Neutral Citation Number: [2021] EWCA Civ 17

Case No: C5/2019/1925

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)
(UPPER TRIBUNAL JUDGES OCKLETON, VICE-PRESIDENT, AND O'CONNOR
PA/02636/2015

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/01/2021

Before :

LORD JUSTICE DAVIS
LORD JUSTICE LEWIS
and
LORD JUSTICE NUGEE

- -

Between :

SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Appellant**
- and -	
NF	**Respondent**

- -
- -

Robin Tam QC (instructed by **the Government Legal Department**) for the **Appellant**
Amanda Weston QC and Anthony Vaughan (instructed by **Luqmani Thompson and Partners**) for the **Respondent**

Hearing date: 14 December 2020

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APPROVED JUDGMENT

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 10:30am on Monday, 11 January 2021.

Lord Justice Lewis:

INTRODUCTION

1. This is an appeal against a decision of the Upper Tribunal (Immigration and Asylum Chamber) dated 22 May 2019 dismissing an appeal against a decision of the First-tier Tribunal.

2. In brief, the respondent, NF, is a Kenyan national. He had downloaded a considerable quantity of material which demonstrated an obsessive interest in Islamic extremism and terrorism and sympathies with a terrorist organisation known as Al Shabaab. He had had contact with extremists. The appellant, the Secretary of State for the Home Department, decided that NF been guilty of acts contrary to the purposes and principles of the United Nations within the meaning of article 1F(c) of the Convention relating to the Status of Refugees ("the Refugee Convention") and so was excluded from protection under that Convention. The First-tier Tribunal allowed an appeal against that decision.

3. The Secretary of State submitted that, in allowing the appeal, the First-tier Tribunal erred in law by concluding that NF's actions could not fall within article 1F(c) as NF had not been involved in any completed or attempted terrorist act. Alternatively, the Secretary of State submitted that the only conclusion that the First-tier Tribunal could lawfully have reached on the facts of the present case was that NF was responsible for acts contrary to the purposes and principles of the United Nations. In those circumstances, the Upper Tribunal had erred in dismissing the appeal. NF submitted that the Upper Tribunal was correct to find that the First-tier Tribunal had properly directed itself to the question of whether NF's acts were sufficiently serious to

fall within article 1F(c) and reached a conclusion that it was entitled to reach on the evidence before it.

4. NF has been granted leave to remain in the United Kingdom as the Secretary of State accepts that he cannot at present be returned to Kenya as he would face a real risk there of treatment contrary to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). This case is not, therefore, about whether NF should be deported to Kenya. The Secretary of State has decided that he cannot be deported at present. The only issue in this appeal is whether the Upper Tribunal was correct in holding that there was no error of law in the decision of the First-tier Tribunal.

THE FACTUAL BACKGROUND

5. NF came to the United Kingdom on 6 October 2007 with leave to enter as a student in order to study aerospace engineering. His wife was granted leave to enter as his dependant.

6. Following his return from a visit to Kenya in December 2013, NF was found to be in possession of downloaded material demonstrating an interest in Islamic terrorism. The material included photographs of armed members of a terrorist organisation, Al Shabaab, and speeches by three individuals supporting terrorism. Searches of NF's home revealed large quantities of downloaded material showing an interest in terrorism. In addition, NF had deleted many thousands of files from a computer at his home.

7. NF was charged with three offences of collecting or making a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, contrary to section 58 of the Terrorism Act 2000. Count 1 related to material containing instructions for constructing pressure cooker bombs of a type used by others in bombings in Boston in the United States. Count 2 related to a manual entitled 39 Ways to Serve and Participate in Jihad. Count 3 related to a document entitled physical planning. No information about the third document was provided to this court.

8. On 14 March 2013, NF was convicted on count 2 but acquitted of the other two offences. He was sentenced to nine months' imprisonment and the judge recommended that he be deported. In sentencing NF, the judge observed that the 39 Ways to Serve and Participate in Jihad manual was "best described as a terrorists' manual".

9. NF applied for asylum. On 2 November 2015, the Secretary of State decided that NF was not entitled to protection under the Refugee Convention as he had done acts contrary to the purposes and principles of the United Nations. The decision letter referred to the quantity of material downloaded by NF, its nature which indicated a terrorist mindset on the part of NF, and the fact that NF was believed to have sent significant sums of money in response to requests from extremists for funds. Although the Secretary of State considered that NF was not entitled to protection, she accepted that NF could not be returned to Kenya at that stage as there was a real risk that he would be subjected to treatment there which would be contrary to Article 3 of the

Convention. The Secretary of State, therefore, granted NF discretionary leave to remain in the United Kingdom.

The Appeal to the First-tier Tribunal

10. NF appealed to the First-tier Tribunal against the decision that he was excluded from protection. At paragraph 18 of its judgment, the First-tier Tribunal said:

> "18. In this appeal I must give careful fact specific consideration to the circumstances of [NF]'s conduct to consider whether there are "serious reasons" for considering if [NF] has engaged in acts contrary to the purposes of the United Nations and whether the acts relied upon by the [Secretary of State] had the requisite gravity and international dimension to justify exclusion from Refugee Convention protection".

11. The judgment recorded a summary of the evidence given and found the following facts. First, NF had downloaded considerable quantities of material demonstrating an obsessive interest in Islamic extremism and terrorism. NF was not a credible witness and did not give credible explanations for the possession of this material. The material included all three of the items that had formed the subject matter of the criminal charges. Secondly, NF must have developed sympathies with Al Shabaab, a terrorist group in Kenya. Thirdly, NF had had been in contact with individual extremists. Fourthly, however, there was no evidence that NF had been a member of any terrorist group and no evidence that he had incited others to engage in terrorist acts.

12. The First-tier Tribunal recorded that the Secretary of State relied primarily on the possession of terrorist material and the contacts with extremists as evidencing acts contrary to the purposes of the United Nations. The Secretary of State no longer relied upon the allegation that NF was either sending or

receiving money from extremists. It recorded the submissions made on behalf of NF.

13. At paragraph 59 of its judgment, the First-tier Tribunal said this:

> "59….. The question that I have to ask in this appeal is whether [NF]'s possession of all this material at a time when he must have had the "mindset" of a terrorist or the very least a sympathiser with these groups, when viewed with his association with "known extremists" was enough to constitute "serious reasons" for believing that [NF]'s conduct was capable of constituting an act or acts contrary to the purposes of the UN. This begs the question whether the possession of this material and [NF]'s mindset at the time he collected all of this and his association with "known extremists" and sympathy with Islamic terrorism is enough to meet this test. I have had difficulty, notwithstanding the serious concern anyone would have about someone downloading and storing all of this when in contact with known extremists, in elevating [NF]'s conduct to a level that could properly be called an act or acts contrary to the purposes of the UN. The totality of the evidence before me suggests that [NF] was of a mindset that would have helped explain any act of terrorism committed by [NF] had [NF] so behaved. The problem faced by [the Secretary of State] is that [NF] has not taken this disturbing interest further into the realms of terrorism or incitement to terrorism. If he had then Article 1F(c) would certainly apply."

14. The First-tier Tribunal then discussed the principles to be drawn from relevant case law before setting out the submissions of the Secretary of State. It concluded as follows:

> "65. After considering all of the evidence before me and the authorities above I find myself in agreement with the skeleton argument provided by [counsel for NF] that [the Secretary of State] has failed to establish that the exclusionary criteria above has been met to exclude [NF] from refugee status under Article 1F(c). The evidence relied upon by the [Secretary of State] does not meet the high threshold. Notwithstanding the volume of evidence to show that [NF] possessed what Detective Sergeant Horrocks has described as a "terrorist mindset" there is a paucity of evidence to show that [NF] has actually committed any criminal offence, other than the three counts on the indictment that he was charged with. I have taken as my starting point in this analysis that I am satisfied on the balance of probabilities that [NF] had committed all three of the offences charged at his trial, not just count 2 of the indictment that he was convicted on. But having reached that conclusion and having taken into account the disturbing evidence that [NF] has been in contact with known extremists in the United Kingdom I find that it is not enough to meet the threshold of Article 1F(c) set out above by the Supreme Court in **Al Sirri v SSHD**. Therefore [NF]'s appeal against the Secretary of State's decision that he is

> excluded from protection of the Refugee Convention under Article 1F(c) is allowed……".

The Appeal to the Upper Tribunal

15. The Secretary of State appealed to the Upper Tribunal on the grounds that the First-tier Tribunal failed properly to apply the test for exclusion set out in article 1F(c) of the Refugee Convention and, in particular, the decision of the Supreme Court in *Al-Sirri v Secretary of State for the Home Department (United Nations High Commissioner for Refugees intervening)* [2013] 1 AC 745. In essence, the Secretary of State submitted that the First-tier Tribunal had decided that acts such as those done by NF in this case could not amount to acts contrary to the purposes of the UN and that conclusion was wrong having regard to the decision in *Youssef and N2 v Secretary of State for the Home Department* [2019] Q.B. 445 (which was decided after the decision of the First-tier Tribunal in this case). In that regard, the Secretary of State relied upon the penultimate sentence of paragraph 59 of the First-tier Tribunal judgment, set out at paragraph 13 above, as indicating that the First-tier Tribunal considered that unless the NF had committed acts of terrorism or incited others to do so, the exclusion in article 1F(c) could not be met. The Secretary of State further relied on a remark in paragraph 63 of the First-tier Tribunal's decision referring to the fact that there was no evidence that NF had been involved in terrorism or any terrorist act.

16. The Upper Tribunal concluded that the First-tier Tribunal had not decided that acts falling short of the commission or incitement of a terrorist act could not, as a matter of principle, fall within the scope of article 1F(c) of the Refugee Convention. At paragraph 26 of its judgment, it said that:

> "When the penultimate sentence of paragraph 59 is analysed in the context of that paragraph as a whole it is clear that …it does not bear the interpretation [counsel for the Secretary of State] seeks to place on it. When read in its proper context the sentence is clearly intended to convey no more than a finding which rules out the possibility of the SSHD succeeding on the basis that NF had committed a terrorist act or incited others to do so, because the facts do not establish as much. Contrary to [counsel]'s contentions it does not close the door on the possibility of the SSHD demonstrating the applicability of article 1F(c) on an alternative basis."

17. After considering other paragraphs of the judgment, the Upper Tribunal concluded at paragraph 29 that:

> "When the FtT's decision is read as a whole we are driven to conclude that it did not reach its conclusion on the basis *"that the threshold in Article 1F(c) was not met on the basis that the appellant had not committed or incited acts of terrorism*" but rather it applied its mind to the relevant matters identified in Youssef and Al-Sirri and reached a conclusion on the evidence as a whole which was open to it."

18. The Upper Tribunal went on to state that, if it were wrong in its analysis of the judgment of the First-tier Tribunal, it would have found the asserted error was not one capable of affecting the outcome of the appeal. The Upper Tribunal concluded that, on the basis of the facts as found by the First-tier Tribunal, there was no lawful basis upon which the First-tier Tribunal could have found that the acts fell within article 1F(c). In that regard, it said at paragraph 32 of its judgment that the actions of NF had to be such as to be capable of affecting international peace and security and, in this case, there was no evidence before the First-tier Tribunal to support the contentions that NF's actions were capable of doing so.

19. The Upper Tribunal therefore dismissed the appeal. The Secretary of State appeals against that decision with permission of McCombe LJ.

THE GROUNDS OF APPEAL

20. There are two grounds of appeal, namely that the Upper Tribunal erred in law:

(1) by ruling that NF's conduct in possessing terrorist materials on his computer was incapable of engaging article 1F(c) of the Refugee Convention and its ruling was inconsistent with the decision of the Special Immigration Appeal Commission ("SIAC") and the Court of Appeal in the case of *N2*; and

(2) in concluding that the decision of the First-tier Tribunal in NF's case was consistent with the subsequent decision of the Court of Appeal in *Youssef*.

21. The two grounds are closely linked and it is convenient to deal with them together.

SUBMISSIONS AND DISCUSSION

Submissions

22. Mr Tam QC for the Secretary of State submitted that NF's conduct in the present case involved the acquisition and keeping of significant quantities of material of a terrorist nature. The material involved manuals containing instructions for bomb making, photographs of armed members of a violent terrorist organisation Al Shabaab, speeches, and the manual 39 Ways of Serving and Participating in Jihad which the sentencing judge at trial said was best described as a terrorist manual. There had been contact between NF and extremists in the form of attendance at meetings and the copying of text messages to NF. Mr Tam submitted that NF's conduct involved the acquisition and retention of material of a terrorist nature, demonstrating an interest in, or a

mindset of, violent extremism linked with international terrorist organisations such as Al Qaeda and Al Shabaab.

23. Mr Tam submitted that the First-tier Tribunal had, wrongly, concluded that acts consisting of the acquisition and keeping of such material could not amount to acts contrary to the purposes and principles of the United Nations as they had not involved the commission or incitement of an act of terrorism. That approach was inconsistent with the decision of the Court of Appeal in *Youssef* which had held that it was not necessary for conducts to amount to a crime, or a completed or attempted act of terrorist violence in order to fall within article 1F(c). Moreover, Mr Tam submitted, N2 had committed acts of the same nature or quality as NF in this case, namely the downloading and retention of terrorist material. SIAC had found that such acts were contrary to the purposes of the UN within the meaning of article 1F(c) of the Refugee Convention and that decision had been upheld on appeal. The decision of the First-tier Tribunal that such acts were not capable of falling within article 1F(c) was therefore contrary to the decision of both SIAC and the Court of Appeal. Alternatively, on the facts, in the present case, there was only one conclusion that the tribunal, properly directing itself, could lawfully have reached, namely that the acts of NF did amount to acts contrary to the purposes of the UN and that NF was excluded from protection under the Refugee Convention. The Upper Tribunal was wrong, therefore, to uphold the decision of the First-tier Tribunal.

24. Ms Weston QC, together with Mr Vaughan, for NF submitted that the First-tier Tribunal had not made the error suggested by the Secretary of State. It had

correctly identified the question as being whether NF's conduct was sufficiently grave to amount to acts contrary to the purposes of the UN and reached a conclusion that, on the evidence, it was entitled to reach. NF's case was factually different from that of *N2*.

The Legal Framework

25. In broad terms, the Refugee Convention is intended to provide protection to persons with a well-founded fear of persecution for specified reasons. Article 1A(2) of the Refugee Convention as amended defines a refugee as any person who:

> "… owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country…"

26. Article 1F of the Refugee Convention excludes certain persons from protection. It provides that:

> "F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> (c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

27. That provision is, in turn, reflected in European Union law in Article 12 of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as

refugees or as persons who otherwise need international protection and the content of the protection granted. That provision has been implemented in the United Kingdom by the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, regulation 7 of which provides that:

> "(1) A person is not a refugee, if he falls within the scope of Article 1 D, 1E or 1F of the [Refugee] Convention."

The Relevant Case Law

28. This case concerns whether conduct falls within article 1F(c), acts contrary to the purposes and principles of the United Nations, not articles 1F(a) or (b). The proper approach to the interpretation of article 1F(c) was considered by the Supreme Court in *Al-Sirri*. There, the Secretary of State had decided that the appellant, Mr Al-Sirri, was excluded from refugee status by reason of certain matters including the possession of certain books and videos, and the authorship of the foreword to a book. Two matters were more serious. The first were convictions in absentia in Egypt for conspiracy to kill the then Egyptian Prime Minister and for membership of a terrorist organisation. Those convictions had probably been secured by the use of torture. The second matter was an indictment in the United States accusing Mr Al-Sirri of certain activities there but which could not be proceeded with. Those last two matters were, as it was decided, ones that the tribunal should not have accorded any weight to and the case was remitted to the Upper Tribunal for reconsideration. There was a further issue as to whether Mr Al-Sirri had been complicit in the killing of the then Prime Minister of Afghanistan. The Supreme Court set out the approach to be taken in considering whether acts for which an individual was responsible fell within article 1F(c) of the Refugee Convention.

29. First, the Supreme Court adopted, and quoted from, the approach set out in the Background Note on the Application of the Exclusion Clauses published by the United Nations High Commissioner for Refugees ("UNHCR"). As a matter of general approach to the application of article 1F(c), the Supreme Court held that:

> "16…. The article should be interpreted restrictively and applied with caution. There should be a high threshold "defined in the terms of the gravity of the act in question, the manner in which the act is organised, its international impact and long-term objectives, and the implications for international peace and security". And there should be serious reasons for considering that the person concerned bore individual responsibility for acts of that character".

See the speech of Lady Hale and Lord Dyson, with whom the other members of the Court agreed.

30. That approach involves consideration of whether the acts concerned reach a certain level of seriousness having regard to, amongst other things, the gravity of the acts and the international impact. In addition, the acts must have an international dimension, that is they must be contrary to the purposes and principles of the United Nations. In that regard, as appears from paragraph 40 of judgments in *Al-Sirri*:

> "The test is whether the resulting acts have the requisite serious effect upon international peace, security and peaceful relations between states".

31. In that context, the Supreme Court considered the question of conduct amounting to acts of terrorism and observed that:

> "39. The essence of terrorism is the commission, organisation, incitement or threat of serious acts of violence against persons or property for the purpose of intimidating a population or compelling a government or international organisation to act or not to act in a particular way (see, for example, the definition in article 2 of the draft comprehensive Convention), as Sedley LJ put it in the Court of Appeal, "the use for political ends of fear induced by violence": para 31. It is, it seems to us, very likely that inducing terror in the civilian

> population or putting such extreme pressures upon a government will also have the international repercussions referred to by the UNHCR….."

32. In *Youssef* the Court of Appeal had to consider whether acts which were not themselves completed or attempted acts, and which could not be shown to have led to specific completed or attempted terrorist acts by others, fell within the scope of article 1F(c) of the Refugee Convention (see paragraph 33 of the judgment). Mr Youssef was not alleged to have incited or encouraged any specific act of violence. Rather, the conduct in issue was that Mr Youssef had praised the terrorist organisation, Al Qaeda, and its leaders in a sustained fashion over a long period of time and encouraged others to follow those leaders and support them (see paragraphs 10-15). The other appellant, N2, had in his possession material describing how to establish a jihadist organisation and how to make viable explosive devices and on the placing of these devices and the targeting of particular premises, public places and public figures. N2 had multiple identities and had travelled to the United Kingdom under an assumed name. He had lied consistently to the police. N2 was described as a sleeper for a terrorist organisation but there was no evidence to demonstrate that N2 had been involved in the commission, preparation, or instigation of a specific act of terrorism.

33. Irwin LJ, with whom McCombe and Rafferty LJJ agreed, concluded that acts contrary to the purposes and principles of the United Nations were not confined to the commission of specific terrorist acts. N2's conduct was in principle capable of falling within article 1F(c) of the Refugee Convention and his appeal was dismissed (see paragraphs 77 and 80 of the judgment). So far as Mr Youssef was concerned, article 1F(c) of the Refugee Convention was capable of encompassing acts representing active encouragement or incitement

of international terror if, having regard to all the relevant facts, they were sufficiently grave or serious to satisfy the high threshold set in *Al-Sirri*. As the tribunal had not assessed the gravity or severity of Mr Youssef's conduct, his appeal was allowed and the matter remitted to the Upper Tribunal for redetermination (see paragraphs 83 to 88 of the judgment).

Discussion

34. In the present case, the First-tier Tribunal correctly directed itself as to the relevant principles as appears from paragraph 18 of its judgment (set out at paragraph 10 above). In paragraph 59 of its judgment (set out at paragraph 13 above), the First-tier Tribunal identified correctly the question it had to ask itself, and identified the relevant core facts, namely NF's possession of extremist material, his terrorist mindset and his association with extremists. In considering that question, it was satisfied that NF had committed all of the offences in the indictment, and took into account "the disturbing evidence that [NF] has been in contact with known extremists" but it found that "it is not enough to meet the threshold set out … by the Supreme Court in **Al-Sirri v SSHD**" (see paragraph 65 of its judgment set out above at paragraph 14).

35. Read as a whole, therefore, the judgment of the First-tier Tribunal does not, as Mr Tam submitted, proceed on the basis that acts falling short of the commission or incitement of a specific act of terrorism could not fall within the scope of article 1F(c) of the Refugee Convention. Rather it asked whether the acts committed by NF were sufficiently serious and grave to cross the high threshold necessary for acts to fall within the scope of article 1F(c). Nor does the penultimate sentence of paragraph 59 of its judgment indicate the contrary.

There, the First-tier Tribunal was pointing out that NF had not taken his interest in Islamic terrorism into the realms of committing or inciting terrorist acts and, if he had, "then Article 1F(c) would certainly apply". In other words, if there had been such acts or incitement, the threshold would clearly have been crossed. That did not, however, mean that the First-tier Tribunal considered that NF's conduct could not fall within article 1F(c) unless they amounted to the commission or incitement of specific acts of terrorism. Indeed, the whole purpose of the First-tier Tribunal's analysis from paragraph 59 onwards was to determine whether the acts which NF had committed were sufficiently serious to cross the high threshold necessary for such acts to fall within article 1F(c).

36. Further, the facts of NF's case are very different from N2's case. As is clear from the decision of SIAC in N2's case, N2 was "engaged in the planning and/or facilitation of acts of terrorism". He had material on his computer "ready to be used if and when either he or others considered it appropriate for that material to be used". There was clear, credible and strong evidence that N2 was "a sleeper for a terrorist organisation". The acts relied upon included the possession of instructions for the making and placing of bombs, instructions on how to establish terrorist cells, the use of multiple identities, association with other terrorists, and persistent lies to the police. N2 was charged with more serious offences than NF (possession of an article giving rise to a reasonable suspicion that his possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism contrary to section 57 of the Terrorism Act 2000). N2 was sentenced to nine years' imprisonment (as compared with the nine months' imprisonment to which NF

had been sentenced). Those matters reflect the more serious nature of N2's criminal conduct as compared with NF's criminal conduct. It is too simplistic to say that the cases of both N2 and NF involved the downloading and retention of extremist material and that, therefore, the essential quality of the two men's conduct was the same so that, if N2's conduct fell within article 1F(c) so must NF's. The factual situation, the gravity of the conduct and the impact in the two cases are very different. What the First-tier Tribunal had to do, and did, was consider whether NF's conduct amounted to acts contrary to the purpose and principles of the United Nations following the guidance established by the Supreme Court in *Al-Sirri*.

37. I would also reject the submission that there was only one conclusion that the tribunal could reasonably reach in the present case. It is clear from *Al-Sirri* that article 1F(c) establishes a high threshold in terms of the gravity of the act, the manner in which the act is organised, and its international impact and long-term objectives. This was a difficult case, as the First-tier Tribunal recognised, given the nature of the material that NF had downloaded and retained, his mindset and his contacts with other extremists. On the facts as found by the First-tier Tribunal, however, it could legitimately conclude that the acts, although serious, had not crossed the high threshold necessary for exclusion from protection under the Refugee Convention.

38. The Upper Tribunal was, therefore, correct to conclude, as it did at paragraph 29 of its judgment, that the First-tier Tribunal had not misdirected itself. It was correct to conclude that the First-tier Tribunal had applied its mind to the

relevant matters and reached a conclusion on the evidence which was open to it. It was correct, therefore, to dismiss the appeal.

39. In those circumstances, it is not necessary to consider the Upper Tribunal's alternative basis for dismissing the appeal set out at paragraphs 30 to 34 of its judgment. Other tribunals ought, however, to approach the suggestion there made that NF's conduct may not have been capable of affecting international peace with circumspection. If the conduct here had been sufficiently grave and serious, a tribunal could have been satisfied that the conduct would have had an effect upon international peace, security and relations between states. The material here concerned possible terrorism and support for terrorist organisations operating in other countries. As the Supreme Court observed in *Al-Sirri* it is "very likely" that acts of terrorism involving violence for the purpose of inducing terror in the civilian population or compelling a government or international organisation to act, or not to act in a particular way, will also have international repercussions (see paragraph 16 of the judgment).

CONCLUSION

40. For those reasons, I would dismiss this appeal.

Lord Justice Nugee

41. I agree.

Lord Justice Davis

42. I also agree.

43. The First-tier Tribunal's finding that at the time that he had the materials NF possessed a terrorist mind-set is obviously very concerning. But the bar is set high for excluding a person from protection under the Refugee Convention, having regard to the terms of article 1F(c) as interpreted and explained by the Supreme Court in *Al-Sirri*. On its careful and thorough appraisal of the totality of the evidence, the First-tier Tribunal was entitled to reach the conclusion it did.

ORDER

UPON HEARING Mr Robin Tam QC on behalf of the Appellant and Ms Amanda Weston QC and Mr Anthony Vaughan on behalf of the Respondent,

IT IS HEREBY ORDERED THAT:

1. The Secretary of State's appeal be dismissed.
2. The Secretary of State do pay the costs of the Respondent on the standard basis, to be assessed if not agreed.
3. There be a detailed assessment of the Respondent's legal aid costs.

Dated this 11th day of January 2021

BY THE COURT