



**FIRST-TIER TRIBUNAL  
ASYLUM SUPPORT**

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Appeal Number AS/13/12/30731  
UKBA Ref. 13/11/01297/002  
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 MK
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 given on Wednesday the 11<sup>th</sup> day of December 2013 dismissing the above mentioned appeal.
2. The appellant, a citizen of Nigeria born on 22 July 1995, appeals against the decision of the Secretary of State who refused her application for support under section 4(1) of the Immigration and Asylum Act 1999 ("the Act") on 25 November 2013.
3. The appellant gave her evidence today in English. She was represented by Mr Fullelove of the Asylum Support Appeals Project. The respondent was represented by Ms Crozier.
4. Ms Crozier sets out the chronology of the appellant's application for support as follows: the appellant made her first application to the Home Office on 22 January 2013 on form FLR(O). This application was invalidated on 29 January 2013, probably because she had not paid the requisite fee. The appellant repeated her FLR(O) on 26 April 2013, this time paying the required fee of £561. This application was considered and rejected in writing by the Home Office on 20 May 2013 with no right of appeal. The appellant served a pre-action protocol on the Home Office on 5 July 2013 to which the Home Office replied on 30 August 2013. At that time, the Home Office noted that the appellant had another judicial review outstanding, this one against Barking & Dagenham local authority, which was adjourned pending the outcome of the

appellant's judicial review of the Home Office decision. A consent order was signed on 4 October 2013 which awarded the appellant an in-country right of appeal against the Home Office decision of 20 May 2013. That appeal will be heard by the appellate authority on 3 July 2014.

5. The appellant made her Section 4(1)(a) application on 20 November 2013 with the assistance of Coram Children's Legal Centre on the grounds that she enjoyed temporary admission and was destitute. The appellant explained that she had been brought to this country in 2007 at the age of 12 and that she has lived here ever since with her 'aunt', KA, and her aunt's two sons born in 2005 and 2007. She did not attend school for the first three years of her stay in the UK but started school in 2010 since when she has obtained GCSEs and A levels. She asserts that her eligibility for Section 4(1)(a) support is found by way of her destitution, her young age, her limited contact with her biological mother in Nigeria and her family life in the UK. She makes her application for Section 4(1)(a) support following a judicial review against her local authority which was dismissed on 30 October 2013 but she was awarded support for a further seven days while she made her application for support to the respondent.
6. Ms Crozier confirms that the appellant's support application was refused by the respondent on 25 November 2013 on the grounds that the appellant had not demonstrated any exceptional or compelling circumstances that required the respondent to provide support under Section 4(1). It is against that decision which the appellant appeals today.
7. In her grounds of appeal, the appellant rehearses the statement made at the time of her application for Section 4(1)(a) support and encloses a draft High Court court order of 30/31 October 2013 together with a copy of the Immigration and Asylum First Tier Tribunal notice of hearing of 3 July 2014.
8. Ms Crozier confirms the respondent's position namely that there is no evidence to suggest that the appellant was unable to return to Nigeria while her appeal, to be heard on 3 July 2014, was pending. The appellant could return to the UK if that appeal was successful and she was granted leave to enter and remain. Ms Crozier confirms that KA and her sons have no permission to be in the UK.
9. The appellant, with the assistance of her representative, addressed me and stated that it was unreasonable to expect her to return to Nigeria while her appeal against the Home Office decision of 20 May 2013 was outstanding. The appellant's destitution is not disputed by the respondent and, in any event, is clear given the written evidence from her representatives.
10. The appellant confirms her grant of temporary admission by way of her IS96 dated 12 August 2009.
11. The appellant confirms the submissions prepared on her behalf by her representatives, namely that she arrived in this country at the age of 12 in 2007, with KA who she refers to as her aunt but who is in fact a friend of her mother's. She has lived with KA's children born in (2005 and 2007) since that time and she considers them to be her brothers. They consider her to be their sister. She confirms that she did not attend school for the first three years of her stay in the UK, namely from 2007 until 2010, as her aunt did not know how to register her. She confirms that she started school in 2010 since when she has obtained nine GCSEs and three A levels. She hopes to study psychology at South Bank University in London but was unable to start her studies this academic year. She hopes to have deferred her place for September 2014.

She confirms that her aunt was arrested on 12 August 2009 and spent some four or five months in detention after she had been charged with a criminal offence. She confirms that she looked after her two 'brothers' at that time. The appellant confirms that she has been obliged to leave KA's accommodation and that she is currently living with the friend of a cousin of a school friend.

12. In terms of her return to Nigeria, the appellant confirms that she has never made a claim for asylum in this country and has not made any protection-based representations to the Home Office. She lived with her parents and four siblings in one room in a rural area in Lagos. She confirms that she currently has four sisters and a brother who are respectively approximately twelve, ten, eight, six and four years younger than herself. She confirms that the last child was born after she left Nigeria. She confirms that her parents separated before she left Nigeria.
13. The appellant submits that her parents are extremely poor and she believes that she was sent to England in order to alleviate her parents' financial burden of raising a growing family. She believes that her mother's friend brought her to the UK as a way of helping her mother. She has had no contact with her father at all since she arrived in this country six years ago and has had little contact with her mother. The last contact was a telephone call approximately five months ago.
14. The appellant confirms that KA has never worked in the UK and that KA is currently being supported by Barking & Dagenham local authority. She is unclear as to how KA was able to support the appellant and her two 'brothers' over the past six years and confirms that KA has no leave to remain in this country and no permission to work.
15. Ms Crozier confirms that the appellant's destitution is accepted by the respondent.
16. Mr Fullelove, for the appellant, submits that the only barrier to the appellant's return to Nigeria is her outstanding immigration appeal. He submits that it is unreasonable to expect the appellant to leave the UK before her appeal is heard on 3 July 2014. Her situation in Nigeria is poor and she has little contact with her mother. It is clear that she came to the UK for economic reasons and her situation in Nigeria would be unenviable on her return. She is closer to KA than she is to her mother and she would prefer to await the outcome of her appeal with KA, albeit that they are no longer living together, than with her mother in Nigeria. If the appellant is given leave to remain following a successful outcome of her appeal next July she will be a productive member of society.
17. There is no other evidence from either party to this appeal.
18. Section 4 of the Act states:

The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of persons –

  - (a) temporarily admitted to the United Kingdom under paragraph 21 of Schedule 2 of the 1971 Act;
  - (b) released from detention under that paragraph; or
  - (c) released on bail from detention under any provision of the Immigration Acts

19. The Home Office Section 4 Instructions of 12 April 2013 state that support under section 4(1)(a) and (b) of the 1999 Act will only be provided to other immigration categories [non asylum] in truly exceptional circumstances. In considering whether such circumstances exist, Caseworkers should take account of the following:

Support should only be provided to other persons on temporary admission if

- (a) They are destitute; and
- (b) They have no avenue to any other form of support; and
- (c) The provision of support is necessary in order to avoid a breach of their human rights.

The consideration of whether support is necessary to avoid a breach of the person's human rights will usually require an assessment of whether they are likely to suffer inhuman or degrading treatment if they are not provided with accommodation and the means to meet their essential daily living needs in the UK. However, Caseworkers should only provide support for those reasons if it is clear that the person cannot reasonably be expected to leave the United Kingdom.

Caseworkers should consider all cases on their merits, but must also take particular account of the following:

- (a) Support should not be provided in cases where there are children in the household because an alternative avenue of support is available through the duties local authorities have to safeguard and promote the welfare of children under section 17 of the Children Act 1989.
- (b) Support should not be provided to persons who claim that the reason they cannot leave the United Kingdom is because they are at risk of persecution or serious harm in their own country. Individuals in this position should submit a protection claim. Support may be available for such individuals under the asylum support arrangements.
- (c) Support should not be provided solely because the person has an outstanding non-protection based application for leave to remain in the United Kingdom (for example based on Article 8 of the European Convention on Human Rights or on long residence). A person in these circumstances can reasonably be expected to leave the United Kingdom to avoid the consequences of destitution.

20. I consider whether the appellant satisfies the test for Section 4(1)(a) support as set out at paragraph 19 above and consider whether the appellant has demonstrated any truly exceptional circumstances which make it clear that she cannot reasonably be expected to leave the United Kingdom.
21. I consider whether the appeal scheduled for July 2014 is a truly exceptional circumstance which would make it unreasonable to expect the appellant to leave the UK while she awaits its outcome. I find it does not.
22. I have considered all the particular circumstances of the appellant's case, both in the UK and in Nigeria. I accept Mr Fullelove's submission that the only barrier to the appellant's return to Nigeria is her outstanding immigration appeal. I accept her precarious immigration history together with her current homelessness and destitution in the UK as well as her family situation in Nigeria. This case is finely balanced but I find that it is not unreasonable to expect the appellant to return to Nigeria to await her appeal hearing in July 2014.

23 Appeal dismissed.

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

Dated 13 December 2013