



Tribunals Service
Asylum Support Tribunal

Asylum Support Tribunal
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Appeal Number : AST/07/06/15491
NASS Ref. : 04/06/00250
Appellant's Ref. :

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

Adjudicator	Mrs Sehba Haroon Storey
Appellant	MBD
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 Wednesday the 11th day of July 2007 allowing the above mentioned appeal.
2. The appellant, a 42 year old national of Guinea appeals against the decision of the Secretary of State who on 27 June 2007 decided to refuse his application for support under Section 4 of the Immigration and Asylum Act 1999 as amended (the 1999 Act), on the grounds that the appellant did not satisfy one or more of the conditions set out in Regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 (the 2005 Regulations).
3. In his notice of appeal, the appellant does not request an oral hearing. I have considered the appellant's request with reference to rule 5 of the Rules and I am satisfied that within the particular circumstances of this case, an oral hearing is not necessary for the appeal to be disposed of justly. Accordingly, I shall proceed to determine the appeal under rule 6(2) of the Rules.
4. The appellant is a failed asylum seeker. He arrived in the United Kingdom (UK) on 30 May 2004 and claimed asylum upon arrival. His claim was refused on 5 June 2004 and he exhausted his appeal rights on 21 March 2005. I do not know how the appellant has maintained and accommodated himself in the UK since 21 March 2005, save that, for the period 5 May 2006 to 25 June 2007 he was housed by a friend, whose name and address have been provided to me together with his written confirmation that he is no longer able to continue doing so. The appellant therefore applied for Section 4 support on the grounds that he is destitute and taking all reasonable steps to leave the UK.

5. The respondent accepts that the appellant is destitute but refuses Section 4 support on the grounds that the latter fails to meet the relevant criteria for such an award.
6. On 3 July 2007, the respondent was directed to produce the following:
 - (i) a written submission that responds in detail to the grounds of appeal;
 - (ii) details of the precise evidence that this appellant is expected to provide to demonstrate that he is taking or has taken all reasonable steps to leave the U.K;
 - (iii) evidence from International Organisation for Migration (IOM) as to the present status of the appellant's latest application for the Voluntary Assisted Return and Reintegration Programme (VARRP) and the position with regard to VARRP applications made by persons who are subject to a deportation order;
 - (iv) confirmation from the Home Office as to whether the deportation order remains in force with regard to this appellant, the steps being taken by the Secretary of State to deport him and the degree to which the appellant has co-operated with the same;
 - (v) confirmation of whether the appellant's Guinean identity documents remain in the possession of the Home Office and, in that event, what steps the Appellant may be able to take to arrange his departure from the U.K.
7. In response, the respondent confirmed that IOM would not accept the appellant's VARRP application "because of an outstanding deportation order". They said that in order to demonstrate that the appellant was taking all reasonable steps to leave the UK, the Border and Immigration Agency (BIA) require evidence from the IOM of a confirmed VARRP application duly approved; they confirmed that the deportation order remained in force and that "RGDU [Removals Group Documentation Unit] are pursuing a travel document on behalf of the subject". They made no response to direction (i).
8. According to the BIA's Case Information Database (CID), the appellant was convicted of a criminal offence on 9 November 2005 and recommended for deportation by the court on the same date. I have no information concerning the length of his sentence but in any event, it would appear that this may have been for less than 12 months as the appellant was living with his friend from 5 May 2006, unless he was released on licence after serving part of his sentence.
9. In relation to the deportation order, I have not seen a copy, but CID printouts suggest that a deportation order has been signed and, as stated above, efforts are being made by the RGDU to secure a travel document for the appellant from the Guinean embassy. There is also reference amongst the documents before me, to the appellant having been detained by the Immigration Service pending removal nor that he was released because RGDU were unable to secure a travel document for him from to enforce his removal.
10. The appellant states that he wishes to return to Guinea and in order to facilitate an early departure, he has applied on three separate occasions to the IOM for assistance under VARRP. In addition, enquiries have been made on his behalf with the Guinean embassy about the possibility of applying for travel documents to facilitate his return. The appellant's applications for assisted voluntary return have all been rejected. In the refusal letter of 7 October 2006, the appellant was advised that whilst destitution was accepted, the appellant had failed to meet "one or more of the criteria set out in Section 5.3 of Policy 71". The letter noted

that the appellant's VARRP application had been rejected, but save for this, gave no other indication of why the application had been refused.

11. In response to the appellant's second application for support, the respondent advised the appellant that although he had stated that he was taking all reasonable steps to leave the United Kingdom, his VARRP application had been rejected. Once again, the appellant was not told why the application was rejected nor by whom.
12. Following the appellant's third application for Section 4 support, he received the decision letter of 27 June 2007 informing him, for the first time, that his application for support was unsuccessful because his VARRP application had been rejected on the grounds that he has a deportation order against him.
13. The appellant takes issue with this decision, not least because both he and his representatives consider that he is not only able and willing to leave the United Kingdom, but is anxious to do so and has taken what they consider to be all reasonable steps to facilitate his departure including complying with attempts to obtain a travel document. The appellant states that he has done so by making three applications for assisted voluntary return and has approached his embassy for the purpose of obtaining a travel document only to be informed that in order to do so, he requires either his birth certificate or his passport as confirmation of identity and entitlement to a travel document. He has been unable to produce this evidence because the documents are currently in the custody of the BIA. I do not know whether the respondent has been asked to release these documents, if necessary directly to the embassy. Given that there is an outstanding deportation order, however, it is probably unlikely that the BIA would be willing to do so.
14. Section 4(2) of the 1999 Act (as amended by Section 49 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) allows the Secretary of State to provide, or arrange for the provision of, facilities for the accommodation of a person and his dependants if –
 - (a) he was (but is no longer) an asylum seeker, and
 - (b) his claim for asylum was rejected.
15. The criteria to be used in determining eligibility for and provision of accommodation to a failed asylum-seeker under Section 4 are set out in Regulation 3 of the 2005 Regulations. These came into force on 31 March 2005.
16. Regulation 3 states as follows:
 - (1)the criteria to be used in determining the matters referred to in paragraphs (a) and (b) of section 4(5) of the 1999 Act in respect of a person falling within section 4(2) or (3) of that Act are-
 - (a) that he appears to the Secretary of State to be destitute, and
 - (b) that one or more of the conditions set out in paragraph (2) are satisfied in relation to him.
 - (2) Those conditions are that-
 - (a) he is taking all reasonable steps to leave the United Kingdom or

place himself in a position in which he is able to leave the United Kingdom, which may include complying with attempts to obtain a travel document to facilitate his departure;

(b) not relevant;

(c) he is unable to leave the United Kingdom because in the opinion of the Secretary of State there is currently no viable route of return available;

(d) not relevant;

(e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998.

17. Where an appellant seeks to appeal against a decision to refuse him Section 4 support, the burden of proof is upon him to prove on a balance of probabilities that he meets the criteria for a Section 4 award.

18. I have given careful consideration to all the evidence that is before me, including all documents and submissions received from both parties to the appeal.

19. The IOM is an independent inter-governmental organisation, whose many functions and responsibilities include the administration of VARRP. In the UK, IOM act as an intermediary between the potential returnee and BIA. In order to be eligible for VARRP a person must:-

- (a) have a pending asylum application; or
- (b) have been refused asylum and have an outstanding appeal against that decision; or
- (c) have been refused asylum and exhausted the appeals process; or
- (d) be in the asylum process and in long term immigration detention; or
- (e) be subject to the Immigration Act and serving a sentence of imprisonment of less than 12 months; or
- (f) be detained by the Immigration Service solely in relation to immigration offences (provided they have not been assessed as violent and/or disruptive); or
- (g) have been granted time-limited exceptional leave to remain, humanitarian protection or discretionary leave outside the immigration rules.

20. The programme is not open to those who:

- (i) have been granted indefinite leave to remain and/or refugee status;
- (ii) have never sought asylum or humanitarian protection in the UK;
- (iii) have permission to enter or remain in the UK for non-asylum/humanitarian reasons e.g., student, spouses, visitors etc;
- (iv) are short term immigration detainees and have had removal directions set;
- (v) are convicted prisoners subject to deportation order;
- (vi) have been convicted of a serious immigration offence;
- (vii) are convicted prisoners sentenced to more than 12 months imprisonment;
- (viii) are British citizens or EU national;

- (ix) are Persons for whom compulsory deportation/removal directions have been set.

21. In all cases, applications for VARRP are received and screened by the IOM and thereafter forwarded to the Assisted Voluntary Returns Unit of the BIA for approval and it is they, not the IOM, who decide whether an applicant is suitable for assisted voluntary return or not.
22. In relation to the appellant, I accept that at some stage, a deportation order has been signed in his name and that attempts are currently being made to obtain a travel document for him from the Guinean embassy. I am told, and accept, that at some stage the appellant has been in detention pending removal but that for reasons possibly to do with the delay in obtaining a travel document for him, the Immigration Service considered it appropriate to release the appellant rather than continuing to hold him in detention. The deportation order was made by the Secretary of State of the Home Department (SSHD). The decision, both to detain and to release him from detention were made by his officers as was the decision to refuse the appellant's three applications for assisted voluntary return.
23. It seems to me that the appellant is in a no win situation. He is willing to return to his country but does not have the documents he needs to obtain the necessary travel document from his embassy. The respondent appears to have had a deportation order in place for over 12 months but has not been able to remove him possibly because of difficulties in securing a travel document from the Guinean embassy. There is no evidence before me to suggest that the failure of the respondent to remove the appellant from the UK, or to obtain a valid travel document from his embassy, is in anyway attributable to the conduct of the appellant himself. He appears to have demonstrated his willingness to co-operate in any way he can with the process of removal.
24. Policy Bulletin 71, version 2.3, issued on 31 March 2005, provides guidance to caseworkers "on the criteria that a failed asylum seeker must meet to qualify for support under Section 4 of the 1999 Act, and the conditions under which support shall be provided. Paragraph 5.3 states that if the caseworker is satisfied that a person applying for support under Section 4 is destitute, they must then determine whether the person meets one or more of the conditions set out in earlier paragraphs of the document. In making this determination, the caseworker is required to consider any supporting evidence submitted by the applicant and directs that the caseworker shall be satisfied that the person meets a relevant condition where, in relation to the taking of all reasonable steps to leave the UK or placing oneself in the position to be able to leave, a caseworker receives:-

"Confirmation from the Immigration Service that an application for a travel document has been made, including the likely period until issue, or confirmation that an application has been made to the International Organisation for Migration (IOM) for assistance in arranging the person's voluntary return to their country of origin.

Caseworkers should check the Case Information Database (CID) to establish whether the person has applied to the IOM. Consideration should be given in all cases to whether the person is genuinely taking steps to leave the UK within a reasonable period. Thus, if a person is complying with attempts by the Immigration Service to obtain a travel document and the process is likely to be lengthy, they are unlikely to qualify for support under Section 4 if alternative arrangements to leave

the UK much sooner could be made with the IOM, but these are not being pursued".

25. Caseworkers are reminded that Policy Bulletin 71 has the status of guidance only and should not be treated as the law. Regulation 3(2)(a) sets out the test an appellant needs to satisfy in order to qualify for Section 4 support on the basis that they are taking all reasonable steps to leave the UK or to place themselves in a position in which they are able to do so. The making of an application to the IOM for voluntary return is one such step.
26. It must also be remembered that the test of reasonableness set out in this regulation is not a subjective test to be made by the claimant, but an objective one to be determined by an adjudicator in the light of all available evidence. In this appeal, the fact that the appellant's VARRP application cannot be accepted, is a relevant, but by no means the sole determining factor.
27. On the totality of the evidence before me, I am satisfied on a balance of probabilities that this appellant has complied with the requirements of Regulation 3(2)(a) by taking all reasonable steps to leave the United Kingdom or place himself in a position in which he is able to do so. He has made repeated applications to the IOM for VARRP, notwithstanding that he does not qualify to benefit from the scheme because there is currently a deportation order in his name. He has made enquiries of his embassy concerning alternative travel documentation but is prevented from pursuing this because documentary evidence required by his embassy is currently held by the respondent. There is no evidence before me to suggest that the appellant has refused to co-operate with the Immigration Service in any way including in securing a travel document.
28. In the circumstances, I find that the respondent is not entitled to deny the appellant Section 4 support. In the absence of evidence to the contrary, the failure to remove the appellant from the United Kingdom rests solely with the respondent. The appellant must not be reduced to destitution because of the failure of the respondent to implement the deportation order expeditiously.
29. Appeal allowed.

Signed:..... Dated:.....
Chief Asylum Support Adjudicator