

Appeal Number: ASA/02/04/2462
NASS Reference Number: 00/10/06739
Appellant's Reference Number:
Address



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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>TS</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 Monday the 15 day of April 2002 substituting my own decision for the decision appealed against, namely that the appellant is entitled to the provision of support in accordance with Section 95 of the Immigration and Asylum Act 1999 ("the Act.")
2. The appellant, a 23 year old citizen of Turkey, appeals against the decision of the Secretary of State who on 2 April 2002 decided to refuse the appellant's application for subsistence only support on the grounds that the appellant is excluded from support under the Act and Section 4(4)(c) of the Asylum Support Regulations 2000 ("the Regulations"). It is the respondent's case that the appellant's asylum claim was refused on 18 January 2001 and finally determined on 18 June 2001.
3. At the hearing before me, the appellant was represented by Counsel, Mr Vassall-Adams on the instructions of the Hackney Community Legal Centre. The respondent was represented by Ms Mapp. The appellant was in attendance and gave evidence through the interpretation of Mr Ahmet, in the Turkish language.

4. The facts of this case are that the appellant applied for asylum on 11 October 2000 and thereafter submitted his application for asylum support dated 27 October 2000. The appellant's appeal against refusal of asylum was dismissed on 18 June 2001 and an application for leave to appeal to the Immigration Appeal Tribunal ("IAT") was refused on 19 July 2001. On 2 January 2002 an application was made by the appellant's present representatives that to return the appellant to Turkey would be in breach of the respondent's obligations under Article 3 of the European Convention on Human Rights ("the ECHR"). A decision on this application remains outstanding.
5. I am asked to adjudicate on the following two issues;
 - (1) Is the appellant entitled to asylum support for the period prior to his refusal of asylum, namely between 27 October 2000 and 19 July 2001?
 - (2) Is the appellant entitled to asylum support following his fresh claim for asylum on 2 January 2002?
6. An asylum seeker is defined by Section 94(1) of the Act 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."
7. A claim for asylum is defined by Section 94(1) of the Act to mean:-

"...a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention, or under Article 3 of the Human Rights Convention, for the claimant to be removed from, or required to leave, the United Kingdom."
8. For the purposes of Section 95, a person is destitute if:
 - (a) He does not have adequate accommodation or any means of obtaining it (whether or not his other essential needs are met); or
 - (b) He has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs."
9. Regulation 7(a) of the Regulations defines the prescribed period for the assessment of destitution as 14 days beginning with the day on which that question falls to be decided.
10. Section 96(1)(b) of the Act enables the Secretary of State to provide to the applicant what appears to the Secretary of State to be essential living needs. Section 96(2) states:-

"If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support under Section

95 in such other ways as he considers necessary to enable the supported person and his dependants (if any) to be supported.”

11. In relation to the nature of the support provided, Section 96(3) states:

“Unless the circumstances of a particular case are exceptional, support provided by the Secretary of State under subsection (1)(a) or (b) or (2) must not be wholly or mainly by way of payments made (by whatever means) to the supported person or to his dependants.”
12. It is not disputed that the appellant was an asylum seeker within the meaning of Section 94 of the Act from 27 October 2000 to 19 July 2001, this being the date upon which the appellant’s application for leave to appeal to the IAT was refused. I do not accept Counsel’s submission that the appellant remained an asylum seeker until 14 days after this date. Section 94(3)(b) of the Act states clearly that where an appellant has appealed against the decision of the Secretary of State, the asylum claim is determined on the day on which the appeal is disposed of. On the basis that there is no further right of appeal once an application for leave to the IAT has been dismissed, the period during which the appellant can be defined as an asylum seeker is not capable of being extended for any further period.
13. It is also not disputed that the appellant ceased to be an asylum seeker until the submission of his Article 3 application on 2 January 2002. That application was sent to the respondent by special delivery and by facsimile. The appellant has not been able to establish that the special delivery letter was in fact received by the respondent but I have had produced to me a fax transmission report confirming that the application was delivered to and received by the respondent as claimed.
14. Accordingly, I am satisfied that as at the date of the decision, namely 2 April 2002, the Secretary of State’s decision that the appellant is excluded from support because he has not made a claim which is being considered on the basis that he is an asylum seeker, is in fact incorrect.
15. What therefore remains to be determined is the period for which the appellant is entitled to support.
16. Counsel referred me to the case of *R (SSHD) v the Asylum Support Adjudicator and Berkadle and Perera* [2001] EWHC Admin 881, wherein the Court were asked to determine with regard to Section 96(2) of the Act, whether, in exceptional circumstances, an Adjudicator was empowered to backdate an award of asylum support to the date of application. However, on the basis that the particular circumstances of the two cases under review were not considered to be exceptional, Mr Justice Gibbs declined to express an opinion on this issue. Accordingly, Mr Vassal-Adams invites me to find that the circumstances of this case are exceptional and warrant a backdated award.

17. The appellant gave evidence before me and stated that he arrived in the United Kingdom on 11 October 2000 and since that date, has not received any assistance from the respondent. An application form was completed by him with the assistance of a relative and submitted on 27 October 2000 by the Refugee Council in Brixton. He did not receive any professional assistance in the completion of the same and states that the reference on the form to payment of Jobseeker's Allowance was in fact a mistake. He believes that his uncle may have been in receipt of this benefit at the time. The appellant said that he had been living with his uncle, his uncle's wife and their two children since the date of his arrival. He did not have a room of his own and often had to sleep on the couch or on the floor. His uncle was not able to afford to financially support him in addition to his family and the appellant was therefore forced to borrow money from friends and relatives in the expectation that he would eventually return the money borrowed. He tells me that his debt to one such named individual amounts to £700-800 approximately but he is unable to recall the precise figures owed to various other individuals specifically named during the course of the hearing.
18. The appellant states that he sought the assistance of both the Refugee Council and his solicitors with a view to making enquiries about his support application. In desperation he even made enquiries himself but due to his limited knowledge of the English language, he was unable to make himself understood. He said that he personally visited the premises of the National Asylum Support Service ("NASS") in Croydon but did not receive any explanation for the delay in the processing of his application.
19. Ms Mapp for the respondent was unable to provide any meaningful assistance but confirmed that according to the file of papers in her possession, no effort had been made to explain to the appellant why his claim for support remained undetermined for eighteen months. She noted that there was some confusion concerning the occupants of the appellant's uncle's home and the fact that several individuals shared similar or identical names but I was given to understand that there was no evidence on file of any correspondence being sent to the appellant nor to any organisation representing his interests seeking clarification. She confirmed that the letter of 2 November 2001 from the Hackney Community Law Centre was on file but did not receive the courtesy of a response. She conceded that management of this case was clearly unsatisfactory and the appellant had been unfairly penalised. She accepted the appellant's evidence that he was destitute throughout and supported his application for backdating of his claim to the date of application for such periods as he was an asylum seeker.
20. I have given careful consideration to all the evidence before me including the oral evidence of the appellant whom I find to be a credible witness and I accept his evidence that he was destitute throughout the period commencing on 27 October 2000 and that he is in debt to several people.
21. I take the view that if ever there was a case meriting exceptional consideration, this is one such case. It is, as Counsel submits, manifestly unjust that the Secretary of State should be able to rely upon his own delay to refuse an appellant support which he would have been entitled to had a decision been

made within a reasonable time. I note that the guidance notes accompanying the Regulations state that the respondent aims to make a decision within two working days of receiving an application. If however, it is not possible to do so, the appellant will be contacted within seven days of receipt. In fact the appellant received no communication from the respondent for eighteen months. When he did receive a decision, it was to inform him that he was excluded from the support scheme because in the course of the respondent's delay, the appellant's claim for asylum had been finally determined.

20. I accept that the appellant's claim for support has been subjected to appalling delay and that such delay should not be permitted to frustrate the statutory scheme by denying support when it should rightfully have been provided. Clearly, the appellant was an asylum seeker at the date of decision and the application requiring determination by the respondent was that made on 27 October 2000. Had a decision been made within a reasonable timescale, the appellant would have been in receipt of support for the period 27 October 2000 to 19 July 2001. As the delay can in no way be attributable to any act on the part of the appellant, I am satisfied that this is a case where the respondent should have considered the application of Section 96(2) of the Act and awarded subsistence only support for that period. Furthermore, given the lengthy period of time in question, and the amount of support to which the appellant was entitled in respect to the period in question, I am satisfied that pursuant to Section 96(3) of the Act, such payment should have been made in cash. In making this decision, I remind myself that the period for which the appellant was entitled to support amounts to approximately 37 weeks. At the rate of £36.54 pence per week, the appellant is entitled to arrears in the region of £1351.98.
21. Section 4 of the Regulations states clearly that a person to whom subsection (4)(c) applies, is excluded from the application of Section 95(1) and may not be provided with asylum support. Neither the Act nor the Regulations specify whether a person excluded from support who goes on to make a fresh application for asylum is required to make a further application for asylum support or whether the original application remains valid. Counsel for the appellant submit that there is no requirement under the Act or the Regulations requiring an asylum seeker to submit a fresh claim for asylum support when his previous claim was refused solely on the basis that, at that time, he was not an asylum seeker. He states that the previous asylum support claim remains extant for the second asylum claim.
22. I have some sympathy with this submission but do not agree with it in its entirety. I accept that where a fresh application for asylum is made within a period of fourteen days of the final determination of the applicant's asylum claim, the original claim should be treated as continuous throughout. Where, the gap between the determination of the original asylum claim and the fresh application exceeds fourteen days, the applicant must re-apply for asylum support with effect from the date of the fresh application. Where however an appellant is prevented from making the fresh application for asylum support through no fault of his own, for example, because he has not received a decision from the Secretary of State on the original application within a reasonable period and may have held the genuine belief that that application would be treated as continuous throughout, the Secretary of State should give

exceptional consideration to backdating the claim to the date upon which the appellant re-qualified as an asylum seeker.

23. In the present case, my decision is therefore that the appellant is entitled to backdated support for the period dated 27 October 2000 to 19th July 2001 but is not entitled to support thereafter and must make a fresh application for support with effect from 2 January 2000. So far as I am aware, the appellant has not made this application to date. No doubt, those representing him will advise him to do so immediately and to request that the Secretary of State consider backdating his claim to 2 January 2002 given the exceptional circumstances of his case. On the basis however, that application is yet to be made, I leave it to the Secretary of State to determine upon receipt whether the appellant had good cause for failing to submit his application on time and whether in the light of the same, the Secretary of State should exercise his discretion in favour of the appellant and backdate the claim to 2 January 2002.
24. For the reasons above stated and the periods stipulated I find that the appellant is entitled to the provision of support in accordance with Section 95 of the Act.

Signed Date:
Chief Asylum Support Adjudicator