



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number AS/13/09/30435/SB

UKBA Ref. 08/10/00735/003

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 AGG
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 Tuesday the 1st day of October 2013 remitting the above mentioned appeal.
2. The appellant a citizen of Ethiopia, born on 1 January 1979, appeals against the decision of the Secretary of State of 16 September 2013 terminating Section 4 support on the grounds that she no longer satisfied any of the conditions set out in Regulation 3 of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 ("the 2005 Regulations").
3. The appellant gave her evidence today in Amharic by way of an independent court interpreter. She was represented by Ms Poyner of the Asylum Support Appeals Project. The respondent was represented by Ms Crozier.
4. The chronology of the appellant's applications for asylum and support are contained in the Statement of Reasons *AS/12/05/28385* of 17 May 2013 and I do not propose to repeat them here. In summary, the appellant's Section 4 support was awarded under Regulation 3(2)(b) on 18 September 2009 and continued under Regulation 3(2)(e) following the appeal referred to above. Support was discontinued on 16 September 2013 and it is against that decision which the appellant appeals today.
5. Ms Crozier, for the respondent, confirms that the respondent's decision of 16 September 2013 is made in the following terms:-

"It is noted that you were granted Leave To Remain on 30/07/2013 and you received your final documentation on 20/08/2013. This means you no longer qualify for asylum support and can no longer remain at the above accommodation. You will be required to leave by 16/10/2013."

6. Ms Crozier confirms that the appellant was awarded leave to remain following her application to the Home Office Managed Migration for leave to remain under the ten year rule/family life. She paid £561 for this application and it was based on the dependency of her British son born on 22 November 2009. Ms Crozier confirms that the terms of that leave to remain are that the appellant has no recourse to public funding. She has been granted permission to work and she must be self-sufficient. The terms of her leave to remain are set out in the Home Office letter of 19 August 2013 ICD4546.
7. Ms Crozier confirms that in the normal course of events where Section 4 support was to be discontinued to failed asylum seekers with children, the Home Office would liaise with the local authority in order to establish what obligations, if any, the local authority had towards that family.
8. Ms Poyner, for the appellant, addressed me and confirmed that the appellant was in the process of judicially reviewing the terms of the Home Office's decision of 19 August 2013, namely the condition that she had no access to public funding: the appellant's child is not quite four years old, the appellant does not speak English and her ability to prevent their destitution by way of her employment in the immediate future is seriously in doubt. The decision of 16 September 2013 offers the appellant a month to find employment and earn sufficient money to provide accommodation and subsistence support for both herself and her son. Given the age of the appellant's child and given the appellant's lack of English this is unreasonable. Furthermore, the respondent's decision of 16 September 2013 fails to show that the Home Office considered its obligations under Section 55 of the Borders, Citizenship and Immigration Act 2009 ("the 2009 Act"), namely to safeguard and promote the welfare of the appellant's child. The decision fails to apply the Home Office policy "every child matters" which was issued under Section 55 of the 2009 Act.
9. There is no other evidence from either party to this appeal.
10. I consider the appellant's destitution which is defined at Section 95 of the Immigration and Asylum Act 1999 Act which states:-
 - (3) For the purposes of this section, a person is destitute if-
 - (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
 - (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.
11. 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.

12. 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.

13. 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) he has made an application for judicial review of a decision in relation to his asylum claim-
- (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.

14. The respondent's Section 4 Instructions of 12 April 2013 state:

"Applicants are most likely to establish that they should be supported under Regulation 3(2)(e) if they cannot be expected to take steps to leave the UK and so avoid the consequences of destitution that might lead to them suffering inhuman and degrading treatment. The most common case types where this applies (the list is not exhaustive) are when:

- The applicant has submitted a late appeal against the Secretary of State's decision to refuse asylum and the AIT is considering whether to allow the appeal to proceed out of time.
- The applicant has submitted further submissions which are outstanding.

These are examples only and Caseworkers must consider each case on its own facts."

15. I make the following findings:-

- (i) that the appellant remains a failed asylum seeker in this country until such time as she is awarded refugee status. The award of any leave to remain which falls short of refugee status does not change the appellant's status as that of a failed asylum seeker;
 - (ii) that the appellant's destitution was accepted by the respondent at the time that she was awarded Section 4 support;
 - (iii) that the respondent's current decision under appeal makes no reference to consideration of how the appellant might prevent her destitution in the weeks immediately following 16 October 2013 when she is expected to vacate her Section 4 accommodation;
 - (iv) that there is no evidence that the respondent considered its obligations under Section 55 of the 2009 Act;
 - (v) that there is no evidence that the respondent ascertained what support, if any, the appellant might have access to through her local authority or the father of her child or any other legitimate source while she looks for work.
16. I find that the appellant currently satisfies Regulation 3(2)(e) and the respondent's guidance at paragraph 17 above: I find it is currently unreasonable to expect her to take steps to leave the UK to prevent her destitution and that of her son given that she has been awarded leave to remain in this country, albeit of a temporary nature and with conditions attached.
17. I remit this appeal to the respondent in order that she may consider how the appellant might prevent her destitution and that of her dependant child in the immediate future given that the respondent's accommodation will come to an end on 16 October 2013. The respondent should consider the effects of her decision of 16 September 2013 on the appellant's child and her obligations under Section 55 of the 2009 Act.
18. This appeal is remitted to the respondent in order that she may consider the appellant's eligibility for support given my findings above.
19. I anticipate that the appellant's support will continue during the period of remittal. Should the appellant's support be discontinued once more, that decision will attract a right of appeal to the AST.

Ms Sally Verity Smith
Tribunal Judge, Asylum Support

SIGNED ON THE ORIGINAL [Appellant's Copy]

Dated 4 October 2013