Appeal No: SC/68/2008

Hearing Date: 1st, 2nd & 3rd December 2009
Date of Judgment: 21st December 2009

SPECIAL IMMIGRATION APPEALS COMMISSION

OPEN JUDGMENT

Before:

THE HONOURABLE MR JUSTICE MITTING (Chairman)
SENIOR IMMIGRATION JUDGE K ESHUN
MR GLYN-JONES

(GT)

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Respondent: Mr A O'Connor
Instructed by the Treasury Solicitor for the Secretary of State

Special Advocate: Mr M Supperstone & Ms M Plimmer
Instructed by the Special Advocates Support Office

For the Appellant: Mr E Grieves
Instructed by Tyndallwoods Solicitors

The Hon. Mr Justice Mitting :

1. GT is a 38-year-old Libyan national. He married his 35-year-old wife, BM, on 20 December 2003. She was born of Libyan parents, in England, before the enactment of the British Nationality Act 1981, and so acquired British citizenship at birth. She is also a citizen of Libya. They have two children, a son AM, now aged four and a daughter, B, now aged one. Both were born in England and are, by virtue of section 1(1)(a) of the 1981 Act, British citizens. BM came to England on 14 February 2005, to stay with her aunt in Manchester. After an initial refusal, GT obtained a visitor's visa and flew from Tripoli to the United Kingdom on 19 October 2005. An extension was granted to April 2006. As the period of grace permitted by his visa was about to expire, he left the United Kingdom, for Tripoli, on 9 July 2006. By a letter dated 24 August 2006, GT was notified that on 23 August 2006 the Home Secretary had personally directed that he should be excluded from the United Kingdom because he considered that his presence in the United Kingdom would not be conducive to the public good for reasons of national security. That was not an appealable decision. Subsequently, GT applied for leave to enter, but was refused on 13 January 2008, under paragraph 320(6) of the Immigration Rules, on the ground that the Secretary of State had personally directed that his exclusion from the United Kingdom was conducive to the public good. He appealed against that decision to the AIT. By a letter dated 19 August 2008, the Secretary of State certified the decision to refuse entry clearance under section 97(3) and section 98(2)(b) of the Nationality, Immigration and Asylum Act 2002. The first certificate transferred jurisdiction to SIAC. The second, it is now common ground, was of no effect. It is now common ground that the Commission should treat the decision of the Secretary of State and of the entry clearance officer as a composite decision and determine GT's appeal against it on the merits. There are two principal issues: was the decision of the Secretary of State that it was conducive to the public good on national security grounds that GT should be excluded from the United Kingdom justified? (and does it remain so); if so, did the decision breach the right of GT and his family to respect for their family and private rights under Article 8 ECHR?

2. In his opening skeleton argument, Mr Grieves foreshadowed contentions that:

   i) The common law imported a minimum standard of fairness and, so, of disclosure to an appellant, in a SIAC appeal against a refusal of leave to enter similar to those required under Article 6, as set out in ***SSHD v AF*** [2009] UKHL 28;

   ii) Article 8 has within it procedural protections to similar effect.

   Mr Grieves recognises that SIAC has, in reasoned decisions, rejected both propositions (*OO*, 27 June 2008, *ZZ*, 30 July 2008 and *IR*, 30 October 2009) and will apply its settled analysis of procedural law to this case. We have done so and do not accept Mr Grieves's propositions. In those circumstances, he accepts that we need not repeat SIAC's earlier reasoning. He nevertheless invites us to state whether, if *AF* standards, or something approaching them, apply, GT has received the minimum standard of procedural fairness to which he would be entitled. He has not done so, because he has not been able to give instructions to the special advocates about the essential features of the Secretary of State's case, which, save for the most general words, is entirely contained in the closed case. He also invites us to state whether, under Rule 3 of the SIAC Procedure Rules, the Commission has satisfied itself that the material available to it enables it properly to determine the proceedings. We are satisfied that we have had the material which enables us to determine the proceedings properly.

3. For reasons which are entirely set out in the closed judgment, we are satisfied that the decision to exclude GT from the United Kingdom, by refusing him leave to enter, was fully justified when made, and remains so.

4. In the light of that conclusion, which, at his invitation, we expressed orally at the conclusion of the closed case, Mr Grieves does not submit that it is appropriate for us to go on to consider Article 8. He accepts that, if our decision on the national security issue is procedurally and legally unimpeachable, GT cannot succeed on an appeal on Article 8 grounds. If our decision on the first issue is overset, we will have to consider the whole case afresh.

5. For reasons which are principally set out in the closed judgment, this appeal is dismissed.