

Appeal Number: ASA/02/04/2665
NASS Ref Number: 01/09/02812
Appellant's Ref 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>DK</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 1st day of May 2002 dismissing the above mentioned appeal.
2. The appellant, a 59 year old citizen of the Democratic Republic of Congo, appeals against the decision of the Secretary of State, who on 18 April 2002 decided to discontinue support to the appellant under Regulation 20(1)(a) of the Asylum Support Regulations 2000 ("the Regulations") on the grounds that the Secretary of State is satisfied that the appellant has breached his conditions of support by failing to travel as arranged.
3. At the hearing the appellant was assisted by interpreter, Mrs Tongue, in the French language. He was represented by Mr Vnuk of Lloyds and Associates Solicitors. The respondent was represented by Mr Danquah.
4. The facts of this case are that the appellant arrived in the U.K. on 29th October 1997 and applied for asylum support at the port of entry. He received Income Support up to and including 23rd August 2001 when he was advised by the Benefits Agency that his asylum claim had been determined and he was therefore no longer entitled to Income Support. The appellant claimed subsistence and accommodation support on 6th September 2001. This application was accompanied by representations from his solicitors, detailing the appellant's medical conditions, the length of his residence in Hackney and need to complete his English course at Islington College.
5. The Secretary of State considered the representations and medical evidence submitted on behalf of the appellant but was advised by his medical advisor, Dr John Keen, that dispersal to any location was reasonable and in the circumstances the respondent made arrangements for the appellant to be dispersed to Birmingham. The appellant's solicitors responded by letter dated 17th October 2001 stating that an application for Judicial Review had been lodged by them on 8th October 2001 and

that “notwithstanding the reasonableness of your decision to disperse [the appellant] we believe that it would be appropriate for the appellant to be able to remain in his current accommodation pending the outcome of his application for Judicial Review.” This request was exceptionally granted in October 2001. On 28th November 2001 the appellant withdrew his application for Judicial Review having been served with the Secretary of State’s refusal letter. Further representations were submitted on 5 December 2001 requesting consideration of the earlier letter of 10 September 2001.

6. On 10 September 2001 the respondent advised the appellant’s representative that the Secretary of State is satisfied the appellant does not suffer from any medical condition that would exclude him from the general dispersal policy, that exemption from dispersal on grounds of length of residence applies only to families with children who have attended a particular school for at least 12 months and that failure to travel without reasonable excuse would result in termination without further notice.
7. Arrangements were made for the appellant to travel to Middlesbrough on 27 September 2001. By letter dated 20 December 2001 the appellant’s solicitors requested that dispersal be suspended until 5 January 2002 pending submission of a further medical report from the appellant’s G.P. together with statements from friends and neighbours who provide essential support to the appellant. On 3 January 2002 however, the respondent discontinued support on grounds of failure to travel.
8. The appellant appealed and his appeal was heard by Adjudicator, Mr Ponting on 16 January 2002. In his reasons Statement dated 17 January 2002, remitting the case for further consideration, the Adjudicator took the view that medical evidence produced before him was insufficient in detail to rebut the opinion of Dr. J. Keen, nor did these support claims made concerning the extent of care the appellant required from his friends. He concluded however, that it would be reasonable to disperse the appellant to an area where there is another Catholic church which conduct services in French and a Congolese community.
9. On 8 February 2002 the appellant’s solicitors made further representations to the Secretary of State indicating that they wished to produce further medical evidence. On 15 February however they confirmed that they had been unable to speak to the specialist but hoped to be able to provide the same the following week. They considered that the further medical evidence could have a significant influence on the Secretary of State’s decision.
10. No evidence having been submitted, the Secretary of State decided on 4 March to disperse the appellant to Wigan in Lancashire. By a letter dated 7 March 2002 the appellant’s solicitors advised that the appellant would not be travelling and that they believed the decision to be unlawful. They indicated that they may seek to apply for a Judicial Review.
11. On 8 March 2002 the respondent replied at some length commenting upon various points raised by the appellant’s solicitor. They did not consider that dispersing the appellant outside London resulted in a breach of his Article 9 rights under the European Convention on Human Rights (“ECHR”). It was noted that additional medical evidence though promised had not been received. The Secretary of State considered that suitable medical facilities would be available to the appellant in a dispersal area and that the accommodation in Wigan was on a full-board basis to

ensure that the appellant did not have to deal with preparation of his food. The Secretary of State exceptionally agreed to re-arrange accommodation for the appellant in a location where there are other Congolese.

12. On 14 March 2002 yet more representations were received from the appellant's solicitors, this time conceding that medical care for the appellant would be available elsewhere in the country but that the assistance he receives from members of the Congolese community in dealing with his medical conditions was not, nor the links he had built up with local community and healthcare providers. As regards the appellant's religion, they said that they were unaware of any other French-speaking Catholic churches in the U.K. let alone a French-speaking African church, other than [A] in Leicester Square and the appellant's own parish church of St [M]. They maintained that full-board accommodation would not necessarily meet the appellant's needs because of his special dietary needs arising from his diabetes.
13. These representations were fully considered by the Secretary of State and rejected on 19 March 2002 noting in particular noting that Congolese asylum seekers were living at the hostel to which the appellant was to be dispersed to in Wigan and that the appellant could have been provided with a diet consistent with his medical conditions.
14. By letter of 27 March 2002 the appellant's representatives made further representations confirming that no additional medical evidence would be tendered. Further submissions were made on Article 9 of the ECHR and the need for the appellant to enjoy his own bathroom and toilet facilities. Once again these received a detailed response but the Secretary of State maintained his position and by letter of 9 April 2002, arrangements were made for the appellant's dispersal to Bolton on 17 April 2002. On 12 April the appellant's solicitors confirmed that the appellant would not be travelling and in the circumstances they encouraged the respondent to discontinue support immediately. Support was discontinued on 18th April on grounds of failure to travel.
15. At the hearing, I heard oral evidence from the appellant and the Minister of the Parish of St [M]. The appellant told me that he is a diabetic and also suffers from high blood pressure and a heart problem. He also has problems with his eyes. As a result he is unable to prepare his own meals, clean his home or do his shopping. He receives assistance from the wife of a friend with these tasks. His conditions make him tired and as a result he has not been able to work since he came to this country. He receives assistance from a young man in his house with reading correspondence because his English is "non-existent."
16. He said that he had been baptised a Catholic and had taken an active part in church and parish activities both in the Federal Republic of Congo and in the U.K. since his arrival. Save for one occasion when he attended mass conducted in English, he has always taken part in mass at either [A] or St [M] as both the churches offered this service in the French language. St [M] is within walking distance but to get to [A] the appellant has to travel by bus. I would estimate that the journey is approximately 45 minutes there and back. The appellant is active in the church committee and has been given responsibility for bringing people back into the church. He attends every Saturday and Sunday. He says that to send him to Bolton is tantamount to a sentence of death because there is no French-speaking Catholic church he would not be able to pray and there would be no one to look after him.

17. The appellant confirmed that his diabetes is “type 2” and controlled through diet and tablets. He claimed, unusually, that he had needed insulin on 3 occasions over a period of 4½ years. He denied that he either spoke or understood English despite having studied at college. He then added that he had a problem with incontinence and could not live in shared accommodation.
18. I next heard from the Minister of St. [M]. He explained that a Francophone African community had developed within his parish and the appellant was an active and respected member of this community. Traditionally he said that mass had always been said in Latin and it had been considered sufficient for the faithful to be present. This was not however considered satisfactory and the emphasis was later changed and required an individual to “actively participate” in mass. He stated that there was a colossal difference between simply attending mass and being able to understand and take part. Whilst he acknowledged that mere presence was acceptable, he described this as “rock bottom minimum.” He maintained however that although there were a great many Catholic churches in Bolton and there may also be French-speaking Ministers, the information he had received was that there was no effective Congolese or Francophone community there in place.
19. Where termination of support is justified on grounds of a breach of conditions, it is for the Secretary of State to establish that breach. Once done, the burden of proof shifts to the appellant to prove on a balance of probabilities that he has reasonable excuse for his failure to comply with any condition as alleged. The standard of proof is that of the balance of probabilities. It is not disputed that the appellant failed to travel and it is therefore for the appellant to prove that he had reasonable cause.
20. Mr Vnuk for the appellant submits that a dispersal of the appellant to Bolton or indeed to any location away from his current accommodation would amount to a breach of the appellant’s rights under Articles 3, 8 and 9 of the ECHR.
21. Article 3 places a negative duty on the State not to inflict torture or inhuman or degrading treatment or punishment upon those living within its borders. Torture is defined as deliberate, inhuman treatment causing very serious and cruel suffering. Inhuman treatment is treatment that causes intense physical and mental suffering to the victim and degrading treatment is that which arouses in the victim a feeling of fear, anguish and inferiority capable of humiliating and debasing the victim and possibly breaking his or her physical or moral resistance. Each case must be decided on its own facts and as stated in *BenSaid* [2001] 33 EHRR 10 205, the necessary threshold is particularly high in cases where the State is not directed responsible for the infliction of harm.
22. I have noted the medical evidence which confirms that the appellant suffers from diabetes and that this has not been easy to control in the past. He has however not been admitted to hospital and is treated through medication prescribed by his G.P. and a diet low in refined carbohydrate and low in fat. He is further said to suffer from hypertension and although an exercise E.C.G. in March 2001 was normal although apparently it is thought that the appellant might still have some degree of underlying ischaemic heart disease. The appellant’s complaints of an altered bowel habit have also been investigated and the results found to be normal. However, all the medical reports before me, and there are several, there is no mention of the appellant suffering from incontinence. This is the basis of the Article 3 application,

namely that to require the appellant to share the accommodation with other asylum seekers and given the likely consequences of his risks of incontinence would amount to degrading treatment.

23. I reject this submission. There is no medical evidence before me to support the appellant's claim that he suffers from incontinence. I note that he is able to sit through mass lasting in the region of 2 hours and he is able to travel by public transport to London. I have not heard any evidence that he encounters problems on these occasions. Even if the appellant does suffer from incontinence from time to time, he could avoid the risk of accidents occurring in the home by proper use of incontinence pads. The respondent has taken account of the appellant's condition and offered full-board accommodation. On the facts before me, I am not satisfied that the minimum level of severity required by Article 3 has been established.
24. Article 8 protects the right to respect for a person's private and family life, home and correspondence. It is submitted on the appellant's behalf that to move him away from the Francophone community in which he currently resides and away from the friends who assist him with cooking, cleaning and shopping would amount to a breach of his right to private life.
25. I have carefully considered the appellant's evidence. I am at a loss to understand why he cannot read the instructions provided by the dietician and prepare a meal for himself. It would be fairly simple for these instructions to be translated into French if the appellant has difficulty reading English. The appellant is clearly active within his community and fit and able to use public transport services. He has not established on the evidence before me that he has a medical reason for his inability to cook, clean and shop for himself.
26. In any event, I note that the respondent has offered him full-board accommodation and it has been confirmed that the appellant's dietary needs will be met by the accommodation provider. I am further satisfied that Bolton is a cluster area to which Congolese asylum seekers have been dispersed and in the circumstances, albeit that there may not be a thriving community, I am satisfied that he will not be isolated as claimed. Even if I were to find that the State had interfered with his Article 8 right to private life, and the right to physical and moral integrity, I am satisfied that such an interference is in accordance with the law, necessary and proportionate.
27. Article 9 protects the right to hold religious beliefs and to manifest them in worship, teaching, practice and observance, whether alone or with others, in public or in private. The right to hold, or to adhere to a religion or belief is unqualified whereas the right to manifest that religion or belief is subject to restrictions under Article 9(1).
28. It is submitted on the appellant's behalf that as a practising Catholic, not only does he have a duty to take active part in mass but he has a strong desire to do so. This necessitates that he must have access to a church where mass is said in French and because this facility is not available in Bolton, the requirement for him to disperse to that locality breaches his Article 9 rights.
29. I do not accept the latter part of this submission. I note that the appellant attended an English language course at college for approximately 5 months. In a letter dated 11th January 2002, the Minister of the church of St [M] commented that "although [the

appellant] has studied English at college and understands spoken English fairly well, he is not at all comfortable about speaking it.”

30. I am aware that in accordance with the Canon Code, “the faithful are obliged to assist at Mass” but Canon Code 1248 confirms that the obligation of assisting at mass “is satisfied wherever Mass is celebrated.” Code 1248 continues thus:-

“If it is impossible to assist at a Eucharist celebration, either because no sacred minister is available or for some other grave reason, the faithful are strongly recommended to take part in a liturgy of the Word, if there be such in the parish church or some other sacred place, which is celebrated in accordance with the provisions laid down by the diocesan Bishop; or to spend an appropriate time in prayer, whether personally, or as a family, or as occasion presents, in a group of families.”

31. This would seem to suggest that the absence of a Minister able to conduct mass in French would not and should not prevent the appellant from nevertheless taking part in Mass by being present and that in doing so, he will fulfil the requirements of his faith.

32. Insofar as the requirement to understand the proceedings is concerned, I readily accept that the appellant would prefer to be able to understand the proceedings being conducted. However, bearing in mind that the evidence before me suggests that the appellant can understand English, I am satisfied on a balance of probabilities, that he would be able to follow a mass service conducted in English. I am aware that mass follows a fundamental structure which only normally varies slightly from service to service. A person such as the appellant who has taken part in mass all his life should, in my view, be fully aware of the proceedings and by virtue of that knowledge would know when, for example, he is required to receive Holy Communion.

33. I am not therefore satisfied that the appellant’s right to manifest his belief has been interfered with as the appellant could attend any one of several Catholic churches in Bolton and attend mass. His knowledge of the English language as confirmed by the Minister of St [M] would be sufficient to enable him to understand the proceedings and to take part in the service as and when required. Given that the appellant is able to use public transport, there is nothing to prevent him from travelling to a church where there may be a French-speaking Minister in post although I must emphasise that the absence of one would not amount to a breach of Article 9. In the circumstances, Policy Bulletin 31 has been fully considered.

34. I have given careful consideration to all the evidence that is before me including the two decisions of the ASA to which reference was made by Mr Vnuk and the case of *R v Secretary of State for the Home Department ex parte Altun* [2001] IMN AR 570. Mr Vnuk seeks to distinguish *Altun* from the appellant on the basis that he was dependent on a person claiming asylum whereas the appellant in this case is an appellant awaiting determination of his asylum claim. I do not consider that this entitles the appellant to exemption from dispersal on grounds of his personal circumstances. I note the comments of Scott Baker J that “asylum seekers do not, unfortunately for them, have an unfettered right to choose where they live in this country. They must, within reason, accept what is on offer if they wish to receive such support as they are entitled to.”

35. I am satisfied on the totality of the evidence before me that the Secretary of State has fully considered the appellant's circumstances and acted reasonably in allocating accommodation which would meet his needs. The appellant has had numerous opportunities to disperse and has failed to do. Such refusal can properly be described as persistent and unequivocal and it would normally be my view that in a case such as this support should be discontinued. I note however that the appellant is 59 years of age and has clearly been given the impression, wrongly, in my view, that he is entitled to remain in London. In the circumstances, I have decided to substitute my decision for the decision of the Secretary of State by suspending support to the appellant until such time as he travels to accommodation allocated by the respondent.

Signed Date
Chief Asylum Support Adjudicator