



**FIRST-TIER TRIBUNAL  
ASYLUM SUPPORT**

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Appeal Number AS/14/07/31653

UKBA Ref. 08/10/01869/003

Appellant's Ref.

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

Tribunal Judge	Ms Gill Carter
Appellant	MR AB
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 Wednesday the 16<sup>th</sup> day of July 2014 to dismiss the above mentioned appeal.
2. The appellant, a citizen of Iran born on 4 September 1990, appeals against the decision of the Secretary of State who, on 1 July 2014, decided to discontinue support previously provided 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 conditions for support set out in Regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 (the 2005 Regulations).
3. The appellant was represented in the hearing before me by Mr Howe of the Asylum Support Appeals Project and the respondent was represented by Ms Sreeraman. The appellant gave his evidence through an independent interpreter in the Kurdish Sorani language.

**Background**

4. It is accepted that the appellant is a failed asylum seeker, who first applied for asylum in October 2008. His immigration history is of no further relevance to this appeal, save to confirm that there are no currently outstanding applications. In terms of the history of his support under Section 4, Section 4 was provided for a seven month period during 2010 on the basis that the appellant was taking

all reasonable steps to leave the United Kingdom. That support was discontinued when the appellant withdrew his application for voluntary return to Iran. Thereafter support was granted on 22 December 2011 on the grounds that the appellant satisfied Regulation 3(2)(b), since he was unable at that time to leave the United Kingdom due to a medical condition. Support was discontinued on 12 July 2012 on the grounds that the appellant's medical condition had improved, but reinstated after his appeal was remitted by a Judge at this Tribunal on the basis that fresh medical evidence required consideration by the respondent's medical adviser.

5. More recently support appears to have been provided on the basis that the appellant had made fresh representations on 14 August 2012 and to have been discontinued on 16 January 2012 after the 17 December 2012 refusal of these fresh representations.
6. The appellant appealed this discontinuance of his support, once again relying on his medical condition. The Judge at this Tribunal duly considered all of the evidence and, on 8 February 2013, made the following findings:
  - (i) that the current treatment of the appellant's epilepsy is unclear as identified by Dr Keen in his opinion of 6 August 2012;
  - (ii) that this confusion has not been resolved by the appellant's current Section 4 medical declaration of 24 January 2013;
  - (iii) that the appellant's epilepsy appears to be monitored every four or five months at Leicester Hospital: there is no indication that his condition is being treated any more urgently than that;
  - (iv) that Dr Keen suggested that his opinion be sent to the appellant's medical advisors, presumably in order to obtain their opinion on his opinion, and that this has not been done;
  - (v) that there is considerable potential danger to the appellant if he has an epileptic seizure, without medical escorts, on a flight from the UK to Iran.
7. The Tribunal Judge determined that the appeal should be remitted for the following action to be taken:
  - (a) The appellant should provide evidence from his GP or specialist:
    - (i) on his ability to return to Iran overland (in terms of his epilepsy) as per Dr Keen's opinion. If unable to undertake such a journey, a clear and precise reason should be offered;
    - (ii) a clear and precise record of the appellant's anticonvulsant medication over the past twelve months;
    - (iii) a response to Dr Keen's opinions of 6 August 2012 and 7 February 2013.
  - (b) The respondent should provide:
    - (i) confirmation that the appellant's return to Iran under the AVR can be arranged overland;
    - (ii) Dr Keen's opinion on the appellant's ability to travel (by air or overland) following consideration of (a)(ii) above, namely evidence of the appellant's anticonvulsant medication over the past twelve months;
    - (iii) confirmation that medical escorts continue to be used on flights between the UK and Iran. If not, confirmation that she maintains her opinion that the appellant could undertake a journey to Iran by air.

8. The appellant's support continued during the period of remittal until the discontinuance decision of 1 July 2014, which is the subject of the current appeal.

### **The Law on Entitlement to Section 4 Support**

9. 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

10. 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.

11. 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) [not relevant to this appeal];
- (b) he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;
- (c) [not relevant to this appeal];
- (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.

12. The lead case on Regulation 3(2)(b) is that of *R (on the application of the Secretary of State for the Home Department) v Chief Asylum Support Adjudicator CO/10382/2005* (referred to herein as *Osman*). Here Mr Justice Holman set out that the approach to Regulation 3(2)(b) should be a two part test: first I must be satisfied that the appellant is unable to leave the United Kingdom and, only if this test is satisfied, should consideration pass to the second part of the test namely whether or not this inability is by reason of a physical impediment to travel or for some other medical reason. Mr Justice Holman further clarifies that the word "unable" should be given the meaning attributed to it in ordinary daily usage - that is "not able". An absolute test or a test of impossibility would be to put the test too high.

### **Matters in Dispute**

13. Entitlement to support is a three part test. A supported person must be a failed asylum seeker and destitute. Further, he must satisfy one of the criteria set out

in Regulation 3(2). It is agreed that the appellant is a failed asylum seeker and his destitution is not in dispute. This is a discontinuance of support and the burden of proof therefore falls upon the respondent to demonstrate that the grounds on which support were granted are no longer satisfied. If the respondent is successful in this argument, then it remains open to the appellant to demonstrate that he satisfies the criteria for support in some other way. The standard of proof is that of a balance of probability.

14. The respondent's decision of 1 July 2014 relies upon the appellant's most recent medical evidence and that the respondent's medical adviser has assessed the appellant as fit to travel over land to Iran. It also adds that the appellant has been non-compliant with medication, which has resulted in his epilepsy being uncontrolled. It is said that this is a choice on the part of the appellant and, if he were to be compliant with taking medication, his epilepsy would be better controlled and he would be able to leave the United Kingdom. At the hearing the respondent also sought to demonstrate that the Assisted Voluntary Return Team could provide a medical escort to travel with the appellant on any flight to Iran and thus that he was also able to avail himself of that means of leaving the United Kingdom.
15. The appellant disputes this assertion. His case is that his health has deteriorated and he now suffers from additional health complications, such as a heart condition and an ongoing investigation into problems with his throat which could be cancer. He is thus unable to travel to Iran by either land or air.
16. In the alternative the appellant argues that he can demonstrate an entitlement to support under Regulation 3(2)(e) since stress worsens his epilepsy, causing an increase in the number of his fits, and thus to render him destitute (particularly given that he is undergoing investigations by the hospital into his throat condition) would be a breach of his human rights.

### **Recent Evidence**

17. Since this matter last came before the Tribunal on 8 February 2013, the appellant provided a medical declaration from his GP, dated 13 September 2013, which confirmed that the appellant continued to report one or two fits per week, that he remained under the care of his neurologist and that a blood test was being arranged to check his compliance with medication.
18. The respondent's medical adviser, Dr Keen, was asked to comment on this declaration. He noted on 3 March 2014 that the September 2013 declaration indicated that the appellant continued to experience fits which were apparently more frequent, for reasons that were not clear and he concluded, "It remains my view that the applicant can leave the UK by overland travel ... but at present, air travel would seem inappropriate".
19. Most recently the appellant submitted a medical declaration prepared on 19 June 2014 by his GP. This states as follows: "Continues to have seizures despite being on medication. Says seizures happening on weekly basis and can last 10 – 15 minutes at times. Under neurologist care. Currently on Epilim Chrono 500... Epilim Chrono 300... and Levetiracetam 500 [milligrams per day]. There is however a question mark over his compliance with his medication as a recent blood test organised by the hospital to assess drug blood levels found them to be disappointingly low and hence pointing towards non-compliance. Given the episodicity of his seizures, air travel without medical escort would be very risky. Destitution / deportation are likely to make his epilepsy worse, and hence putting him at risk. Questions ought to be asked of the patient in regard

to non-compliance of his medication as proved by recent hospital blood tests. (Consultant Neurologist less than happy about this).”

20. Dr Keen's views on this latest medical declaration are expressed in an email dated 27 June 2014. He comments that “[The GP's] report is self explanatory that the applicant is proven non compliant with medication, hence his epilepsy is not controlled. This is of course behaviour of the applicant's choice. With compliance with medication it is reasonable to assume his epilepsy will be better controlled and he will be able to leave the UK. In the meantime I again recommend consideration be given to over land travel.”
21. In terms of the options regarding travel to Iran, the respondent relies on emails from the Assisted Voluntary Returns Team dated 9 July 2014. The AVR team confirm that travel by train from London to Tehran is an option that “we could definitely pursue”. The team highlight, however, that there would be practical difficulties since such trains transit several countries, requiring visas and taking several days, which might be a problem if the appellant was non-compliant with medication. In a later email it is also confirmed that there would be concerns that the appellant could decide not to complete such a journey and remain in another EU country.
22. With regard to travel by plane, the AVR Team confirm that “Air travel to Iran would be the best option for return as the journey is shorter and a medical team could ensure [the appellant's] epilepsy is controlled either by taking his medication or monitoring him during the flight and treating him if he has a seizure ... there are epilepsy medicines which can be injected so his doctor could advise us if this is a suitable option.” It is subsequently added that “As a flight has not been ruled out by the medical profession then we could provide a medical team to travel with the applicant to deal with any potential medical emergencies in flight. We have returned a few applicants with epilepsy so this is no barrier for us. Our medical returnees usually have much more severe conditions ... so as a medical return this would be one of our easier ones”.
23. The appellant disputes in his oral evidence that he had been non-compliant with his medication, although he explains that the medication does made him feel very drowsy. He suggests that the blood test was erroneous and attributes any false reading to the fact that he drinks a lot of energy drinks to stay awake and that he smokes. He asserts that level of his fitting had increased since the stress of the letter discontinuing his support, such that he has had six such episodes since that time. These fits now last anything from 25 – 30 minutes. He has not required medical assistance thereafter. He states that he would accept injectable medication for his epilepsy if this were offered. He sees his GP once per month and his next hospital appointment for epilepsy is in October 2014.
24. He also refers to a recent hospitalisation. He remained in hospital for 12 or 13 hours due to bleeding from his throat. He has had a CT scan and is due to go back for a further appointment on 23 July 2014. He believes that he has a diagnosis of throat cancer. He also refers to problems with his heart, which were checked at the hospital. He is waiting to receive a further appointment about these. In view of his various medical problems he is not able to undertake air or train travel to Iran.

### **My Findings**

25. In order to find that the respondent has proved the case for a discontinuance of support I must find, duly applying the case of *Osman*, that the appellant no

longer satisfies Regulation 3(2)(b) – that is, he is not unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason. I am satisfied that this is the case.

26. With regard to the appellant's epilepsy, when support was first granted by the respondent the appellant's epilepsy was uncontrolled and un-medicated. Support has since been continued for the assessment of the appellant's response to medication, the frequency of his fits and the arrangements that the respondent could put in place to ensure his safe travel.
27. I am satisfied that a combination of the safeguards which can be put in place and the appellant's present medical condition are such as to mean that he is able to travel from the United Kingdom to Iran. I find the appellant's explanation of the reasons for the low levels of anti-epileptic medication found on his blood test to be wholly unconvincing. It is clear that both his Consultant Neurologist and his GP are satisfied that he has been non-compliant. This would explain why he continues to have regular seizures despite being on increased medication and, as Dr Keen concludes, it is reasonable to assume that, were the appellant to be fully compliant, his epilepsy would be better controlled. This is the appellant's choice, although it is obviously an option for his treating team to consider more regular blood testing to monitor compliance and (if medically appropriate) the option of injectable medication, which the appellant has stated that he would accept.
28. However, even if the appellant remains symptomatic (whether or not resultant from non-compliance with medication), there is evidence which has not previously been before this Tribunal to demonstrate that the appellant could be adequately cared for on a flight to Iran. I note in this context that in the most recent medical declaration the appellant's GP did not rule out air travel, but stated that "*air travel without medical escort would be very risky*" (the italics are mine). It is not suggested that the appellant should travel without a medical escort. The AVR Team have confirmed that they have clear procedures in place and that returning persons suffering from epilepsy is no barrier for them. A medical team would travel with the applicant in flight and it has not been disputed that the Civil Aviation Authority guidelines do not preclude air travel for persons suffering epilepsy. Indeed, even if such arrangements could not be put in place, a flight could be avoided since travel by train could definitely be pursued, although there may be practical difficulties.
29. Mr Howe highlighted that Dr Keen in his most recent comments recommended consideration of overland travel and on 3 March 2014 commented that air travel would seem inappropriate. However, I note that the March view from Dr Keen was made before he had sight of the June medical declaration from the appellant's GP in which air travel is specifically commented upon. Further, in his June comments, Dr Keen was merely following up on his March opinion and had not been asked to re-address the option of air travel. In any event Dr Keen did not exclude travel by air and in this case I place greater weight upon the views of the appellant's own GP, who has the benefit of monthly contact with him.
30. With regard to the appellant's other medical conditions, I find it strange that the detailed medical declaration of 19 June 2014 would refer solely to the appellant's epilepsy and not to an alleged diagnosis of cancer or further investigations for heart problems. The appellant was able to provide no evidence whatsoever of any investigation for heart problems or any ongoing treatment or assessment for the same. In relation to the problems with his throat, he produced a letter from the Glenfield Hospital in Leicester confirming

that he had a Consultant's appointment in the department for respiratory medicine on 23 July 2014. There is nothing to link this appointment to any exploration for cancer and indeed, since the appointment was made on 2 June 2014, there is no indication that any urgent care or tests are required. I have been provided with nothing therefore which would support the appellant's case that his new symptoms render him unable to leave the United Kingdom.

31. Having found that there is currently no impediment to the appellant leaving the United Kingdom in Regulation 3(2)(b) terms and thus that the respondent has discharged the burden of proof in this regard, I turn to consider Regulation 3(2)(e). I do not find the case for Regulation 3(2)(e) to be made out. I accept that the appellant's fits can be worsened by stress and that destitution may be one such stress. However, the appellant may remedy his position by working with the respondent and the Assisted Voluntary Returns team to take steps to return to Iran and thus avoid any potential breach of his human rights.
32. If such a return cannot be promptly organised, it will be open to the appellant to apply for support from the respondent under Regulation 3(2)(a) on the basis of his co-operation with the returns process. Alternatively, if he is able to provide evidence not before me today to show that his various health concerns are indeed such as to render him unable to leave the United Kingdom, then it is open to him to provide such proof to the respondent in a fresh application for support under Regulation 3(2)(b). He is warned, however, that symptoms caused by his own non-compliance with medication are unlikely to assist his case in this regard.
33. On the basis of the evidence currently before me I find that the appellant does not satisfy a Regulation 3(2) condition for support and the appeal is dismissed.

Signed Ms Gill Carter  
Deputy Principal Judge, Asylum Support [File Copy]

Dated: 18 July 2014