

Appeal Number: ASA/02/02/1872  
NASS Ref Number: 02/01/07321/001  
Appellant's Ref Number:  
ADDRESS



**ASYLUM SUPPORT ADJUDICATORS**  
Christopher Wren House  
113 High Street Croydon CR0 1QG  
Telephone: 020 8688 3977  
Fax: 020 8688 6075

**IMMIGRATION AND ASYLUM ACT 1999**  
**ASYLUM SUPPORT APPEALS (PROCEDURE) RULES 2000**

Adjudicator	Mrs Sehba Haroon Storey
Appellant (s)	EH
Respondent	Secretary of State

**REASONS STATEMENT**

1. This Reasons Statement is made in accordance with Rule 13 of the Asylum Support Appeals (Procedure) Rules 2000 ("the Rules"), and gives reasons for the Adjudication given on Tuesday the 26<sup>th</sup> day of February 2002 remitting the above mentioned appeal.
2. The appellant, a 41 year old citizen of the Czech Republic, appeals against the decision of the Secretary of State, who on 7<sup>th</sup> February 2002 decided to refuse support to the appellant on the grounds that she has exhausted her appeal rights with effect from 3<sup>rd</sup> July 2001 and she is therefore excluded from support under the Immigration and Asylum Act 1999 ("the Act") and the Asylum Support Regulations 2000 ("the Regulations".)
3. At the hearing before me, the appellant appeared in person and was assisted through the interpretation of Mr Ottlyk in the Czech language. She was represented by Mr James Bottomley.
4. This case concerns the interpretation of Section 94(5) of the Act. Extensive written submissions were received from the respondent and I confirm that I have given full consideration to the same.
5. I remind myself that the purpose of the Asylum Support Scheme is to provide support for asylum seekers and their dependants who are destitute. Section 94(1) of the Act defines an asylum seeker as -

“...a person who is not under eighteen and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined.”

6. Section 94 of the Act continues to define what is meant by a claim for asylum being determined, the circumstances in which an appeal may be treated as having been disposed of, and provisions relating to the giving of a notice by the Secretary of State. Section 94(5) of the Act, however, states as follows:-

“If an asylum seeker’s household includes a child who is under eighteen and a dependant of his, he is to be treated (for the purposes of this Part) as continuing to be an asylum seeker while –

- (a) the child is under eighteen; and
- (b) and the child remains in the United Kingdom.”

7. The facts of this case are that the appellant lives with her husband and her four month old baby in a property rented by her 21 year old daughter. The property is situated in Peterborough. The appellant accepts that her asylum application has been finally determined and that she is no longer an asylum seeker. Amongst the documents sent to me, however, is a letter from Morgan Hall Solicitors which confirms that the appellant’s husband submitted an asylum application in his own right in August 2001. Mr Bottomley requested a short adjournment in order to establish the existence of this application and confirmed that Home Office records show that the appellant’s husband’s asylum application remains outstanding.
8. The Secretary of State argues that asylum support is only available to asylum seekers and in order to qualify for Section 95 support, the applicant must fulfil the definition of asylum seeker contained within Section 94(1). The purpose of Section 94(5) , says Mr Bottomley, is to protect individuals like the appellant, who applied for support at a time when they were asylum seekers within the meaning of Section 94(1) but whilst in receipt of support, they exhaust their appeal rights. Subsection 5 prevents support from being withdrawn from such persons and ensures continuity of support.
9. I have given careful consideration to all the evidence before me, including the written submissions received from the respondent in relation to the applicability of Section 94(5) and the oral evidence of the appellant at the hearing. I have also fully considered any documents submitted by the appellant and the respondent.
10. Having considered the evidence before me, I accept the submissions of the Secretary of State that Section 94(5) is not intended to enable persons who have exhausted their appeal rights from qualifying for asylum support under Section 95 unless they are already in receipt of such support. Otherwise the use of the word “continuing” in subsection 5 would have no relevance.
11. Accordingly, I am satisfied that the appellant cannot benefit from Section 94(5).
12. I note however, that the appellant’s husband is an asylum seeker within the meaning of Section 94(1) of the Act. Regulation 3 of the Regulations states that either an asylum seeker or a dependant of an asylum seeker may apply to the

Secretary of State for asylum support. Subsection 2 states that the application may be for the applicant alone or for the applicant and one or more dependants of his. Regulation 2(5) states that any dependant included in the application must be a dependant of the asylum seeker.

13. Accordingly, the appellant is entitled to submit an application for asylum support for herself, her husband and her child. Her application has not been considered with regard to Regulation 3 and the fact that her husband has an outstanding claim for asylum. This evidence has not been considered by the respondent.
14. In the circumstances I remit this appeal to the Secretary of State.

Signed ..... Date .....  
Chief Asylum Support Adjudicator