

“Terrorism” case unravels further

Australian judge overturns government cancellation of Dr Haneef’s visa

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24 August 2007

The Howard government suffered another significant setback on Tuesday when a Federal Court judge declared that Immigration Minister Kevin Andrews had unlawfully cancelled Dr Mohamed Haneef’s visa.

Andrews revoked the Indian Muslim doctor’s visa on July 16 in an attempt to block his release on bail by a Queensland magistrate. Haneef had been charged with the terrorism offence of “recklessly” providing resources to a terrorist organisation, which has since been dropped by the Commonwealth Director of Public Prosecutions (DPP).

The extraordinary overturning of a court bail ruling by a government minister was part of a sustained effort by the Howard government to vilify an innocent man—and jail him for up to 15 years—as part of its campaign to whip up a new terrorist “scare” in the lead up to the federal elections. Just like during the 2001 election campaign, the government seized upon an overseas terrorist attack—the failed bombings in London and Glasgow in late June—to beef up its “war on terror” at home.

Haneef was initially arrested on July 2, and locked away in solitary confinement for nearly two weeks without charge. At the same time, the media carried sensational claims of a “doctors’ jihad network,” fuelled by malicious government and police leaks, based on unsubstantiated reports that British police suspected that Haneef’s second cousins, Kameel and Sabeel Ahmed, were involved in the London and Glasgow attacks.

Faced with Justice Jeffrey Spender’s verdict that he had wrongly revoked the visa, Andrews rejected calls to apologise and resign, announcing instead that the government would appeal, possibly all the way to the High Court. Backed by Prime Minister John Howard, Andrews smeared Haneef again, claiming that he was even more suspicious of the young man than at the time he took away his visa.

As a result, Haneef will still be denied his visa, pending the appeal, and cannot return to Australia to resume his training as a medical registrar at the Gold Coast Hospital. Effectively snubbing his nose at the courts for a second time, Andrews declared that even if the government lost the appeal, it could simply revoke Haneef’s visa again.

On Wednesday, Haneef’s lawyers struck back by releasing the transcript of a marathon second police interview with their client, conducted on July 13, just before he was charged. The full

transcript exposes Andrews’s earlier release of highly-selective, misleading and mistranslated phrases from the interview to claim that Haneef’s brother Shoaib urged him to flee Australia after the Glasgow explosion.

The 378-page transcript shows that well before his on-line chat room conversation with Shoaib, and before seeking to fly back to India to see his ill wife and new-born daughter, Haneef had already tried to contact British police several times, had made all his travel arrangements and had obtained leave from his job at Gold Coast Hospital.

Whatever the ultimate outcome of the legal appeal, which could take more than a year, Justice Spender’s decision, followed by the release of the embarrassing police transcript, means that the government will have considerable difficulty burying the Haneef affair in the period prior to the federal elections, due before the end of the year.

The collapse of the case against the young man, culminating in the withdrawal of the “terrorism” charge, was already a debacle for the government. In the eyes of ordinary people, the Haneef case has crystallised their growing concern about the police-state measures introduced since 2002 in the name of protecting them from terrorists.

The young doctor was incarcerated without charge, then ordered into immigration detention to thwart a bail ruling—all on the basis of what the police and the government later claimed were “mistakes”. These “mistakes” included the false and still-unexplained allegation that Haneef’s former mobile phone SIM card was found in the jeep that exploded at Glasgow airport on June 30.

The judge ruled that Andrews applied an invalid test in revoking Haneef’s visa on “character” grounds. Spender said the minister had interpreted the word “association” in the Migration Act so widely that “completely innocent” people could be stripped of visas simply because they had a relative, friend or even lawyer whom police suspected of criminal conduct.

Spender observed that Andrews applied a “guilt by association” test that anyone, from Galileo Galilei to Mahatma Gandhi and Nelson Mandela, would have failed. While hearing the case, the judge said he would have failed the character test himself, together with everyone in Australia who descended from the early convict settlers.

While calls have been made for Andrews to resign, Howard's backing for his minister confirms that the visa decision was not an individual one. Howard's inner cabal, the cabinet National Security Committee, discussed his course of action, and the immigration minister acted in tandem with Attorney-General Philip Ruddock, who issued a Criminal Justice Certificate to keep Haneef detained while awaiting trial on the terrorism charge.

To justify his action, Andrews invoked sweeping powers under the Migration Act to cancel visas, declaring he "reasonably suspected" Haneef had an "association" with people whom Andrews "reasonably suspected" had been involved in terrorism, that is, Haneef's cousins.

However, the visa decision backfired. Broad layers of the population, as well as many in the legal profession, expressed shock and outrage at the use of executive power to block a court order. Australian Bar Association president Stephen Estcourt condemned it as a "threat to the rule of law".

To some extent, Justice Spender echoed those concerns in his judgment. It was prefaced by a lengthy discussion of the constitutionally-entrenched duty of courts "to protect persons against any violation of a law" and "restrain a Minister ... from exceeding his or her power". He quoted John Locke's statement, in his 1690 *Second Treatise of Government*, that "wherever law ends, tyranny begins".

Citing an American author, Spender also observed that "virtually every significant security initiative implicating civil liberties—including penalising speech, ethnic profiling, guilt by association, the use of administrative measures to avoid the safeguards of the criminal process, and preventative detention—has originated in a measure targeted at noncitizens."

Spender denied there was a "war" between the executive and the judiciary, but added: "There is no room for the view ... that the executive should have exclusive responsibility over all matters involving national security ... it is for the judicial arm of government to ensure that ministerial or other official action is lawful".

Spender conceded that Andrews could have made a valid decision if he had relied upon the basis that the doctor had been named as a "person of interest" by the British Metropolitan Police's counter-terrorism unit, and been charged with a terrorist offence. The judge observed, however, that the circumstances had since changed with the dropping of the charge.

Just hours before Spender handed down his ruling, the police allegations against Haneef crumbled further.

Anonymous "legal sources" in Britain confirmed that Sabeel Ahmed, whom Haneef had given his nearly-expired SIM card in 2006, did not know about the London and Glasgow attacks in advance. The other cousin, Kabeel Ahmed, who drove the jeep into Glasgow airport and later died from his burns, had sent Sabeel an email two hours before the attack, saying his brother would be shocked to read of his involvement in terrorism. The "sources" belatedly revealed that Sabeel did not read the email until 90 minutes after the attack occurred.

Justice Spender rejected several other arguments mounted by Haneef's lawyers, including that Andrews had revoked the visa for an "improper purpose"—that is, for the purpose of keeping

Haneef detained by gazumping the bail ruling. Despite noting that the visa was cancelled just two hours or so after the bail verdict, the judge said this aspect of the case had not been proven.

To come to that conclusion, Spender declined to draw any adverse implication from the fact that Andrews refused to appear in court to be questioned about his motives. Nevertheless, Spender was critical of the manner in which Andrews sought to justify his visa decision to the media by selectively releasing only part of the second police record of interview with Haneef, and then making it impossible for his actions to be challenged in court.

"The Minister is, in a sense, presenting one case in the public arena, a case the accuracy of which cannot be challenged in any meaningful way, and a smaller and not the same case in the Court, in a way which does not permit explanation or challenge by way of cross-examination," the judge said.

Although Spender did not say so, this methodology—feeding prejudicial material to the media and preventing court scrutiny—has been the government's *modus operandi* in all its terrorist prosecutions since 2002, only one of which has so far led to a jury conviction.

Haneef's family welcomed Justice Spender's ruling, saying it would help to clear the doctor's name. In Bangalore, India, Haneef's cousin Imran Siddiqui said the family was pleased, but it was "too early to celebrate". "We would have been happier if Andrews had taken everything into consideration—the fact that all charges against Haneef were dropped and that even the Director of Public Prosecutions (DPP) felt there was no case against him, and now this verdict—and just decided to give his visa back."

Haneef's solicitor, Peter Russo, said: "I would hope the Minister will accept the Court's decision with good grace and clear the way for Dr Haneef to return to Australia to complete his medical work and specialist studies."

The government soon dashed these hopes, with Andrews insisting that he had cancelled the visa "for the national security of Australians".

The Labor Party, which has solidarised with the government throughout its persecution of Haneef, again refused to criticise the government. Labor's immigration spokesman, Tony Burke, reiterated his party's call for a judicial inquiry into the Haneef affair, in order to "preserve public confidence" in the terrorism and immigration laws.

Labor's record on Haneef demonstrates that a Labor government would be no less willing than the Howard government to utilise the anti-democratic anti-terrorism laws—which allow for detention without charge, the banning of organisations by executive order, semi-secret trials, lengthy jail terms for "praising" terrorism and a vast array of unprecedented police and intelligence agency powers—to suppress political opposition and social unrest.



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