



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

2nd Floor
Anchorage House
2 Clove Crescent
London
E14 2BE

Telephone: 020 7538 6171

Fax: 0126 434 7902

Appeal Number AS/15/11/34507

UKVI Ref. 15/09/02781/001

Appellant's Ref.

IMMIGRATION AND ASYLUM ACT 1999
THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL)
(SOCIAL ENTITLEMENT CHAMBER) RULES 2008

Tribunal Judge	<u>Mrs Sehba Haroon Storey</u>
Appellant	<u>MR TY</u>
Respondent	<u>Secretary of State</u>

STATEMENT OF REASONS

1. This Statement of Reasons is made in accordance with Rule 34(1) of the Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008 (the 2008 Rules), and gives reasons for the decision given on Thursday the 14th day of July 2016, allowing the above mentioned appeal.
2. The appellant is a national of Sri-Lanka born on 19 April 1986. He appeals against the decision of the Secretary of State who, on 11 November 2015 decided to refuse his application for support under Section 95 Immigration and Asylum Act 1999 (the 1999 Act), on the grounds that the appellant:
 - a) is not destitute;
 - b) he is enrolled on a university course until 31 May 2016 and has failed to provide evidence stating that he is no longer continuing with his studies; and
 - c) he has failed to explain what has become of £11,000, previously said to be available to him whilst he was in the United Kingdom (UK) as a student.

IMMIGRATION HISTORY

3. The appellant applied for a student visa (Tier 4) in August 2014 in order to undertake a postgraduate course of studies at Salford University. His application was initially refused because he had failed to provide documentary evidence of his ability to finance his studies. On 26 November 2014, he applied

again and on this occasion, he was able to demonstrate that a sum of £20,000 was available to him to cover the cost of course fees and maintenance. On the strength of this evidence he was issued a Tier 4 student visa in January 2015. The visa was valid until 30 September 2016.

4. The appellant arrived in the UK on 21 January 2015 and enrolled at Salford University. As a condition of his leave to remain as a student, the appellant was given permission to undertake 20 hours of paid work per week but maintained throughout these proceedings that he did not actually engage in paid work whilst in the UK as a student at any time.
5. The appellant states that his father gave him £20,000 to finance his postgraduate studies but that on receiving the student visa, he transferred the money back to his father who then sent him smaller sums of money as and when required but usually on a monthly basis. It is said that the money did not arrive through normal channels, namely transferred from one bank account to another, but was paid to him by various individuals, in cash, who in turn had received the monies from his father in Sri- Lanka. From the monies received, the appellant paid the balance of his university fees by direct debit on a monthly basis. Evidence of this is available from the bank statements produced to me.
6. On 29 August 2015, the appellant returned to Sri-Lanka having purchased a return ticket on 28 July 2015. According to the copy online ticket available to me, he was due to return on 3 October 2015.
7. The appellant returned to the UK on 24 September 2015 and applied for asylum at London Heathrow Airport. His application was refused on 5 February 2016 and the appellant appealed against the decision. A final determination remains outstanding.

ASYLUM SUPPORT HISTORY

8. Following his arrival, the appellant was initially accommodated at Barking Park Hotel and then transferred to Lynx Hotel in Cardiff. On 1 October 2015 he applied for asylum support with the assistance of Migrant Help who are based at Lynx House. They helped him to complete the ASF1, copies of which are in the respondent's bundle. In the section headed "your previous employment", it was said that the appellant was previously employed by BP Petrol Station in Wigan from February 2015 to 26 September 2015. On an attached sheet, additional information was provided which detailed monies received into the appellant's bank account and confirmation that he had cancelled the mobile contract direct debit with Vodafone. It was further stated that payments made to Motorfuel Ltd on various dates were for food and not for fuel, and that his wife and parents are unable to support him.
9. A second entry on the form stated the following:-

"I am unable to provide any payslips as I took them back to Sri-Lanka when I returned there on 29/08/2015. I cannot remember where I put them and my wife has not been able to find them. I was paid by cash by my old employers."
10. An attached sheet to the application included the following statement:-

"I am unable to provide any payslips as I took them back to Sri-Lanka when I returned there on 29/08/2015. I cannot remember

*where I put them and my wife has been unable to find them.
Please see my bank statements for details of my pay."*

11. On 28 October 2015, the respondent refused the application for asylum support on the grounds that:-
 - a) the appellant was not destitute;
 - b) his student visa does not expire until 30 September 2016 and he cannot be in the UK on a student visa and claim asylum at the same time;
 - c) his student visa was conditional upon him having no recourse to public funds and he must therefore pay for his own essential living needs;
 - d) it is not acceptable that his father can no longer support him; and
 - e) If he wishes to apply for Section 95 support, his student visa would need to be curtailed, he will not be allowed to study and he will need to provide evidence that his father cannot support him rather than choosing not to do so.

12. On 11 November 2015 the respondent issued a further Decision Notice refusing the appellant asylum support under Section 95. I do not know the sequence of events between 28 October 2015 and 11 November 2015 that led to the making of the second refusal decision. The grounds for refusal are set out in paragraph 2 aforesaid. Additionally, the respondent noted discrepancies between the information provided on the ASF1 and on the appellant's visa application, in particular his statement in the latter that he had over £11,000 in his own name that was available to him for the duration of his studies.

13. On 13 November 2015, the appellant appealed against the decision of 11 November 2015 on the following grounds:-
 - a) The sum of £11,000 was transferred to his father prior to his arrival in the UK for studies. This money was transferred to him by his father to cover his university fees and living expenses over an eight month period;
 - b) He spent £5,000 in setting up his own company;
 - c) His father spent 15 Laks in order to facilitate his escape from Sri-Lanka.
 - d) He no longer had any money;
 - e) His student visa was cancelled when he claimed asylum and his passport and visa are with the Home Office. He cannot study at the University of Salford;
 - f) He was married on 18 January 2015, after his student visa was granted; and
 - g) He suffers from PTSD with nightmares, tactile hallucinations of previous torture and feels very frightened. He is very stressed and feels he cannot live anymore.

14. The appellant was asked to clarify the information provided on his ASF1 and did so. I will deal with this in the body of the evidence.

15. On 4 November 2015, the appellant wrote to Salford University and attempted to obtain a refund of his course fees. He was told that under the terms & conditions of the University he was not entitled to a refund.

16. Following the decision of 11 November 2015, the appellant was asked to vacate Lynx House but was able to find emergency accommodation in a homeless

shelter for one night. He states that this shelter was "full of drug addicts" and he therefore left and slept rough for a few days in the city centre. Thereafter he was invited to stay at the house of other refugees where he slept in a chair. Prior to the hearing of his first appeal on 24 November 2015, the appellant was sent to Barry House in London. The Asylum support Judge who heard his appeal decided that he was not destitute and dismissed his appeal. The appellant states that on the night of 24 November 2015, he slept at a railway station in Cardiff. Thereafter he has "lived on the streets" and spent one day in hospital. Since 30 November 2015 he has stayed at the Huggard Centre, his only access to food was from the Trinity Centre during the week. At weekends he had no access to food or washing facilities.

17. On 15 December 2015 the appellant applied for judicial review of the Tribunal decision of 24 November 2015. By order of the court, the respondent was required to provide the appellant with emergency accommodation and subsistence. The appellant has been in receipt of the same since 16 December 2015.
18. On 12 February 2016, the Administrative Court ordered (by consent) that the decision of 24 November 2015 be quashed and that the appellant's appeal against the decision dated 11 November 2015 be heard *de novo* by the First-tier Tribunal. The respondent has agreed pursuant to that order, to support the appellant until seven days after the determination of his appeal.

THE DE NOVO HEARING

19. This hearing took place over two days. In opening, Ms Crozier for the respondent confirmed that the essence of the decision was whether the appellant was destitute. It was no longer disputed that the appellant was an asylum seeker whose application for asylum had been refused, against which he had lodged an appeal on 22 February 2016. The Secretary of State therefore accepts that the appellant is no longer a student and is not entitled to take up employment. I shall therefore confine my decision to determining the issue of destitution.

THE ORAL EVIDENCE

20. The appellant gave evidence as follows:-
 - a) He was born in Sri-Lanka and has two siblings both of whom are permanently residents in Sri-Lanka together with the appellant's father and mother who are nearly 60 years of age and 55 years of age respectively. His mother is a housewife and his father is currently not employed for reasons of health. Previously he was self-employed in the coconut industry, essentially buying and selling coconuts. The appellant's sisters are both in full time education. The older sister is studying a management course at university and the younger sister is studying medicine. Primary and secondary education in Sri-Lanka is free up to secondary education level. Thereafter it must be paid for unless a student secures a scholarship. The appellant's two sisters have scholarships to study at university. This covers the costs of their education only. There are no fees and money is only required to cover subsistence.

- b) The appellant said that his family did not own any property and they have always resided in a “war zone” having been displaced 7-8 times. He said that they lived in temporary accommodation for refugees and moved regularly from place to place. They did not own a car.
- c) The appellant married his wife on 18 January 2015, shortly before he arrived in the UK to take up his place at Salford University. This was post the grant of his student visa. He maintained that he and his wife had known each other for 10 years and for the last four years of this period they were “living together”.
- d) From 2010 – 2014, the appellant was a student in India studying for his bachelor’s degree in electronics and communications. His studies were financed by his father and cost approximately £2,500 in total. In addition, the appellant worked part-time in order to pay for his accommodation. He completed his degree in June 2014.
- e) On return to Sri-Lanka from India in 2014, the appellant secured an internship and received Rs.7000 per month in payment.
- f) The appellant had a longstanding interest in launching a communication company in Sri-Lanka. In 2014 he had basic knowledge of the subject but believed that if he completed a Masters degree he would be in a better position to launch his company.
- g) In August 2014, he applied for a UK visa. Salford University offered him a scholarship of £4,000 and his father provided him with £20,000 to facilitate his visa and studies. He said that his father transferred this sum of money into his bank account when he applied for the Tier 4 student visa. Once the application was successful, the appellant transferred the £20,000 back to his father rather than bringing the money with him. Notwithstanding that, he had returned the £20,000 to his father’s bank account, the appellant maintained that he retained ownership of the money.
- h) The total course fees for the appellant’s studies in the UK amounted to £12,800. He received a bursary of £4,000 and paid a deposit of £4,400 whilst still in Sri-Lanka. The remaining £4,400 was paid by direct debit monthly payments from his UK bank account, details of which were provided in the form of bank statements.
- i) Upon arrival in the UK, the appellant quickly found accommodation within the Tamil community at the cost of £250 per month in cash. He remained at the same address until he returned to Sri-Lanka in August 2015.
- j) During the period of his 8-month stay in the UK, the appellant’s father sent him a total of £12,400 through various individuals. On receipt of the monies, these individuals transferred the money into his bank account or gave it to him in cash. When monies were received in cash, the appellant would pay this into his bank account unless he needed to retain cash for payment of his rent.
- k) The appellant returned to Sri-Lanka on 29 August 2015 having purchased a return ticket. He was due to return to the UK on 3 October 2015.
- l) The appellant said that he returned to Sri-Lanka in order to launch his company. He had already done some preparatory work towards this. He maintained that he spent the sum of £4,200 in establishing his company

which included the registration fee, location, equipment, computers, analysers and tools.

- m) On 9 September 2015 the appellant was arrested whilst at home with his wife and placed under arrest. He claimed to have been tortured whilst in custody and asserts that his father paid an agent the equivalent of £7,000 in order to secure his release and exit from Sri-Lanka using his own passport. The appellant arrived on 23 September 2015 and claimed asylum on arrival. He had £10 on arrival and was accommodated at various locations. He asserts that he is destitute and has no access to funds or assets either in the UK or in Sri-Lanka.
- n) The appellant says that he is a victim of torture and currently suffers from PTSD for which he is receiving treatment. He is on medication for pain and depression.

CROSS EXAMINATION

21. In response to questions put by Ms Crozier, the appellant stated that:-

- a) He travelled to India between 2010-2014 as a student. His studies were financed by his father who sent money to him every semester. Prior to his departure to India, he was living with his girlfriend (now his wife) but she did not travel with him to India as she herself was studying in Sri-Lanka. On his return to Sri-Lanka during 2010-2014 he resided with his girlfriend but this was not looked upon favourably. His parents arranged his marriage to his girlfriend after he obtained his student visa to the UK.
- b) The appellant maintained that each time he left Sri-Lanka to travel to India he had to pay an agent in order to take him through the airport. The amount paid was in the region of Rs.25,000 – Rs.30,000. This was equivalent to approximately £100. If he was unable to pay this, the sum would be paid by his father.
- c) In relation to the £20,000 said to have been gifted to him by his father, the appellant said that his father had saved this over a lengthy period of time from his income selling coconuts. He said that his father had been employed for some considerable time and reiterated that the money had been given to him as a gift sometime around June – July 2014. Initially, his entry clearance application for a student visa was refused because he had failed to submit documents demonstrating the source of the income. In November 2014, he applied again for entry clearance and was required to demonstrate that he could afford the sum of £820 to cover the cost of his maintenance and accommodation for the duration of his studies. By this stage he had already paid part of his fees for the course and on the strength of the £20,000 available in his account, entry clearance was granted. On receipt of the visa, the money was transferred back to his father because the appellant was unsure whether he would be able to transfer the money to the UK from his own bank account in Sri-Lanka.
- d) On arrival in the UK, the appellant stated that he was looking for work but was unable to find any. His university attempted to assist him but without luck. He emphasised that he did not earn any money whilst in the UK. Asked about the reference to payslips, the appellant said that he had been offered a cleaning job at a petrol station but this only lasted one day and

was treated as a "training day" for which he did not receive any remuneration. Asked to explain the references in his support application to payslips, the appellant maintained that this was a mistake on the part of Migrant Help and that he was unable to explain how the error occurred. He added that he had not been provided with an interpreter when giving instructions to Migrant Help.

- e) The appellant was given entry clearance until September 2016 in order to undertake a course of studies lasting a period of eighteen months. His first semester concluded in June 2016 and his second semester was due to start in September. He said that he had fully intended to return as a student in order to complete his studies and for this reason he purchased a return ticket with a return date of 3 October 2015.
- f) The appellant was then questioned in relation to his company set up in Sri-Lanka. The appellant said that the procedure for setting up a company was not an easy one but that he had to start the process before he could purchase equipment. He made his wife a partner in the company with the intention that she would run it when he was in the UK. He did not employ anyone else to work in the company. Asked what had become of it since his return to the UK, the appellant stated that no one has visited the premises and that his father had been denied access to the premises.
- g) The appellant said that the whole process of company registration had commenced whilst he was still in the UK. His wife sent him a copy of the Articles of Association, which he signed and returned to her. The company registration fee was Rs.5,000. He had already ordered the equipment before he went to Sri-Lanka and paid for this on his arrival. Asked whether any receipts were available, the appellant said that these had all been stolen by LTTE.
- h) In relation to his asylum application, the appellant said that he had been advised to claim asylum by his agent who had warned him that if he attempted to return to Sri-Lanka he would be shot. He said that he had made no arrangements for his accommodation on return because he envisaged that he would have no problem finding a cheap hotel at £25 per night until he could sort out more permanent accommodation. He said that in the space of eight hours, his life had changed and he had to flee Sri-Lanka. Had he not done so, he believed that he would have died in prison. He added that he was in severe pain and had not given any thought to how he would be supported pending his asylum claim. He maintained that he was unaware he had £10 in cash with him on arrival.
- i) In response to question put by me, the appellant said that had he not been arrested, he would have returned to the UK with money in order to complete his studies. He gave no thought to who would pay for his food on arrival as an asylum seeker but thought that if he claimed asylum, "they would do everything for me".

SUBMISSIONS FOR THE RESPONDENT

22. Ms. Crozier asked me to note that this was now the appellant's second hearing and as such, he was familiar with the questions that would be asked of him, as he knew the gaps in his evidence. She questioned the appellant's credibility in particular identifying his evidence in relation to his payslips, which he had

claimed was an error on the part of Migrant Help whilst the remainder of the evidence he claimed to be correct. She pointed to discrepancies in relation to the length of his relationship with his wife prior to their marriage and to his failure to show a paper trail of what monies he had received from abroad, which in her opinion he had failed to explain satisfactorily. She questioned why the appellant was unable to produce receipts for the sum of £4,200 and questioned the logic of a person genuinely intending to return to the UK as a student spending such a large sum of money to set up a company in Sri-Lanka. She questioned why the appellant had spent £3,000 in order to facilitate his departure from Sri Lanka when previously he only had to pay small sums of money to an agent to leave Sri-Lanka for India. She asked me to conclude that any sums of money that had not been fully receipted or accounted for, should be treated as still available to him for his maintenance.

SUBMISSIONS FOR THE APPELLANT

23. Mr Copeland asked me to find the appellant a credible witness and maintained that his client had submitted extensive evidence to support his testimony. In his submissions, it was not unusual for the appellant's father to have given him £20,000 to cover the cost of his studies. The appellant had not been employed whilst in the UK and the reference to payslips was an error. Even if the appellant had worked, Mr Copeland reminded me that he was entitled to do so and there is absolutely no advantage to him in denying this. He reminded me that the appellant had previously travelled as a student to India and then to the UK where he maintained and accommodated himself with his own money. He had provided a detailed bank statement showing his expenditure and monies received and various friends described him as upfront and honest. Mr Copeland described the appellant as hardworking and ambitious. He maintained that his client had not withheld any evidence and that he was genuinely destitute.

THE BURDEN AND STANDARD OF PROOF

24. The burden of proof is upon the appellant and the standard of proof is that of a balance of probability.

THE LEGISLATIVE FRAMEWORK

25. So far as is material, Section 95 of the 1999 Act, as amended, provides the following:

95. Persons for whom support may be provided

- (1) The Secretary of State may provide, or arrange for the provision of, support for –

- (a) asylum-seekers, or
- (b) dependants of asylum seekers

who appear to the Secretary of State to be destitute or to be likely to become destitute within such a period as may be prescribed.

[...]

- (3) For the purposes of this section a person is destitute if –
- (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
 - (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

26. In circumstances where the applicant is not already in receipt of support, the prescribed period for the purpose of Section 95 is 14 days beginning with the day on which the question of destitution or likelihood of destitution falls to be determined. (Regulation 7, Asylum Support Regulations 2000 (the 2000 Regulations)).

27. Regulation 6 of the 2000 Regulations makes further provision as to 'destitution', including the matters to be considered by the Secretary of State in determining whether an individual is destitute for the purpose of Section 95 of the 1999 Act. Regulation 6 provides as follows:

“ Income and assets to be taken into account

6.—(1) This regulation applies where it falls to the Secretary of State to determine for the purposes of section 95(1) of the Act whether—

- (a) a person applying for asylum support, or such an applicant and any dependants of his, or
- (b) a supported person, or such a person and any dependants of his, is or are destitute or likely to become so within the period prescribed by regulation 7.

(2) In this regulation “the principal” means the applicant for asylum support (where paragraph (1)(a) applies) or the supported person (where paragraph (1)(b) applies).

(3) The Secretary of State must ignore—

- (a) any asylum support, and
- (b) any support under section 98 of the Act, which the principal or any dependant of his is provided with or, where the question is whether destitution is likely within a particular period, might be provided with in that period.

(4) But he must take into account—

- (a) any other income which the principal, or any dependant of his, has or might reasonably be expected to have in that period;
- (b) any other support which is available to the principal or any dependant of his, or might reasonably be expected to be so available in that period; and
- (c) any assets mentioned in paragraph (5) (whether held in the United Kingdom or elsewhere) which are available to the principal or any dependant of his otherwise than by way of asylum support or support under section 98, or might reasonably be expected to be so available in that period.

(5) Those assets are—

- (a) cash;
- (b) savings;
- (c) investments;
- (d) land;
- (e) cars or other vehicles; and

(f) goods held for the purpose of a trade or other business.

(6) The Secretary of State must ignore any assets not mentioned in paragraph (5).

GUIDANCE FROM THE COURTS

28. In *R (Limbuella) v SSHD* [2005] UKHL 66, the leading case on destitution, Lord Bingham said at [5], that the power of SSHD to provide asylum support becomes, in effect, a duty to do so where the exercise of such power is necessary to avoid a breach of the applicant's Convention rights. Baroness Hale agreed stating at [78] that leaving a person homeless in circumstances where there was no other source of support, was likely to lead to a breach of Article 3.
29. On matters concerning the assessment of credibility of a witness, Schiemann LJ said in *SSHD v Maheshwaran* [2002] EWCA Civ 173, that a failure to put a point to a party to litigation, which is subsequently decided against them, may be grossly unfair and lead to injustice. In such circumstances, it is open to the tribunal expressly to put a particular inconsistency to a witness but this will not be the usual case, and where the party is represented, the tribunal is entitled to remain silent. He emphasised however, that whether a particular course is consistent with fairness is essentially "an intuitive judgment which is to be made in the light of all the circumstances of a particular case."
30. In *WN (Surendran; credibility; new evidence) Democratic Republic of Congo* [2004] UKIAT 00213, Ousley J sitting in the Upper Tribunal Immigration and Asylum Chamber, cautioned tribunals against taking on the role of the decision maker and doubting *prima facie* credible evidence that had not been challenged by the respondent either in writing or through a representative at the hearing. Of particular relevance to this appeal are his following comments:
- " 28.it is for an Appellant whose credibility is challenged as this Appellant's credibility most emphatically was, and challenged in almost every possible respect, to put forward all the evidence he can and to deal with the discrepancies which arise. Even where the Secretary of State is not represented, the Appellant cannot assume that points which are not put by the Adjudicator to him for his comment are points which are to be regarded as accepted, especially if they are obvious points of contradiction or implausibility which he has failed to grapple with. It is not necessary for a fair hearing that every point of concern which an Adjudicator has, be put expressly to a party, where credibility is plainly at issue...."
31. Ouseley J went on to stress at [33] that the Judge must 'be especially careful not to invent his own theory of the case and must deal with what are significant problems, not minor points of detail', and at [38] that any questions should not 'disguise what is the point of concern'.

FINDINGS OF FACT

32. I make the following findings of fact:
- a) In August 2014, the appellant was unable to demonstrate that he could meet the Tier 4 student visa financial requirements;

- b) In November 2014, he was able to demonstrate that he held the sum of £20,000 in an account in his name;
- c) The said sum of £20,000 was not a gift to him by his father;
- d) In January 2015, the appellant returned the £20,000 to his father prior to the leaving Sri Lanka for the UK. It was therefore no longer under his control;
- e) In 2015, the appellant was able to take funds out of Sri Lanka in but was restricted from taking currency notes out of the country;
- f) There were several methods by which the appellant's father could send money directly to the appellant instead of via third parties;
- g) The appellant was engaged in paid employment whilst in the UK as a student;
- h) The appellant's father was employed in the coconut trade, buying and selling coconuts. He did not own a home or car and always resided in rented accommodation;
- i) The appellant's father did not have savings of £20,000 that he was able to gift to the appellant;
- j) During the period January – August 2015 the appellant's father did not send the appellant money from Sri Lanka through various individuals;
- k) The appellant has a company in Sri Lanka which was established whilst he was still in the UK as a student;
- l) He did not spend £4,200 in establishing the said company in Sri Lanka;
- m) The appellant does not have any money or assets available to him for his maintenance and accommodation.

DISCUSSION

33. As stated above, the appellant's application for asylum was refused on 5 February 2016 and a hearing date for his appeal is awaited. In the circumstances, I do not intend to comment upon any evidence that may affect the outcome of his asylum appeal. This includes in particular his evidence of events occurring after his return to Sri Lanka in August 2015 and the manner of his exit from Sri Lanka in September 2015. Additionally, any adverse findings of credibility I make in this decision relates solely to the evidence before me and are not intended to cast doubt on the credibility of his evidence in his asylum appeal.

Tier 4 Student Visa application

34. The appellant's Tier 4 student visa application of November 2014 has significant relevance to his asylum support claim. This is because in support of that claim, the appellant submitted evidence claiming that he had available to him for his exclusive use, the sum of £20,000 which he intended to utilise for his course fees and maintenance whilst studying in the UK. The respondent submits that £11,000 of that sum was unaccounted for when the appellant returned to the UK in September 2015 and therefore it was still available to him for his maintenance and accommodation. If that is correct, he was not destitute at the time of his application for asylum support.
35. The Tier 4 guidance (version 11/14) states that an applicant seeking a visa to study in the UK (outside London) needs to demonstrate that they have sufficient funds under their control to cover the cost of their studies plus £820 per month for a maximum period of 9 months. The appellant's course fees amounted to £12,800, less a bursary of £4,000, leaving £8,800 to pay. The maintenance sum

required for nine months was £7,380. The appellant therefore needed to show that he had available to him the sum of £16,180.

36. The guidance further states that an applicant is only required to show that they have held the required sum of money for a consecutive 28-day period ending no more than 31 days before their application. The money may be held in the applicant's own bank account or the account of a parent or guardian, provided it is cash held in a bank and must be available for their use for studying and living in the UK.
37. For the reasons stated below, I do not accept the appellant's evidence that his father gave him the sum of £20,000 as a gift to use for his studies. Firstly, if the money was given to him sometime in June/July 2014, as claimed, there is no credible reason why the appellant would not have been able to produce evidence of his ability to finance his studies with his application in August 2014. Even if he is mistaken about the date the money was given to him, there was nothing to prevent him from using his father's bank statement in support of his application. The fact that there was no evidence of finances submitted with the August 2014 application, suggest to me that the money was not available to the appellant or his father at that time.
38. I further note that the Tier 4 visa requirements in November 2014 were such that it was not necessary for the appellant to show how he or his father came by the money (other than that it must not have been acquired from working illegally in the UK). It was sufficient under the relevant guidance to show that the money was available in a cash account for a consecutive period of 28 days. I accept that the appellant was able to provide evidence that he held a sum of money in his account sufficient to cover the cost of his studies (less any sums paid in advance) and his maintenance cost. On the strength of this evidence, he was issued with a visa.
39. Once the visa was issued, the appellant promptly returned the money to his father. His explanation is that he was unsure how he could transfer the money to the UK and he therefore gave it to his father to send the money to him when required. I do not accept this evidence. There is no evidence before me, save for his assertion, to suggest that the appellant could not have taken the money with him to the UK by purchasing travellers cheques, a bank draft, MoneyGram or transferred the entire sum through Western Union or other similar money transferring agencies. I am further satisfied that he was not prevented from taking the money with him by any financial restrictions imposed by the Sri Lankan Government.
40. I do not accept that the £20,000 belonged to him or to his father. I also reject his evidence that his father managed to save £20,000 from his income buying and selling coconuts. It is common knowledge that coconut traders in South East Asia are amongst the poorest workers in the region. Furthermore, the appellant gave evidence that his father had never owned a car or property and that the family had always resided in government accommodation, moving from place to place on six or seven occasions. According to him, the family now live in "refugee accommodation".
41. In my judgment, this is not the profile of a man with the means to provide for himself, his wife and three dependant children and save £20,000 all from buying and selling coconuts. The evidence lacks credibility and I reject it. I appreciate that the claim to ownership of £20,000 was accepted for the purposes of the Tier 4 visa application but I note that the rules and policy governing this procedure do not require applicants to prove that the money in the relevant

account belongs to the applicant or their parent. Thus, it would be possible for a person to borrow the money and return it once the visa is issued. That in my judgment is probably what occurred and why the money was promptly returned to the appellant's father.

42. Much has been made of the appellant's decision to marry after the grant of his visa. Whilst this is a change of circumstances that he should have declared, I do not consider it relevant to the outcome of this appeal as it has no bearing on the appellant's credibility. I accept the appellant's evidence that his wife and father are not in a position to support him.
43. I further reject the appellant claim that he did not engage in paid employment whilst he was a student. He maintains that references to his payslips in his asylum support application are an error on the part of Migrant Help who assisted him with completing his claim and suggests that there may have been a communication problem because he was not provided with an interpreter. I am satisfied that the appellant speaks fluent English and does not need an interpreter to communicate. He demonstrated this in the hearing before me when he regularly spoke to me in English notwithstanding the presence of an interpreter at his request. Furthermore, I do not accept that the detailed information provided by Migrant Help as per paragraphs 9 and 10 above, could have come from any other source than the appellant. I do not know why he subsequently sought to conceal his employment. It is possible that he was engaged in work for more than the 20 hours permitted. I do not know. I am, however, satisfied that he was in paid employment, possibly for several individuals, that he was provided with payslips and paid in cash. I reject his evidence that his father sent money to various individuals who paid the appellant in cash in the UK. I am satisfied that the appellant paid his course fees, rent and maintenance from his earned income and not from money sent by his father.
44. Lastly, in relation to the appellant's company in Sri Lanka, I accept that the company was formed at modest cost but I reject his evidence that he spent £4,200 in purchasing equipment for his business. I have seen no evidence of this expenditure. In my judgment, the money simply did not exist and the appellant has invented this elaborate story to explain away fictitious money.
45. I did not find the appellant a credible witness and except where it is specifically accepted, I reject his evidence as fabrication designed to conceal the fact that he misrepresented his financial status when seeking a Tier 4 visa.
46. The appellant is accordingly destitute and entitled to the provision of section 95 support.

Ms Sehba Haroon Storey
Principal Judge, Asylum Support

Dated 22nd July 2016

SIGNED ON THE ORIGINAL [Appellant's Copy]