Appeal No: SC/34/2005
Date of Hearing: 20-23 March 2007
Date of Judgment: 14 May 2007

SPECIAL IMMIGRATION APPEALS COMMISSSION

Before:

THE HONOURABLE MR JUSTICE MITTING
SENIOR IMMIGRATION JUDGE PERKINS
MR B A BLACKWELL

"W"

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellant: Mr M Oliver and Mr S Purdasy
Instructed by J D Spicer & Co

For the Respondent: Mr J Glasson
Instructed by the Treasury Solicitor for the Secretary of State

Special Advocate: Mr M Supperstone QC and Clare Brown
Instructed by the Special Advocates Support Office

OPEN JUDGMENT

National Security

1. W, a 35 year old man, is a citizen of Algeria of Berber ethnicity. He claimed asylum in the United Kingdom on 15th September 1999. He claims – and there is no evidence to contradict his claim – that he arrived on 8th September 1999. The first detailed written account given to the Secretary of State by W of the circumstances in which he came to leave Algeria is dated 15th April 2003. He has repeated this account in subsequent statements. We deal with their contents below.

2. He was charged with an offence of dishonesty in 2002. He retained the solicitors who act for him in this appeal. They commissioned a psychiatric report from Dr Henry Andrews dated 5th August 2002. Dr Andrews examined W, with the aid of a interpreter, on 27th July 2002. We discuss what he elicited from W below.

3. On 22nd January 2003 W was arrested and, on 28th January, charged with conspiracy to commit a public nuisance. It was alleged that he was a secondary party to the "Ricin" plot. Kamel Bourgass and Mohammed Meguerba, both Algerian citizens, were alleged to be the ringleaders and were charged with both conspiracy to murder and conspiracy to commit a public nuisance. Meguerba fled to Algeria. Bourgass and others were tried. Bourgass was convicted of conspiracy to commit a public nuisance on 13th April 2005. The jury were unable to reach a verdict on the charge of conspiracy to murder. The remaining defendants were acquitted. W and others charged as secondary parties to the lesser conspiracy were to be tried subsequently. In the light of the jury's verdicts, the Crown offered no further evidence against them and a verdict of not guilty was entered upon the direction of the judge, Penry-Davey J. Bourgass was sentenced to 17 years imprisonment. His application for leave to appeal against conviction was refused and his appeal against sentence dismissed, by the Court of Appeal in December 2006.

4. Bourgass's conviction and the substantial sentence which he received demonstrate that there was a conspiracy between him and Meguerba to cause a public nuisance in the United Kingdom by causing fear, alarm and disruption by the deployment of Ricin and other poisons.

5. Mr Oliver (for W) does not contend that his acquittal puts an end to any suggestion that he played a knowing part in this conspiracy. He is right not to do so. It has never been the case that an acquittal of a criminal charge is conclusive of innocence of that charge for any purpose other than criminal proceedings upon a charge arising out of the same facts. Even in a criminal case, the facts of cases in which an accused has previously been acquitted may be adduced to prove his guilt of the offence for which he is being tried: R v Z 2000 2AC483 – even if it

shows or tends to show he was in fact guilty of the offence of which he has been acquitted. He may not be prosecuted again for the same offence or for an offence arising out of the same facts but that is all: R v Beedie 1998 QB 356. W's acquittal does not prevent SIAC from examining and making its own findings about the evidence which would have been deployed against him in criminal proceedings.

6. The starting point of the national security case against him is that evidence. On 5th January 2003 police officers searched 352B High Road, Wood Green, London, at which address it was believed that Bourgass was living. Recipes, materials and equipment for the manufacture of Ricin and other poisons were discovered: 3 sets of recipes, on which the fingerprints of Bourgass, Meguerba and others, but not W were found; W's fingerprints were found on 2 blank sheets of paper contained in the same bag as the recipe sheets; castor beans and apple seeds; 2 bottles containing acetone (used in the extraction of poison from the seeds), on one of which was found W's fingerprints and on the other Bourgass's; a coffee mill, which could have been used for the grinding of seeds, on the box containing which the fingerprints of W and Bourgass were found; and other items of equipment which could have been used in the manufacture of poisons, such as digital weighing scales, thermometers, rubber gloves and a pestle and mortar.

7. W denies ever visiting 352B High Road, Wood Green and asserts that his fingerprints on the blank paper, acetone bottle and coffee mill box must have originated from an innocent and accidental contact (paragraphs 15 & 16 of his response to the Secretary of State's national security evidence dated 22nd October 2006).

8. On 8th January 2003 Bourgass fled from London to Bournemouth. On the back of the National Express coach ticket used by him for the journey were a series of telephone numbers, which included 96059093. W's mobile telephone number was 07960590903.

9. In paragraph 46 (10) of W's statement dated 9th November 2005 made in support of his application to SIAC for bail, he asserts that the fact that his mobile telephone number "was found with Bourgass" did not mean that he assisted his escape. He went on to say "it was very important to note that I deny knowing Bourgass personally and question how my number came to be found in Bourgass's possession in the first place". In paragraph 7 of the response dated 22nd October 2006, he stated that he knew a man called Nadhir at the mosque and "learned that Nadhir was Kamel Bourgass from his solicitor". He does not state when that was, but it can safely be inferred that it was, at the latest, during the criminal proceedings – well before his statement of 9th November 2005. In paragraph 17 of his response to the second open statement by the Secretary of State, dated 20th February 2007, he stated "just because I knew Bourgass as Nadhir, this would not mean that I knew him personally in so far as his personal secrets or who his associates were concerned." This change in his evidence about his knowledge of Bourgass is unconvincing.

10. From this evidence, we draw the following conclusions, on balance of probabilities:

    (i) The fingerprints of W Bourgass and Meguerba were on the items identified above.
    (ii) Those and other items found at 352B High Road, Wood Green were used or intended for use in the manufacture of poisons to be deployed in the United Kingdom with a view to causing fear and disruption.
    (iii) W's mobile telephone number was written on the bus ticket used by Bourgass to escape from London.
    (iv) W's denial of knowing Bourgass was false.

    It would have been an unlucky and improbable coincidence for W's fingerprints to be found on 3 separate items connected with the manufacture of poisons in a house which he had never visited if his contact with them was accidental and innocent. It would have been an even unluckier and more improbable coincidence that his telephone number was found on the back of the ticket used by one of the two men undoubtedly guilty of the plot to deploy poisons to escape arrest, if he did not know him "personally". His denial of knowledge of Bourgass cannot have had an innocent explanation. It was a lie told to suggest that the evidence of the fingerprints and telephone number did not incriminate him. We are satisfied that it did; and that, on balance of probabilities, he was knowingly concerned in the Bourgass/Meguerba conspiracy. We have no reason to doubt the assessment of the CPS, the police and the security service that his involvement was secondary.

11. The appellant's account of how and why he came to the United Kingdom is as follows. He completed his National Service in March 1993. In 1998, he was forcibly taken from his home for a further period of National Service. One day, his group of servicemen was ordered into the forest area of Boufarik. They came under fire. Two men were killed next to him. He was also shot, by a bullet which grazed his left knee. Another soldier was then killed. He decided to escape and threw away his weapon. He then hid in the Kabylie Mountain area with his grandmother and eventually made his way to the Port of Algiers, where he boarded a ship for Marseilles. From there, he eventually made his way to the United Kingdom.

12. If those events had occurred as W describes, they would have been shocking and vivid in his memory. When he saw Dr Andrews in July 2002, approximately 3 years later, he made no mention of them. The account recorded by Dr Andrews was as follows:
    "
    (W) says that because the government rules in a harsh manner and the poorer classes and unemployed are prone to being repeatedly arrested, and because he was hit with the butt of a rifle he fled and came to this country in 1999 and is seeking asylum here."
    The purpose for which he was seeing Dr Andrews was to set in context the offending for which he was then being prosecuted. He claimed to

Dr Andrews that he had offended because he was told to do so by a "Djin". Dr Andrews' provisional diagnosis is that he was suffering from psychotic symptoms. It is not credible that, if he had escaped Algeria in the circumstances now claimed, he would not have mentioned them to Dr Andrews. The fact that he did not leads us to disbelieve his account. Our disbelief is supported by the reported absence of any record in Algeria of W's desertion.

13. There is no reason to suggest, let alone find, that he came to the United Kingdom for economic purposes. He appears to have been substantially inactive economically, save for the commission of repeated petty thefts.

14. One of W's brothers, Yamine, was arrested in Italy on 15th November 2005 and charged with terrorist offences, for which he is currently being tried. According to newspaper reports, the evidence against him includes tapped telephone conversations, in which the participants, including him, stated that they were planning a terror attack on a large ship aiming to kill "at least 10,000 people". Italian police said that he and his two associates were suspected of ties with the GSPC.

15. W's brother's claimed activities, together with the facts which we have found about W's involvement in the Bourgass/Meguerba plot and the lack of a credible account for claiming asylum, or economic reason for doing so falsely, satisfies us that W was and remains a risk to national security. Examining the case as a whole against him, as we are required to do, following The Home Secretary v Rehman [2003] 1AC153 168 at paragraph 44, leads us to conclude that he is a danger to national security.

16. None of the other pieces of evidence on which the Secretary of State relies, individually or together, adds anything material to that considered above. Multiple aliases, two false passports and three bank accounts in false names are as consistent with his activities as a petty thief, as with facilitating terrorism. Association with other fringe participants in the Ricin plot, before and after it (and his meeting with P, in breach of his bail conditions) adds nothing to his proven associaton with Bourgass. We discount his own denials, for the reasons stated; and derive no comfort from the fact (which we accept) that he has persuaded Diana Nelson that he is a harmless individual.

17. Save for two aspects of the national security case, the closed material adds nothing to it. The closed judgment deals only with those aspects.

Safety on return

18. On 24th September 2006 the Algerian Ministry of Justice gave the following written assurance to the British Government in relation to "W":

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

1. The right to appear before a court so that the court may decide on the legality of his arrest or detention and the right to be informed of the charges against him and to be assisted by a lawyer of his choice and to have immediate contact with that lawyer.
2. He may receive free legal aid.
3. He may only be placed in custody by the competent judicial authorities.
4. If he is the subject of criminal proceedings, he will be presumed to be innocent until his guilt has been established by due legal process.
5. The right to notify a relative of his arrest or detention.
6. The right to be examined by a doctor.
7. His human dignity will be respected under all circumstances."

19. Three divisions of SIAC have now considered the state of affairs in Algeria and reliability of assurances given by the Algerian State. We adopt them and do not intend to repeat them. In summary they are that: Algeria is making a sincere, broadly supported and generally successful attempt to transform itself from a war-torn authoritarian state to a normally functioning civil society; solemn diplomatic assurances given by the Algerian State to the British Government about individual deportees are reliable and can safely be accepted (see "Y", "BB" and "G"). In "BB" SIAC formulated yardsticks by which the reliability of assurances should generally be assessed, which were adopted with a qualification which is academic for present purposes in "G". We adopt that approach to the assurances given in respect of "W".

20. Since those appeals were determined, 4 Algerian citizens have withdrawn their appeals to SIAC and have been deported to Algeria: "Q", "K", "H" and "P". Events after their return provide valuable, if disputed, information about both the reliability and the limits of the assurances given in respect of them; and, by extension, in respect of "W". Detailed analysis of, and the conclusions which can be drawn from, those events are set out in the open judgment in the case of "U" at paragraphs 14 to 42. We adopt them and do not propose to repeat them. We share the conclusion that they confirm the reliability of the assurances, in particular that the Algerian State will respect the human dignity of a deportee and his rights under Algerian law; but that it promises no more than that.

21. Mr Layden's view is that W is likely to be treated in the same way as "V" on his return: to be detained for a few days, and then released without charge. Mr Layden's view may well be right, but we cannot exclude the possibility that W will be detained and charged with an offence under Article 87a6 of the Algerian Criminal Code. He is somewhat more at risk of being detained and charged because of the claimed activities of his brother Yamine. If he were to be detained and charged, he would be at risk of being subjected to the criminal procedures analysed in

paragraphs 44 to 68 of "U". Mr Oliver does not suggest that if that were to occur, there would be a flagrant breach of the rights guaranteed by Article 6, such as to put the United Kingdom in breach of its obligations to W under that Article. We are satisfied that it would not, for the reasons set out in "U".

22. Mr Oliver also suggests that W is at risk of being prosecuted for desertion. Our judgment is that the risk is negligible. By a Note Verbale dated 14th March 2007, the Algerian Ministry of Justice stated that enquiries conducted at the military prosecutor's office of the court of Blida (the court with jurisdiction for the area in which W claims to have deserted) showed that this person does not appear in that court's criminal case records. There is no evidence, and no reason to believe, that the Algerian authorities would prosecute him for an offence of which they have no record. If they were to do so, he would be prosecuted before a military tribunal. Mr Oliver does not suggest that its procedures would give rise to a flagrant breach of rights guarantee by Article 6.

23. Mr Oliver submits that 2 risks cannot be excluded if W is returned to Algeria:
    1. That he will be subjected to the death penalty.
    2. That he may be extradited to Italy, in connection with the proceedings against his brother Yamine.

    The submissions can be dealt with shortly. The only offences for which he could be prosecuted (under Article 87a6 and for desertion within Algeria do not carry the death penalty. The maximum sentences are, respectively, 20 years imprisonment and 10 years imprisonment (see the note Verbale dated 6th March 2007). Extradition of an Algerian National is prohibited by Article 698 of the Algerian Code of Criminal Proceedure. There is no evidence that the Algerian State has ever infringed this provision of its law and no reason to believe that it would do so in the case of W.

24. In the note Verbale dated 24th September 2006, the Algerian Ministry of Justice stated, erroneously, that "the information obtained concerning this person shows that he was brought before the British judicial authorities on 29/01/2003 for handling a chemical weapon with intent to poison units of the British Army." No such accusation has ever been made against W. The British Government has done its best to emphasise the error to the Algerian Ministry of Justice: see, most recently, the Note Verbale dated 4th March 2007. There is no reason to believe that the Algerian authorities will act, to W's detriment, on this erroneous information.

25. We have not specifically addressed the main thrust of Mr Oliver's submissions on safety on return: that the "deportation with assurances" programme is politically driven, regardless of the advice of permanent officials and the interests of individual deportees that it affects; and that conditions in Algeria are not such that assurances against the use of torture can safely be accepted. These submissions have been

exhaustively considered in Y, BB and G. We intend no discourtesy to Mr Oliver in referring to the detailed findings of SIAC in those cases in response to them.

26. For those reasons we are satisfied that the United Kingdom will not act in breach of W's rights under Articles 3, 5 and 6 ECHR if it deports him to Algeria, and this appeal is dismissed.

MR JUSTICE MITTING

ADDENDUM

On 2nd May 2007 SIAC received, by fax, a letter from Sihali's solicitors Tyndallwoods, enclosing a witness statement by Natalia Garcia of the same date, which exhibited 2 letters said to be in the handwriting of Q, a former client of Ms Garcia. All advocates for the 4 appellants in whose cases judgment has been handed down today submit that SIAC should take the letters into account in reaching its judgments.

The Secretary of State also submitted, by letter from the Treasury Solicitor dated 2nd May 2007, further notes of discussions between a British Embassy official and Q's sister Djazia on 23rd April 2007; and between a British Embassy official and Maitre Tahri (one of H's lawyers) on 26th April 2007.
Ms Garcia states that she recognises Q's handwriting and that the 2 letters are from him. We have no reason to doubt that they are.

The first is to Ouseley J and reads:

"Dear Sir Osliy. To SIAC court my name [Q] former long lartin detainee I rhite you this wourd to let you no that my life here in Algeria in danger first I was torture betaine humilition in police station.
Second here in Serkadji prison life here like slave. Algerian otority thay give a garanty but thay brook the agreement. So Mr judj Osly stop deportation to Algeria in end I wont let you no that eneythink happen to ..... here in Algeria Britich otority responssable for life
Thank you
Detainee Q."

The second letter is to Miss Garcia and adds nothing relevant to the first.
The first letter is dated 10th April 2007. Miss Garcia states that both letters were received by fax at her office on 23rd April 2007 at about 12.30pm from Q's sister. This is consistent with the fax imprints on each page which bear that date and are timed between 12.11pm and 12.17pm. Miss Garcia does not explain why it took until 2nd May 2007 to refer them to SIAC. She states that she is not at liberty to provide full details of the provenance of the first letter because of "serious concerns for the safety of third parties".

She also refers to statements made to her by Djazia about the circumstances in which Q is now being held in Serkadji prison: in a dormitory with 25 others; and that he is required to take a sleeping pill each night, against his will. This information is entirely consistent with what the British Embassy official records Djazia as having told him on 23rd April 2007. It does not alter the view which all four panels of SIAC which have considered these cases have formed about the "prison conditions" issue under Article 3.

Q's claim in the first letter can be broken down into 3:

1. He has been tortured, beaten and humiliated "in police station" (which we take to be a reference to DRS custody in Antar barracks).
2. His life in Serkadji prison is like that of a slave.
3. The Algerian authorities have broken a guarantee in respect of him.

(i) is inconsistent with the description of him by one of his lawyers, Mrs Daoudi, as being "generally in decent health"; with her statement that what he complained of was hearing the sounds of apparent ill-treatment of others, not harm to himself; with Djazia's statement to a British Embassy official on 12th March 2007, that following a family visit on 10th March 2007, he was well, but not happy about his detention; and with her statement to a British Embassy official on 23rd April 2007 that he had not been mistreated (otherwise than being removed to a dormitory in Serkadji prison and made to take sleeping pills at night). This allegation is also entirely unspecific and made very late in the day. While the possibility that he was ill-treated cannot wholly be dismissed it is no more than a mere possibility. This new allegation does not persuade us that there exists a real possibility that any of the 4 appellants with whose cases we are concerned will be tortured or ill-treated on return. Put in the language used by the Strasburg Court, this material does not give rise to substantial grounds for believing that there is a real risk that they would be subjected to treatment which would infringe Article 3 if it were to occur in a Convention state.

(ii) Adds nothing to the "prison conditions" issue already considered.

(iii) Cannot refer to any assurance given to the British Government in relation to Q, because none was given. It must refer to the promises said to have been given at the Algerian Embassy orally to individuals. We have already dealt with this issue in the judgment in U. This adds nothing to it.