

New Zealand: Algerian asylum seeker wins appeal over security risk status

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16 October 2007

In a significant blow to the New Zealand Labour government and the country's Security Intelligence Service (SIS), Algerian asylum seeker Ahmed Zaoui last month won his appeal against an SIS ruling that he was a security risk and should be deported as a suspected terrorist. In a sudden U-turn, SIS director Warren Tucker announced on September 13 that the security agency had dropped its nearly five-year opposition to Zaoui's claim for asylum.

The ruling resulted from an appeal lodged by Zaoui's lawyers against the SIS's "security risk" certificate. The appeal, itself a highly secretive process held behind closed doors, involved a review of classified top-secret SIS files that Zaoui was not allowed to see. Conducted over a four-week period by the agency's director, it was the final legal step available to Zaoui before the immigration minister ruled on his deportation.

This is the first time a security risk certificate has been challenged. The fact that the SIS was forced to lift the certificate after more than four years of legal wrangling underlines the bogus nature of the US-led "war on terror" to which the New Zealand government subscribes. While feigning distance from the Bush White House over the past seven years, Labour has adjusted New Zealand's immigration and terrorism laws in line with sweeping US attacks on fundamental democratic rights.

Zaoui, a former MP for the Islamist Front Islamique du Salut (FIS) in the Algerian parliament, arrived in Auckland in December 2002 on a false passport and claimed asylum. He was jailed without charge and spent 240 days in solitary confinement. Authorities persistently claimed he was a suspected terrorist, despite his being declared a genuine refugee by the Refugee Status Appeals Authority (RSAA).

In reaching its conclusion, the RSAA was scathing of the SIS, saying it had relied on uncorroborated Internet news stories, many of which included disinformation

spread by the Algerian military regime. The RSAA granted Zaoui refugee status on the grounds that if he were sent back to Algeria, he would almost certainly be imprisoned, tortured and possibly executed.

The government refused to act on the RSAA report. Instead it backed the SIS, which claimed to have evidence not available to the RSAA that justified the security certificate. Both Prime Minister Helen Clark and then Immigration Minister Lianne Dalziel endorsed the SIS's efforts to keep the evidence secret, saying that to release it, or even a summary of its contents, would jeopardise New Zealand's working relationships with overseas security services. According to Dalziel, if such classified security information were not treated confidentially, "we simply won't receive it".

Zaoui fought deportation, spending almost two years in prison waiting for his case to be decided as he sought a review of his security certificate. He was released on bail by the Supreme Court, despite the government's opposition, in December 2004 under the supervision of an Auckland religious order.

In the course of the case, the Labour government exploited a series of anti-democratic laws to incarcerate Zaoui, abrogate his basic rights and defend the activities of the SIS and its sister security agencies overseas. Although the law allows for the immigration minister to withdraw the certificate issued against Zaoui at any time, the government steadfastly refused to do so. The immigration minister even refused to issue visas to allow Zaoui's wife and four children to enter the country, leaving them in limbo as refugees in Malaysia.

Zaoui's detention was carried out under a previously unused provision of the Immigration Act, inserted by the last National government as part of a crackdown on refugees and immigrants. At the time, Labour had denounced the amendment as "dangerous", saying people could be detained for lengthy periods without knowing

why.

Amid protests from civil liberties groups and increasing public opposition, Dalziel accused Zaoui's lawyers of being responsible for extending their client's incarceration by pursuing court action. A subsequent police complaints authority report revealed that an undercover agent was put in a cell with him in an attempt to extract information that would incriminate him.

In 2004, Labour unsuccessfully appealed a High Court ruling that Zaoui's human rights be considered as part of the review. The High Court made two findings in Zaoui's favour. One ordered the SIS to present him with a summary of secret evidence used to incarcerate him without trial. The second ruled that Zaoui was entitled to have broad human rights considerations taken into account in the review—particularly in view of his possible fate if deported to Algeria.

Against this background, SIS director Tucker went to considerable lengths in his announcement to exonerate both the agency and the government from any fault. While accepting that Zaoui was “in 2007” not deemed to be a security risk, Tucker declared that when he arrived in 2002 he had been “clearly a risk”. Tucker's predecessor Richard Woods had been forced to resign after making a comment revealing personal partiality over the case.

According to the SIS, three things had now changed. Firstly, Zaoui had during the review process been “more frank” about previously undisclosed information, some of which could have been prejudicial to his case. Secondly, the SIS had received fresh classified information about the nature of Zaoui's association with so-called “terrorist groups” in Algeria. Thirdly, the length of time he had been in New Zealand—and his elevated public profile—mitigated some of the “risks”. Before finally lifting the certificate, the SIS required Zaoui to sign a contract, sworn on the Koran, promising not to engage in any criminal acts or incite violence and to subject himself to constant SIS monitoring.

The fact is, however, that the SIS never produced any evidence linking Zaoui with terrorist activities and he was no more a “risk” when he first entered the country than today. Moreover, Tucker himself revealed that the US and another unnamed country had since granted citizenship to two of Zaoui's associates with links to the same political groups as he. The bogus nature of the SIS claims against Zaoui was underlined by the refusal of the director to answer any questions at his press conference—the first given by any head of the agency.

Prime Minister Clark also refused to be drawn on the

matter, simply saying it was an “independent statutory decision” and that the director had her “full confidence”. Foreign Minister Winston Peters, who leads the right-wing populist NZ First Party, immediately denounced the decision as advertising New Zealand as a “soft touch” for illegal immigrants.

Clark has already moved to ensure that the case is not repeated by legislating harsher measures. She recently put before parliament a major revision to the immigration laws, which would give officials new powers to remove alleged terrorists, including expanded rights to the unchallenged use of secret information.

The new rules will extend the type and sources of classified information that can be used against anyone entering the country. In addition to the SIS, the police and other government agencies will be entitled to pass on classified information about overseas arrivals, which can then be used to order their immediate removal. An applicant will not be allowed to see the information, though a “non-classified” summary will be provided—“where possible”.

Deportation procedures allowing multiple appeals to different bodies will end. Four independent immigration and refugee appeal bodies—the Residence Review Board, the RSAA, the Removal Review Authority and the Deportation Review Tribunal will be replaced by a single body called the Immigration and Protection Tribunal. This is a clear move to do away with the RSAA, which proved to be an unwelcome impediment to the government and the security service in the Zaoui case.

In another development, a parliamentary select committee has decided that reviews of the status of designated “terrorists” should be removed from the High Court. The so-called Terrorism Suppression Amendment Bill, which has cross-party support except for the Greens, proposes that the court's current three-yearly reviews be made the prime minister's sole prerogative. According to the committee, judgments about national security are more properly made by the executive. The bill virtually eliminates any court review of the process by which organisations or individuals become designated as “terrorist”.



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