



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number AS/14/09/31945

UKBA Ref. 03/03/04491/005

Appellant's Ref.

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

Tribunal Judge	<u>Mr David Saunders</u>
Appellant	<u>MR UBM</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, and gives reasons for the decision given on Friday the 3rd day of October 2014, dismissing the above mentioned appeal.
2. The appellant, a 30 year old citizen of Iraq, appeals against the decision of the Secretary of State who, on 19 September 2014, decided to discontinue his support under Section 4 of the Immigration and Asylum Act 1999 ("the 1999 Act") on the grounds that the appellant no longer satisfied any of the requirements of 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 confirms that he does not require an oral hearing of his appeal. I have considered the appellant's request with reference to Rule 27 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 27 of the Rules.
4. It is not disputed between the parties that the appellant is a failed asylum seeker who was granted Section 4 support on 3 June 2013 upon the basis that he was both destitute and that he had made outstanding further representations in relation to a fresh claim for asylum. The Secretary of State reviewed the appellant's continuing entitlement to such a support on the basis that the outstanding further representations have been rejected. As a consequence, the

decision was made to discontinue the appellant's support on 19 September 2014. He appeals that decision.

5. 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.

6. Section 4(5) of the 1999 Act (as amended by Section 10 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004 Act) allows the Secretary of State to make regulations specifying criteria to be used in determining –
 - (a) whether or not to provide accommodation, or arrange for the provision of accommodation, for a person under this section;
 - (b) whether or not to continue to provide accommodation, or arrange for the provision of accommodation, for a person under this section.

7. 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.

8. 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) he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;
 - (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 to this appeal);
 - (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.

9. The respondent says, in her discontinuation letter, that the appellant no longer meets any of the requirements of Regulation 3(2) of the 2005 Regulations. It is noted that the appellant's original grant of Section 4 support was on the basis that he had made outstanding further representations on 18 May 2012 and which were, at that time, outstanding. However, the Home Office is now aware that these were fully considered and refused on 22 August 2014. I have been provided with a copy of the decision letter and evidence that it was properly served upon the appellant. The respondent then issued an appropriate Section 4 review letter on 5 September 2014 – to which it is said there has been no response. The appellant's accommodation and support is to come to an end on 6 October 2014.
10. The appellant, on the other hand, says in his grounds of appeal, that the respondent has failed to take into account concerns about the procedure expressed by the appellant's representatives – Asylum Support Housing Advice. It is alleged that the Home Office failed to provide sufficient clarity of the information that was required and that, in point of fact, the decision to discontinue the appellant's support was made prior to the expiry date given in the review letter.
11. In addition, it is said that ASHA had already explained that the appellant was in the process of preparing a further fresh claim – his legal representative having made a positive assessment of the merits. The appellant is said hail from Kirkuk in Iraq where there has been a radical change in the political and security situation since 3 June 2013 which was the date of his last set of further representations. I am asked to find that it would be unreasonable to expect the appellant to leave the United Kingdom – applying the decision in *R(NS) v First Tier Tribunal [2009] EWHC 3819 (Admin)*. It is claimed that the appellant remains eligible under Regulation 3(2)(e).
12. I have considered all the evidence that is before me, to include all the documents contained in the Secretary of State's bundle of evidence, the appellant's grounds of appeal along with the documents that he has produced. I have also considered the respondent's reply to directions.
13. The appellant will only remain eligible for Section 4 support if he continues to satisfy the criteria set out in Regulation 3 of the 2005 Regulations that I have set out above. This is a two stage test. He has to both continue to demonstrate that he is destitute and that one or more of the requirements set out in Regulation 3(2) continue to relate to him.
14. The burden of proof, however, falls upon the respondent to prove that he no longer qualifies upon the balance of probabilities in view of the fact that his support is being discontinued. This burden reverts to the appellant if he raises a new argument.
15. Destitution is not in dispute. The only issue is whether or not the appellant remains eligible under Regulation 3(2) of the 2005 Regulations.
16. The evidence before me demonstrates that the appellant's outstanding further representations in relation to a fresh claim for asylum were rejected by the Home Office on 22 August 2014. This was the basis upon which he had originally been granted Section 4 support and it no longer applies. In my view, and having shown that this decision was properly served upon the appellant, it has to follow that the appellant can no longer qualify for support upon these grounds.

17. The burden then falls upon the appellant to show that, in some way, he has re-qualified. The situation in Iraq is not a matter that I can consider. I am not acting as an Immigration Judge, Regulation 3(2)(c) is quite clear that the appellant cannot qualify as the Secretary of State remains of the opinion (at least at present) that it is safe to return to Iraq.
18. The question then arises as to whether I should apply the decision in *NS* as it would be unreasonable to expect the appellant to return home when his solicitors are preparing a further fresh claim. There is nothing in the papers before me – apart from this assertion – to show whether or not such an additional set of further representations has yet been prepared. Indeed, there is no evidence to suggest that this has been lodged with the Home Office and is currently under consideration with them. It is inappropriate for me to consider that it would be unreasonable to expect the appellant to return to Iraq when there is no evidence before me to show that an additional fresh claim has been lodged with the Home Office let alone one having been prepared. Section 4 support is not granted based on claims that the submissions may or may not be submitted. This would otherwise lead to considerable uncertainty – it may be that, despite the claims of the appellant's representative, no such fresh claim may ever be lodged.
19. In these circumstances, I cannot find that any of the requirements of Regulation 3(2) of the 2005 Regulations apply to the appellant upon the facts that are before me. In these circumstances, and having found that the respondent properly terminated support when the appellant's further representations were refused, I have no alternative but to dismiss this appeal.

Signed :
Tribunal Judge, Asylum Support

Dated :