife (and, at the time, she had agreed) she was very unhappy about it. She was very jealous and said that she had not meant to agree that I could have another wife and had only been joking. She also knew of Ismail's intentions so she was not happy with us hanging around together as she thought he was a bad influence.
>
> 44. It was against this background that in 2009 Ismail and I were to travel together."

The impression conveyed – and in our view, intended to be conveyed – to the reader of this statement was that it was against the background of the appellant's membership of singlemuslim.com and his wife's discovery of his membership that he and Smith formed their intention to travel. The statement was laconic about the reason for cancellation and re-booking of the tickets:

> "45. The tickets were rebooked as Ismail had problems".

The reason for the ultimate cancellation of the trip was because his wife found his ticket and passport with visa in it. He told her that the reason for the trip was to find a wife for someone else who she discovered eventually was Smith. In her witness statement of 28nd January 2011, his wife confirms that "in 2009" she found that the appellant was planning to go to Pakistan and found his ticket and passport with a Pakistani visa in it. She demanded to know the purpose of the trip, suspecting that it was for the appellant to find a second wife.

15. During the course of the hearing, in response to questions from the panel, Mr Otty, on the appellant's instructions, stated that the events described in paragraph 43 of his witness statement occurred after the cancellation of the trip, in November 2009. He emphasised that the purpose of the trip (about which he had spoken in paragraph 44 of the witness statement) was to introduce Smith to his wife's friend as a possible second wife for him. The problems which Smith had concerned his wife's immigration status. It was necessary for him to be in the United Kingdom to go back and forth to Croydon to attempt to resolve the problem. They rebooked their tickets on the basis of Smith's understanding about when he would be clear of his wife's immigration problems. He said that both of them together rebooked the flights at the travel agents for the same date.

16. As the appellant admits, the first version was wholly untrue. He has given no explanation for telling those lies. The version which he now advances – that the purpose of the trip was to find a second wife for Smith – might have sounded odd to the investigating officers, but it could not have got the appellant into any kind of trouble. Concealing it is an inadequate explanation for the lies told. More significant is the false impression given by the second version. That account was given in a witness statement in support of his appeal. It cannot have been given to conceal something that the appellant

might have thought would be regarded as discreditable: looking for a second wife for Smith was the claimed purpose of the trip, against the background of his intention to marry a Bangladeshi woman "in 2009". We draw the inference that it was told to conceal another purpose. If there was a purpose other than that advanced by the Secretary of State, the appellant could have said so. The fact that he did not strongly suggests that the misleading picture was given to conceal that purpose. For reasons set out in the closed judgment, we are satisfied that the third version of events is also untrue and must be known to be so by the appellant.

The trip to Turkey in 2010

17. The appellant does not now dispute that he travelled to Turkey with Smith in June 2010. Both he and Smith told significant lies to the officers who interviewed them on their return to the United Kingdom on 23rd and 22nd June respectively. Smith said that he and the appellant left Victoria station for Dover on the evening of 4th June 2010. They caught a ferry to Calais the next day and then a bus to Paris. The appellant proposed that they pool their funds. That annoyed Smith because he had £1000 on him, whereas the appellant had only £600-700. They parted company and Smith never heard from the appellant again. He took a train to Nice, where he stayed for two to three days. He then took two trains to Milan, where he stayed for three days. He then travelled overnight from Milan to Naples and then got a bus to Bari, where he stayed overnight. The next day he got a ferry to Greece and travelled to Corfu, from where he went on to Turkey. He stayed in Istanbul in a hotel room for one night and on a bench the next night. He then decided to go to a mountainous area in Turkey and on 17th June took a bus close to the border of Iran. He was refused entry at the Iranian border on 17th June 2010. He then returned to the mountainous area in Turkey, for two or three nights and then went to Istanbul by bus. He was then given money by a Saudi man, which permitted him to pay for a direct flight to Heathrow on 22nd June 2010.

18. The appellant was interviewed at Coquelles at 00.40 on 23rd June 2010. He said that he was returning from a holiday in Turkey. He said that he had decided to go on the trip eight months ago, as a result of being told about Istanbul by two Turkish men whom he had met at the mosque in Langley Green. He said that he flew to Naples on a Friday at the beginning of June, possibly the 4th. On arrival there, he stayed with his parents for two to three days and then took a train to Bari, a ferry to Igoumenitsa, a coach to Thessaloniki and then a bus to Istanbul. He stayed in a hotel for one night and then, for three weeks, with his Turkish friends. On 22nd June 2010, he flew to Paris, where he slept rough overnight and then caught the bus to Coquelles. When the officers pointed out to him that the entry stamp for Turkey was dated 14 June 2010 and the exit stamp 22 June 2010, he said that he was tired and confused. He gave a second account. He stayed with his parents in Naples for a week, then took a train to Bari and the ferry to Igoumenitsa, where he stayed for two days. He then travelled to Corfu and Thessaloniki, staying two days in each place, before taking the bus to Istanbul. When asked why he took this route to Turkey, he said that he had wanted to spend some time with his parents before going on holiday. He made no mention of Smith.

19. In his witness statement of 27 January 2011, the appellant admitted that both versions were false. He explained that the reason for his and Smith's travel was that they had both had arguments with their wives. "We decided to just go together to Naples where I'm from, Ismail wanted to see it, and see what happened". They met in Victoria station and took the train to Dover. From Paris, they took the train to Nice. They then got a train to Milan, on which they showed their passports to Italian border police. From Milan, they went to Naples. "After some time we went on to Turkey". They stayed at a hotel in Istanbul and a second night on benches in a square. While in Istanbul, Smith made enquiries of Imams for a wife. After three or four days, he wanted to go to Iran, to visit a friend with whom he stayed in touch. He left. The appellant remained in Istanbul and arranged to meet him if he returned at a Mosque. He came back after three or four days. The appellant and Smith were given money by a Saudi to enable them to get back to the United Kingdom. He flew to Paris and then took the bus to Coquelles. He admits that he shaved his beard, to avoid unwanted hostile attention. He said that he did not intend to say any more about the trip or about Smith but had given a true account of what happened.

20. The Security Service assess that Italian border police examined the passports of the appellant and Smith on 10 June 2010. We are satisfied that their assessment is correct. It, plus the stamps on the passports of both the appellant and Smith provide firm reference points for their travel, at least between 10th and 22nd/23rd June 2010.

21. When this assessment was opened during the hearing, Mr Otty, on the appellant's instructions, corrected his account of the trip. It was that his (Mr Otty's) characterisation of the trip as the aimless and haphazard wanderings of two young men was correct. He did not explain what had happened between 4th and 10th June, but said that they spent the night of 10th/11th June in Milan and then took the train to Naples, arriving in the afternoon. On 12th June, they departed for Bari and caught the overnight ferry to Igoumenitsa or Corfu. On 13th June, they travelled to Thessaloniki and on 14th June travelled by bus to Ipsala and Istanbul. This itinerary would certainly have been achievable, but could not be described as aimless or haphazard wandering.

22. It is a striking feature of all of the appellant's versions of the journey until the last that he spent a significant period of time in Naples: two or three days in the first version, one week in the second and "some time" in the third, his witness statement: "Ismail wanted to see it, and see what happened". This cannot have been true. The third statement also contains false evidence about what happened in Istanbul – that they stayed there for five or six days, after which Smith set off for Iran. This lie suggests that, when made, the appellant had either not read or had forgotten the details of the interview with Smith on 22nd June 2010, which had already been disclosed to him as an annex to the statement opposing bail.

23. There was no reason for either Smith or the appellant to lie about their journey, if its purposes were entirely innocent, on their return to the United Kingdom. Still less, would the appellant have any reason to lie about an innocent journey in his witness statement. Yet he has done so and, further,

declined to say anything more about the journey or Smith, By itself, this suggests that both had, and he has, something to hide about the purpose of the trip. On the open and closed material which we have considered, we are satisfied on balance of probabilities that the appellant and Smith travelled purposefully and by a direct route from London to the Turkish/Iranian border, without unnecessary delay on the way. The closed material which we have considered, together with the established facts about the timetable of the journey and the lies told by both Smith and the appellant satisfy us on balance of probabilities that their joint purpose was to travel, via Iran, to Afghanistan or North West Pakistan for a terrorism-related purpose. We accept that both men had trouble at home and that in the case of the appellant, this decision to travel with Smith was not formed long before they left the United Kingdom. The significance of the trip is that it demonstrates that, despite failed attempts to travel to a camp in the FATA in 2008 and 2009, the measures taken in respect of Khan and Ali in March 2009 and the arrest of Ali on 24 September 2009, they remained determined to attempt to reach Afghanistan and/or Pakistan for a terrorism-related purpose.

The remaining allegations

24. The open material supporting the remaining allegations adds nothing material to the conclusions reached above. Continuing association with the individuals who attended the TEFL course with him is of greater significance than the course itself. The views which he has expressed openly are not extreme although, his refusal to accept that the atrocities committed on 11th September 2001 and 7th July 2005 were anything to do with Muslims suggests a wish to avoid expressing his real views about them. His purchase and use of a cross bow and interest expressed in buying stun grenades are incapable of supporting an inference that he is interested in acquiring, making or handling lethal weapons of a kind used in known terrorist activities (so far). In any event, he has already received weapons training during compulsory military service in the Italian army.

Imperative grounds?

25. The public security of the United Kingdom is an interest of the highest importance. A real threat to it, whether within or outside the United Kingdom, posed by an individual, whether by himself or in conjunction with others, can amount to imperative grounds justifying his expulsion. In this case, the threat posed by the appellant is that he will gain access to training facilities in the FATA which will equip him to undertake attacks on coalition forces in Afghanistan or – though this is far less likely – on members of the public in the United Kingdom. An individual examination of the specific case of the appellant, which we have undertaken in the open and closed judgments, satisfies us that the appellant has shown, over a considerable period, a determined wish to receive such training. Its only purpose is to equip those who receive it to undertake terrorist attacks. Expulsion of such an individual is, in principle, a permissible measure under EU and domestic law.

26. Mr Otty submits that expulsion is incapable of achieving, or at least unlikely to achieve, the stated aim. He also submits that an alternative measure – the

imposition of a control order – will be less intrusive and more effective. We do not accept either of these propositions. As witness ZY explained (more fully in the closed session), expulsion will sever, or at least make more difficult and remote, the connection between the appellant and his associates in and around Crawley. The appellant has so far failed in his attempts to reach the FATA. The more organised attempt – that in 2009 – was disrupted only by the confiscation of Ali's passport by his mother and the disruption, and disruptive measures, which followed. The attempt in 2010 – impromptu on the part of the appellant – failed because of lack of prior planning and/or the assistance of a UK network. The difficulties facing the appellant will be all the greater if he is not in the United Kingdom. A control order will not provide as effective a means of control, for a number of reasons. First, it would initially only last for a year and, even if renewed, would be unlikely to be renewed more than once. The removal and exclusion of the appellant from the United Kingdom would be likely to be sustainable until he had provided convincing evidence of a change in outlook. Secondly, even if the appellant were to be relocated away from Crawley – a step likely to provoke determined opposition from him and, possibly, his wife (on the ground that, if she were to accompany him, she would be cut off from her blood relatives in Crawley), he would still find it straightforward to make face to face contact with his UK associates. Thirdly, and in addition, he might abscond. The absconding of two men associated with the group who went to Pakistan in 2008, the Adam brothers, provides a cautionary example of limitations on the effectiveness of control orders on those determined to travel to the FATA for terrorism-related purposes. Further, we are not convinced that the imposition of a control order is a less severe or intrusive measure than expulsion to Italy. It would be likely to involve, initially at least, relocation to an unfamiliar town, the imposition of a lengthy curfew and restrictions upon access to communications equipment, the internet and employment. By contrast, as far as we know, and subject to complying with Italian law, the appellant would enjoy unfettered liberty in Italy. For those reasons, we are satisfied that the principle of proportionality, however expressed, which we must apply is satisfied on the facts of this case. The protection of public security is sufficiently important to justify expulsion, Expulsion is a measure rationally designed to meet that objective. It is unlikely to be achieved by any less intrusive measure.

27. The impact of the decision upon the appellant's wife and children must be considered. Their position, in particular hers, is unenviable. Well before he was detained, the appellant had abandoned any attempt to provide for them materially. When he ceased to be employed, they lost their home and principal source of income. They were forced to share cramped accommodation with his brother in law when they lost their temporary local authority accommodation. Meanwhile, he made two visits on his own to Italy, in April and August 2010 and one, with Smith, to Turkey in June 2010. Although he declares his love for his wife, he has sought a second "wife" (UK law would not recognise a second marriage nor, we believe, would Italian law). He has done so, even though he knows it causes her great unhappiness. He is not a foolish and immature young man. He is 34 and has burdensome family responsibilities, which he has shirked. The intolerable circumstances in which his family now find themselves are his responsibility. It is far from clear where their best

28. For those reasons, we are satisfied that the imperative grounds of public security which we have identified justify the decision to expel the appellant. For the reasons given, this appeal is dismissed.