



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number AS/14/06/31567
UKBA Ref. 09/12/00089/002
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 JB
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 Thursday the 31st day of July 2014 remitting the above mentioned appeal.
2. The appellant, a citizen of Uganda born on 6 July 1983, appeals against the decision of the Secretary of State who terminated support under Section 95 of the Immigration and Asylum Act 1999 ("the Act") on 17 June 2014 on the grounds that the appellant was in breach of the conditions of her support.
3. The appellant gave her evidence today by way of video link from Cardiff in Runyankole by way of an independent court interpreter. She was represented by Ms Whittle of the Asylum Support Appeals Project. The respondent was represented by Ms Crozier.
4. The appellant was awarded Section 95 support on 4 December 2009 as it was accepted by the respondent that she was an asylum seeker who was destitute. Support was terminated on 17 June 2014 on the grounds that the appellant was in breach of the conditions of her support as defined by Regulation 20(1)(a) and 20(1)(b). In brief, the appellant was arrested by the police on 3 June 2014 following an alleged assault on a fellow housemate at her Home Office funded accommodation and she was subsequently bailed to a private address in Cardiff. The respondent had previously warned the appellant about her violent and anti social behaviour on 15 December 2011 with a final written warning on 21 March 2012. The latest incident of 3 June 2014 was a serious breach of the

rules of her accommodation and support was discontinued for that reason. It is against the decision to discontinue support that the appellant appeals today.

5. Ms Whittle, for the appellant, raised the preliminary issue of the appellant's ongoing criminal proceedings in Cardiff Crown Court. She confirms that the appellant's plea in a case management hearing of 28 July 2014 had been adjourned to 23 September 2014. She confirms that the matter before Cardiff Crown Court relates to the same incident of 3 June 2014 which caused the respondent to terminate support to the appellant. Ms Whittle asks for an adjournment of today's matter until the outcome of the criminal proceedings is known. She submits that there is a real risk of serious prejudice to the appellant's criminal proceedings in the event that this Tribunal finds against her today. Furthermore, she submits that there is a risk of a breach of the appellant's rights under ECHR Article 6 for the same reason. Ms Whittle refers to the Home Office's earlier request for an adjournment of this matter on 17 July 2014 on the grounds that the appellant had entered a not guilty plea at Cardiff Magistrates Court. That request had been refused by Tribunal Judge Saunders. Ms Whittle submits that Judge Saunders had failed to consider the legal test: case law has established that where an application for a stay is made in civil proceedings, where there are concurrent criminal proceedings, the key consideration is whether the continuation of the civil case will give rise to a real, as opposed to fanciful, risk of serious prejudice which may lead to injustice in one or both proceedings. It accepted that it is not enough that both the civil and criminal proceedings arise from the same facts, although in this particular case they do. Ms Whittle submits a copy of a letter from the appellant's solicitors in Cardiff dated 29 July 2014 confirming that her plea and case management hearing was adjourned to 23 September 2014.
6. Ms Crozier, for the respondent, confirms that the respondent had initially requested an adjournment of this matter in order for it to be determined after the disposition of criminal proceedings. She confirms the appellant's long history of past bad behaviour and that the accommodation provider in Cardiff will no longer agree to accommodate the appellant. She confirms that the respondent agrees to wait for the criminal proceedings to be disposed of and confirms that this could take some time given the evidence submitted by the appellant's Cardiff solicitors today. She confirms that, if necessary, she could proceed with the respondent's case today without cross-examining the appellant on the events of 3 June 2014 but using her past behaviour alone. Ms Crozier confirms that it is rare for a case of this nature to result in criminal proceedings and this reflects the seriousness of the incident of 3 June 2014. On balance, the respondent's view is that it would be better for both parties to await the outcome of criminal proceedings before examining the appellant's support entitlement.
7. There is no other evidence from either party to this appeal.
8. Regulation 20(1) of the Asylum Support (Amendment) Regulations 2005 states that Asylum support for a supported person and his dependants (if any), or for one or more dependants of a supported person, may be suspended or discontinued if –
 - (a) support is being provided for the supported person or a dependant of his in collective accommodation and the Secretary of State has reasonable grounds to believe that the supported person or his dependant has committed a serious breach of the rules of accommodation;

(b) the Secretary of State has reasonable grounds to believe that the supported person or a dependant of his for whom support is being provided has committed an act of seriously violent behaviour whether or not that act occurs in accommodation provided by way of asylum support or at the authorised address or elsewhere.

- 9. The respondent made her decision by reference to Regulation 20 which provides that asylum support may be suspended or discontinued if the respondent has reasonable grounds to believe the supported person is in breach of that Regulation.
- 10. When termination of support is justified on the grounds of a breach of Regulation 20, it is for the respondent to establish that breach on a balance of probabilities. Once proven, it is for the appellant to demonstrate, again on a balance of probabilities, that she had reasonable excuse for such breach. Once that is proven, I must consider whether the respondent's decision renders the appellant destitute, thereby potentially violating her ECHR Article 3 rights while she remains in this country.
- 11. I remit this appeal to the respondent in order that she may consider the appellant's entitlement to support following the disposal of the current criminal proceedings. It has been accepted by both parties today that there could be serious prejudice to the appellant's criminal proceedings if this Tribunal found against the appellant today. The respondent will make a duly considered decision on the appellant's eligibility for support once criminal proceedings are disposed of. At that time, the respondent will be able to respond clearly to the AST's directions of 25 July 2014 in which she was directed to provide evidence of any barriers to the appellant's return to Uganda either by way of her immigration status or by way of any criminal matters. The appellant has been put on notice today that the respondent is unaware of any current immigration barrier to her return to Uganda: the purported application to the European Court of Human Rights of 26 September 2014 (sic) referred to in Asylum Aid's letter of 3 July 2014 is not demonstrated. It is for the appellant to show that her application to the European Court of Human Rights remains outstanding and constitutes a barrier to her return to Uganda. The respondent confirms that the appellant has no other matters outstanding which would prevent her return to Uganda.
- 12. The appellant confirms that she has varied the conditions of her bail to a private address in Cardiff and that she wishes to stay at that address. I anticipate that the appellant's subsistence only support will continue during the period of remittal while she remains at that address. In the event that the respondent terminates support to the appellant once more, she will have a right of appeal against that decision.

Signed
Tribunal Judge, Asylum Support [File Copy]

Dated