



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number AS/12/12/29244/YB

UKBA Ref. 08/02/01988/002

Appellant's Ref.

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

Tribunal Judge	Ms Sally Verity Smith
Appellant	MS CS
Respondent	Secretary of State

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, and gives reasons for the decision given on Tuesday the 18th day of December 2012, remitting the above mentioned appeal.
2. The appellant, a Sri Lankan Tamil born on 25 September 1961, appeals against the decision of the Secretary of State who decided to refuse her application for support under Section 95 of the Immigration and Asylum Act 1999 ("the Act") on 30 November 2012 on the grounds that she was no longer an asylum seeker and, in any event, had been refused support under Section 55 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") on 18 June 2008.
3. The appellant appeared in person and gave her evidence in Tamil by way of an independent court interpreter. The respondent was represented by Ms Jones.
4. The appellant arrived in the UK on 4 June 2002. She made her claim for asylum some six years later on 13 February 2008 and made her application for support soon thereafter. She was interviewed pursuant to Section 55(1) of the 2002 Act on 5 June 2008 and a decision was made on 18 June 2008 that Section 55(1) of the 2002 Act applied: the respondent was prevented from providing support to the appellant under Section 95 of the Act and she had no right of appeal against that decision. The appellant made her second claim for support on 1 November 2012 under Section 95 of the Act for subsistence only. That application was refused by the respondent on 30 November 2012 on the grounds that (a) she was not eligible for Section 95 support as she was no

longer an asylum seeker and (b) she was not considered eligible for asylum support as Section 55 of the 2002 Act had been applied to her previous application for support on 18 June 2008. The respondent offers the appellant a right of appeal against the decision of 30 November 2012.

5. The AST issued directions to both parties to this appeal on 12 December 2012. The appellant was warned that the Tribunal Judge would consider strike out as a preliminary issue for one of two reasons:
 - (i) because Section 55 of the 2002 Act continued to apply to her current application for support; and
 - (ii) because there was no reasonable prospect of her appeal succeeding as she was no longer an asylum seeker.

The appellant was asked to show that she was an asylum seeker and provide evidence to show that the Section 55 decision of 2008 did not preclude her from support and a right of appeal now.

The respondent was directed to explain why a right of appeal was offered if support had been refused under Section 55 of the 2002 Act together with any evidence to show that the appellant was a failed asylum seeker.

Neither party has complied with directions.

6. At the hearing, Ms Jones for the respondent, submits that the respondent was wrong to offer the appellant a right of appeal against the decision of 30 November 2012. The respondent's position is that the Section 55 decision impacts not only the appellant's support application of 2008 but all subsequent support applications.

In any event, the respondent's position remains that the appellant is not an asylum seeker and is not entitled to Section 95 support: the evidence quite clearly shows that the appellant is a failed asylum seeker whose eligibility for support, if at all, lies by way of Section 4 and not by way of Section 95. The appellant should be aware that Section 4 support is offered by way of accommodation only and not by way of subsistence only: the nature of the appellant's support under Section 4 would be radically different than the one she actually applied for.

7. The appellant addressed me and confirmed that she had now understood that she was no longer an asylum seeker, that she was a failed asylum seeker and that her application for support should be made under Section 4 and not under Section 95. She understood that Section 4 support was offered by way of accommodation only (with subsistence support attached) and could not be offered by way of subsistence only. She confirms that her application is clear in that her daughter-in-law continues to offer her accommodation and she was originally only requesting subsistence support.
8. Section 55 of the 2002 Act states as follows:-
 - (1) The Secretary of State may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (2) if –
 - (a) the person makes a claim for asylum which is recorded by the Secretary of State, and

- (b) the Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person's arrival in the United Kingdom.

(2) The provisions are –

- (a) sections 4, 95 and 98 of the Immigration and Asylum Act 1999; and
- (b) sections 17 and 24 of this Act.

(10) A decision of the Secretary of State that this section prevents him from providing ... support ... is not a decision that the person does not qualify for support for the purpose of section 103 of the Immigration and Asylum Act 1999 (appeals).

9. Section 94(1) defines an asylum seeker as a person who is not under eighteen and has made a claim for asylum that has been recorded by the Secretary of State but which has not been determined.

A claim for asylum is defined as one where it would be contrary to the UK's obligations under Refugee Convention or under ECHR Article 3 for the claimant to be removed from, or required to leave, the UK.

Section 94(3) states that the 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, as may be prescribed.

Section 94(4) states that an appeal is disposed of when it is no longer pending for the purposes of the Immigration Acts or the Special Immigration Appeals Commission Act 1997.

10. I have considered all the evidence before me carefully on a balance of probabilities.
11. First, I consider the application of Section 55(10) of the 2002 Act in order to establish whether I have jurisdiction to hear this appeal. I find that I do. I find that the wording of Section 55(10) refers to *a* (emphasis added) decision on a support application. Furthermore, the respondent's decision of 18 June 2008 makes it clear that Section 55 was applied to *this* (emphasis added) support application of June 2008. I find that Section 55 must be specifically invoked in all applications for support: the respondent must consider Section 55 every time an applicant applies for support. If section 55(1) applies, 55(10) will deprive the applicant of a right of appeal to this Tribunal against the decision to refuse support.
12. There is no evidence that the respondent has applied Section 55 to the appellant's current application for support and, indeed, had she had done so she would not have awarded the appellant a right of appeal against the decision to refuse support.
13. Having established jurisdiction to determine the appeal, I go on to consider whether the appellant is an asylum seeker eligible for Section 95 support or a failed asylum seeker eligible for Section 4 support. I accept the respondent's position, which is not disputed by the appellant today, that the appellant is not

an asylum seeker and her eligibility for support, if at all, lies by way of Section 4 of the Act.

14. Since the introduction of a joint application form by the respondent for both Section 4 and Section 95 support, I find that the respondent (and this Tribunal) could have made a decision on the appellant's eligibility for Section 4 support. Indeed, I find that the respondent should have considered the appellant's eligibility for section 4 support rather than refusing the appellant's incorrect application for Section 95 support. The joint application form has been drafted for the convenience of the respondent: if the respondent is on the point of refusing support on the basis that an applicant for section 95 support is no longer an asylum seeker, it seems only logical that the respondent should, rather than refusing support, proceed to consider eligibility under Section 4.
15. In this particular case, I will not make a finding as to the appellant's eligibility under section 4 as I accept that the appellant made her application for support on the basis of subsistence needs only and not because she required accommodation. I therefore remit this appeal to the respondent in order that she may consider all the new circumstances of the appellant's eligibility for Section 4 support.
16. As the appellant is not currently supported by the respondent, she will not be supported during the period of remittal and, for that reason, the respondent may wish to undertake her consideration with all due speed.

Ms Sally Verity Smith
Tribunal Judge, Asylum Support
SIGNED ON THE ORIGINAL [Appellant's Copy]

Dated 21 December 2012