

Appeal Number: ASA/02/02/1877
NASS Ref Number: 02/02/02073
Appellant's Ref Number:
ADDRESS



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

Adjudicator	<u>Mrs Sehba Haroon Storey</u>
Appellant (s)	<u>RB</u>
Respondent	<u>Secretary of State</u>

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 26th day of February 2002 dismissing the above mentioned appeal.
2. The appellant, a 42 year old citizen of Croatia, appeals against the decision of the Secretary of State, who on 12th February 2002 decided to refuse support to the appellant on the grounds that she has exhausted her appeal rights with effect from 20th January 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 Ms Janekovic in the Serbo-Croat language. She was represented by Ms Martha Attouil, a caseworker from the Oxford Citizens Advice Bureau. The respondent was represented by Mr James Bottomley.
4. This case concerns the interpretation of Section 94(5) of the Act. Both parties made extensive written submissions on the interpretation of the same and I am grateful to them for their assistance.
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 appellant states that she is a person to whom Section 94(5) applies because she exhausted her appeal rights on 20th January 2001, and her household includes a child who is under eighteen years of age and the child is a dependant of hers.
8. The appellant and her representatives argue that Section 94(5) must be read together with Section 94(1) and the definition contained therein of asylum seeker, so as to qualify the appellant for Section 95 support. They state that this must have been the intention of Parliament because otherwise this subsection would have no purpose.
9. 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.
10. I have given careful consideration to all the evidence before me, including the lengthy submissions received from both parties notwithstanding that my summary above may not necessarily deal with the depth of arguments placed before me. Both parties agree that the outcome of this case rests upon my interpretation of the relevant Section and the circumstances in which it may be applied. It has not therefore been necessary to take any oral evidence from the appellant.
11. 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.

12. I have also had regard to the letter of Mr Bob Eagle, former Director of the National Asylum Support Service (“NASS”) dated 19th November 1999 and addressed to all Chief Executives of local authorities in England and Wales. In paragraph 8 of this letter, Mr Eagle confirmed that –

“...families with children, including families of those persons who are here unlawfully and families of persons who have exhausted all rights of appeal against refusal of asylum, will continue to be entitled to claim assistance from local authorities under the Children Act until such time as they are removed from the country.”

13. Section 122(9) of the Act confirms that relevant local authorities may provide assistance under any of the welfare provisions set out in Section 122(7) in respect of a child concerned. Assistance is defined as the provision of accommodation or any essential living needs. Section 122(5) states that no local authority may provide assistance under any of the child welfare provisions in respect of a dependant under the age of eighteen, or any member of his family, at any time if the Secretary of State is complying with the duty placed upon him to provide support under Section 95 nor where it is considered that support may be provided were an application to be made.

14. In the instant case, I am satisfied that the Secretary of State has correctly decided that the appellant is not entitled to Section 95 support as she was not an asylum seeker at the relevant date, namely the date upon which she applied for asylum support. The only option available to the appellant is to approach her local authority who may provide her with assistance under Section 17 of the Children Act 1989. Alternatively it is open to the appellant to seek support under the hard cases scheme established under Section 4 of the Act. Entitlement to support will be for the relevant authority to decide.

15. Accordingly, I am satisfied that at the date of decision, the appellant was not entitled to receive support from the respondent.

16. The appeal is dismissed.

Signed Date
Chief Asylum Support Adjudicator