

SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,  
Brems Buildings  
London

Tuesday, 16<sup>th</sup> December 2014

BEFORE:

THE HONOURABLE MR JUSTICE IRWIN  
UPPER TRIBUNAL JUDGE KING  
MR WILIAM FELL

BETWEEN:

BB, PP, QJ AND Y

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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MISS AMANDA WESTON (instructed by Birnberg Peirce & Partners) appeared on behalf of the appellants.

MR S KOVATS QC (instructed by the Treasury Solicitor) appeared on behalf of the Respondent.

MR M GOUDIE (instructed by the Special Advocates' Support Office) appeared as Special Advocate.

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RULING

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MR JUSTICE IRWIN:

1. This is an application by the Secretary of State to substitute GPS tags, which are, in truth, a combination of GPS tags and RF tags, for the existing radio frequency or RF tags worn by all four of the relevant appellants. The GPS component, as the evidence before us makes admirably clear, permits the Secretary of State, or would permit the Secretary of State, to track the whereabouts of the given appellant and the radio frequency function operates to ensure that the curfew within the residence is maintained.
2. The appellants all object to the application for reasons which we will touch on. The terms of bail are for the Tribunal. They are capable of being intrusive. Such terms must be necessary and proportionate.
3. Miss Weston, for the appellants, quite rightly has referred us to a number of relevant authorities. I essentially name them, *CD -v- The Secretary of State for the Home Department* [2011] EWHC 1273 Admin., *Abu Rideh -v- The Secretary of State* [2008] EWHC 2019 Admin., *CF -v- The Secretary of State* [2013] EWHC 843 Admin., in the course of which Wilkie J applied the principles set out in *de Freitas -v- The Permanent Secretary for the Ministry of Agriculture, Housing and Lands* [1999] 1 AC 69. Interestingly, that last case predated the commencement of the Human Rights Act. The principles are identical, both before and after the Act was commenced, although rather different language was used.

4. We also bear in mind the degree of deference which authorities suggest must be paid to the views of the Secretary of State as to what is necessary and appropriate for the control of national security. We have been careful to do so in our discussions before, during and after the hearing.
5. We are grateful to both parties for covering the essentials. They were, indeed, identified by the Commission in the letter of 3<sup>rd</sup> April: the differential size and appearance of the tags, the charging process and the time involved - and that issue has been elaborated to incorporate the concern that there might be inadvertent breach arising - any risk of failure and, more critically, the security gain on the GPS tag.
6. The opposition from the appellants (respondents to this application) can be summarised, in so far as they are common, as follows. The combination tags are larger and more cumbersome and more evident. Whilst RF tags of the existing kind may be evident when you are swimming, the new tags will be much more evident in other activities, such as going to the gymnasium, socially and when in prayer at the mosque. Whilst the smaller tags are capable of fairly effective concealment in all those circumstances, the new tags will be much less readily concealed. The appellants also, in their evidence, have described how some people have already observed the existing tags and in one or two instances quite significant episodes have emerged for the families - children in particular - as a result.
7. There is a real concern advanced by the appellants about charging. The devices require to be charged for about an hour and a half a day, either by a conventional chargers, which requires the wearer of the tag to remain within three metres of a socket for that period, or a

combination of periods, leading to an hour and a half, to charge. Alternatively, there can be mobile chargers which can be charged up and then used attached to the tag so as to charge the tag.

8. Important background to these applications is the very long period over which the appellants have been subject to SIAC bail conditions and the degree of compliance which they have shown over that period. In respect of two of these appellants, there has been very good compliance indeed, that is QJ and PP; Y has been slightly less compliant; and with BB there have been some niggles, but mostly minor. We have indicated the broad run of the points advanced.
9. There is a different emphasis for each appellant and we do not disregard that, but we have come to the same conclusion in respect of all of them and so I hope we will be forgiven for not reciting every nuance in respect of each.
10. We have considered carefully whether there is a necessity and the security gain sufficient to justify the change measured against the stability of the existing situation. Anything we say in relation to these appellants is irrelevant, for reasons which will be clear, in respect of any fresh appellant or any fresh party to a statutory review before SIAC. The conclusion we reach today is also irrelevant if more acute security concerns arise in respect of any of these appellants. We have taken very seriously the submission made by Miss Weston that there is a risk of disrupting what is, perhaps, an uncomfortable stability with these appellants, but, nevertheless, has been broadly stable. We think that, for that reason calibrated against the track record here and the limited sense in which there is any

additional necessity for security against that background, that the balance favours the status quo and, therefore, the application to bring in the new tags is refused in each case.

11. We wish to pay clear tribute to the evidence given by Mr. Fearnley, which was careful, clear, balanced and transparently straightforward. We thank him for that.

12. I should add that it may be helpful, although this is an open ruling and in an interlocutory matter, that the evidence from Mr. Fearnley may well be of help in future, so we will ask that a transcript of this ruling be made and a transcript of his evidence.

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