



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number : AS/15/05/33235
UKVIA Ref. : 12/09/01437/001
Appellant's Ref. :

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

Tribunal Judge	Mr Ian A Lewis
Appellant	MSN
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 ("the Rules"), and gives reasons for the decision made on 12 June 2015, after an oral hearing, remitting the appeal.
2. The Appellant is a national of Malawi born on 1 August 1966. She appeals under section 103 of the Immigration and Asylum Act 1999 against a decision of the Secretary of State dated 21 May 2015 discontinuing support under section 4 of the Immigration and Asylum Act 1999 (as amended).
3. Where an Appellant appeals against a decision to discontinue section 4 support, the burden of proof in the first instance is on the Respondent, to the civil standard of a 'balance of probabilities', to show that the Appellant no longer meets the criteria upon which support was granted. If that be so, thereafter it is for the Appellant to demonstrate on a balance of probabilities that she meets the criteria for support on some other basis.
4. In her Notice of Appeal the Appellant indicated that she wanted to attend an oral hearing of her appeal. The matter was duly listed.
5. The Appellant was represented at the hearing by Ms Gellner of ASAP. The Respondent was represented by Ms Ayodele. In the event it was not necessary to hear evidence from the Appellant. I am grateful to both representatives for

the helpful, sensible, and realistic way in which it was possible to reach a consensus as to the just disposal of this appeal.

6. Given that there was consensus at the hearing I do not propose to rehearse herein the applicable statutes and regulations, or set out a complete chronology of the Appellant's immigration and support histories.
7. What is particularly pertinent is that the Appellant was granted section 4 support on 25 October 2012 because the Respondent was satisfied that she was a failed asylum seeker, was destitute, and met the condition of regulation 3(2)(e) by reason of having outstanding representations lodged with the Respondent in respect of her asylum claim and/or human rights. Since that time the Appellant's representations have been rejected, but she has made further sets of representations – most recently on 5 September 2013 - and her support continued in the meantime. The most recent submissions were rejected on 15 October 2014, and deemed not to constitute a fresh claim for asylum. In consequence the Respondent decided on 21 May 2015 to discontinue the Appellant's support because she no longer met the condition of regulation 3(2)(e) because there were no longer any outstanding representations.
8. The Appellant does not dispute the fact of the rejection of her last representations. In such circumstances I am satisfied that the Respondent has demonstrated that the basis upon which support had been continuing since its grant in October 2012 has ceased to exist.
9. The Appellant does not claim that she has made any yet further representations, or that there is any challenge to the Respondent's decision of 15 October 2014 by way of judicial review, or that any such challenge (which in any event by now would be considerably out-of-time) is being contemplated.
10. Instead, in her Grounds of Appeal and before me she raises issues in respect of her health, and in particular her mental health.
11. The Appellant provided two items of medical evidence with her Notice of Appeal: a letter dated 28 August 2014 from a Nurse Practitioner in Mental Health, and a short letter from her GP dated 17 December 2014 which confirmed that she was "*suffering with significant psychiatric problems and is under the care of the Community Mental Health Team*" and indicating that she was "*not sufficiently stable to attend any appointments regarding her current application for naturalisation*" (which I take to be a reference to immigration rather than specifically naturalisation which relates to citizenship).
12. In response to Directions issued by the Tribunal on 8 June 2015 the Appellant has provided some further medical evidence by way of a letter dated 8 June 2015 from a Consultant in Infectious Diseases. This letter confirms a HIV diagnosis in November 2005; it also adverts to mental health problems including a hospital admission in December 2014 with an overdose and states that the Appellant's "*mood continues to be very variable*". The opinion is expressed that the loss of accommodation "*will be detrimental to her mental health and not help her physical health either*".

13. At the hearing today I was provided with yet further medical evidence, including a discharge summary dated 12 December 2014, patient records up to 28 May 2015, and a further letter from the Nurse Practitioner in Mental Health dated 2 February 2015.
14. Ms Gellner also provided me with the Statements of Reasons in two cases decided by fellow First-tier Tribunal Judges in this Tribunal: AS/14/07/31702, 6 August 2014, Judge Bashir, and AS/15/03/32782, 24 March 2015, Judge Lal. The appeal in each of those cases had been allowed pursuant to regulation 3(2)(b) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005. Of course any particular case turns on its own facts and evidence, and Ms Gellner acknowledged that there was nothing in the medical evidence presently before the Tribunal that overtly stated the risk to the Appellant in leaving the UK comparable with the evidence identified by Judge Bashir at paragraph 15 of her decision, and by Judge Lal at paragraph 5 of his decision.
15. Indeed in this context it is to be noted that none of the medical evidence presently available is directly addressed to the question of the Appellant's ability to leave the UK in relation to any physical impediment or other medical reason. Nor has a Section 4 Medical Declaration been completed.
16. Be that as it may, significant and troubling matters in respect of the Appellant's medical history and underlying medical conditions, which may very well impact upon her ability to leave the UK, have been raised. Moreover - without deciding the matter at this stage – it is clear to me that there is significant evidence suggestive that the Appellant would face consequences if rendered homeless because of the withdrawal of support that might engage regulation 3(2)(e). In this context, whilst it might be said in the ordinary course of events that an applicant can avoid the consequences of destitution by making a voluntary departure from the UK, on the facts of this particular case given the Appellant's mental health vulnerabilities - and again without at this stage deciding the matter – it seems to me that there is at the very least a significant question mark as to whether the Appellant would be able to make such arrangements to quit the UK on her own.
17. Ms Ayodele helpfully and realistically acknowledged that the matters disclosed in the available medical evidence raised significant and genuine issues of concern that might impact upon the Appellant's entitlement to continuing support. These were not matters that had been given any close scrutiny by the Respondent: the evidence submitted with the Notice of Appeal was not contemporaneous, and had only been commented upon briefly in the written submission accompanying the Appeal Bundle. More extensive information was now available, which had not been considered by the Respondent, and in particular there had been no opportunity to pass it to a medical adviser.
18. After some brief discussion, and notwithstanding the clearly expressed opinion of the Consultant in Infectious Diseases that the loss of accommodation would be detrimental to the Appellant's health, Ms Gellner acknowledged that the Respondent had not had a proper opportunity to consider such matters and

accepted that proceeding to a substantive determination at this stage might render any decision procedurally unfair.

19. In the circumstances it was common ground that the most just and fair disposal of the appeal was to remit it to the Respondent, who – further to the discussions that took place at the hearing – will need to address the matters set out below in due course. In the meantime, it is open to the Appellant to provide further medical evidence, and in particular to seek to obtain a Section 4 Medical Declaration specifically addressing her ability to leave the UK.
20. In my judgement in considering the Appellant's entitlement to support the following matters will need to be addressed by the Respondent in consequence of the remittal and on the basis of all available medical evidence.

Matters for Consideration Consequent to Remittal

- (i) Does the Appellant meet the condition of regulation 3(2)(b)?
- (ii) If not, and it is considered that the Appellant is able to leave the UK, is this contingent upon any sort of special arrangements being made in respect of her travel, for example by way of sedation, escort, or other medical/psychiatric support?
- (iii) If the Respondent determines that the Appellant does not satisfy the condition of regulation 3(2)(b) because she is able to leave the UK with the provision of special arrangements, on what basis does the Respondent consider such special arrangements will be put in place? In particular:
 - (a) Does the Respondent propose that UKVI will make such arrangements pursuant to an enforced removal or otherwise?; or
 - (b) Does the Respondent expect the Appellant to make such arrangements herself?
- (iv) If the latter, does the Respondent consider the Appellant capable of making such arrangements as are required?
- (v) In the event that the Respondent acknowledges that special arrangements will be required, and will put in place such special arrangements herself, but does not propose to effect an imminent removal pending the arrangements for removal, what is proposed in respect of the Appellant's support in the meantime? Might regulation 3(2)(e) be engaged if support is not continued?
- (vi) In the event that the Respondent does not propose to enforce removal, but to leave it to the Appellant to make arrangements to depart the UK (whether or not that requires particular special arrangements for the flight), will the withdrawal of support lead to a breach of the Appellant's human rights pending the period of making such arrangements, given her particular vulnerabilities, such that regulation 3(2)(e) would be met?
- (vii) Alternatively, would it be appropriate to continue support by reference to regulation 3(2)(a) if the Appellant were able to indicate that she was taking steps to make the necessary arrangements for her departure - and in this

context to what extent are her mental health vulnerabilities relevant to an evaluation of "*taking all reasonable steps*"?

21. I remit the appeal pursuant to section 103 of the 1999 Act.

Signed: Ian Lewis
Tribunal Judge, Asylum Support
(Signed on the original)

Date: 12 June 2015