



**Tribunals Service**  
Asylum Support Tribunal

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Appeal Number AST/08/06/17796  
UKBA Ref. 04/07/00658/005  
Appellant's Ref. :

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

Adjudicator	Ms Sally Verity Smith
Appellant	AA
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 25<sup>th</sup> day of June 2008 allowing the above mentioned appeal.
2. The appellant, a citizen of Iraq born on 01 February 1983, appeals against the decision of the Secretary of State who on 10 June 2008 decided to refuse support to the appellant on the grounds that the appellant is not an asylum seeker.
3. In his Notice of Appeal, the appellant confirms that he does not require an oral hearing of his appeal. 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 proceeded to determine this appeal under Rule 6(2) of the Rules.
4. The appellant applied for asylum on the first occasion on 21 April 2004. This application was refused on 27 May 2004 and an appeal against that decision was dismissed on 21 September 2004. Permission to appeal to the former Immigration Appeal Tribunal was rejected on 24 January 2005 and the appellant was deemed appeal rights exhausted on 10 February 2005. The appellant subsequently returned to Iraq on a voluntary basis on 22 August 2006.
5. The appellant returned to the UK and applied for asylum once more on 18 February 2008. The appellant completed his application for Section 95 support

on 5 June 2008, which application was refused by the respondent on 10 June 2008. It is against that decision which the appellant appeals today.

6. The respondent's appeal bundle confirms the appellant's applications for asylum and support. The respondent's decision under appeal is predicated on the appellant's immigration status. Her position is that the appellant is neither an asylum seeker nor a dependant of an asylum seeker: his subsequent claim for asylum is classed as further representations and the appellant does not qualify for asylum support as he remains a failed asylum seeker. The appellant is informed that if he has evidence to show that he is an asylum seeker or the dependant of an asylum seeker, that evidence should be sent to the respondent immediately. Furthermore, the respondent informs the appellant that he might be eligible for Section 4 support as a failed asylum seeker.
7. The appellant in his grounds of appeal confirms that he claimed asylum on his return to the UK and had been granted temporary admission as an asylum seeker. His caseworker at the Refugee Council had been informed by the Border Agency that no decision had been made as to whether his claim should be treated as a fresh claim (sic) or as a fresh application (sic) for asylum. The Border Agency in Liverpool is dealing with the case and a caseworker has been allocated to the appellant. The appellant states that as no decision has yet been made on his application, he is an asylum seeker entitled to Section 95 support. The appellant has an ongoing asylum claim submitted to the Home Office and, while the Home Office decides whether or not to treat his application as one for asylum or as fresh representations, the appellant is entitled to Section 95 support. Furthermore, he encloses a copy of a letter from the Border Agency dated 1 May 2008 confirming that he is to collect his cash support from a Post Office in Leeds. The appellant encloses a copy of his application registration card, which defines him as an "asylum claimant" who made an application for asylum on 18 February 2008 and to whom employment is prohibited. Furthermore, he submits a copy of his IS96 which shows that he was given temporary admission on 3 April 2008 and that he must report to the Immigration Service in Glasgow every four weeks, starting 1 May 2008.
8. The AST issued directions to both parties to this appeal on 18 June 2008 directing them to demonstrate that the appellant is not an asylum seeker (in the case of the respondent) or that he is an asylum seeker (in the case of the appellant).
9. The appellant replied on 23 June, submitting a copy of his Screening Interview in which his date of asylum application is noted as 18 February 2008. The form states:

"Any application for international protection will be recorded as a claim for asylum."

The form contains a brief description of the reasons for the appellant's claim for asylum and is counter signed by a member of the asylum screening unit in Liverpool.
10. The appellant confirms that he has not applied for Section 4 support because he maintains that he is entitled to Section 95 support. The appellant confirms that he has not submitted an asylum statement to the Border Agency, his file is in transit at the Border Agency and it has not yet been decided whether the appellant has made a new asylum claim (sic) or a fresh claim (sic). The appellant maintains that until the Border Agency has made a decision on this issue, he is entitled to support by way of Section 95 of the Act.

11. The respondent replied concerning the appellant's previous chronology of his applications for asylum and adding as follows:

"The appellant has now returned to the UK and applied again for asylum on 18 February 2008. As he has already had a determination on his original claim, any subsequent application would be considered as further representations and considered against paragraph 353 of the Immigration Rules. This clearly states that the "submissions will only amount to a fresh claim if they are significantly different from material that has previously been considered". Until this decision is made, the appellant does not qualify for Section 95 NASS support. There has been no application received from the appellant requesting Section 4 support. I have enclosed screen prints from CID to show applicant entered the UK in the back of a lorry. The applicant was served with an IS151A letter (copy enclosed). I have called AIT and spoken to [caseworker] who checked the applicant's Home Office reference number, name and date of birth and also the date he re-entered the UK. He confirmed that there was no new claim or appeal on their system."

12. There is no other evidence from either party to this appeal.
13. I remind myself that the purpose of asylum support 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.

"claim for asylum" means 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."

Section 94(3) –

For the purposes of this Part, a claim for asylum is determined at the end of such period beginning -

- (a) on the day on which the Secretary of State notifies the claimant of his decision on the claim, or
- (b) if the claimant has appealed against the Secretary of State's decision, on the day on which the appeal is disposed of.

Section 94(4) –

An appeal is disposed of when it is no longer pending for the purposes of the Immigration Acts or the Special Immigration Appeals Act 1997.

14. I have considered all the evidence before me on a balance of probabilities and make the following findings:
15. First, I find that the burden is on the appellant to demonstrate that he has made an application for asylum as defined by Section 94(1) of the Act. I have considered the evidence which the appellant has submitted to support his contention that he has made a claim for asylum which post-dates his return to

the UK on 18 February 2008, namely his application registration card which records him as an asylum claimant and his screening interview record which confirms that he is to be interviewed pursuant to an "application for international protection [which] will be recorded as a claim for asylum" and which notes his date of application for asylum as being 18 February 2008.

16. Second, I find that the burden to demonstrate that the application for asylum is no longer under consideration is on the respondent. She might do so by producing a decision refusing the appellant's application of 18 February 2008 together with evidence of correct service of same.
17. Third, I am aware of the rules regarding the lapsing of applications (for asylum) and appeals (against decisions to refuse asylum) as a result of leaving the UK and/or returning to one's country of origin as well as the application of Article 1(c) of the 1951 Convention.
18. Fourth, I find the appellant to be an asylum seeker as defined by Section 94 of the Act: he has an application for asylum made on 18 February 2008 which has been recorded as such by the Secretary of State, as evidenced at paragraph 15 above, and which remains outstanding.
19. Appeal allowed.

Signed .....  
Asylum Support Adjudicator

Date .....