



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number AS/13/07/30154/SB

UKBA Ref. 12/03/00930

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	MR YI
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 Tuesday the 23rd day of July 2013 dismissing the above mentioned appeal.
2. The appellant, of disputed nationality, born on 18 September 1966, appeals against the decision of the Secretary of State who, on 9 July 2013, refused his application for support under section 4(1) of the Immigration and Asylum Act 1999 ("the Act") on the grounds that the appellant had not demonstrated any exceptional or compelling circumstances as to why the respondent should be obliged to support him and on the grounds that the appellant had not demonstrated his destitution.
3. The appellant gave his evidence today in English. He was represented by Ms Thomas of the Asylum Support Appeals Project. The respondent was represented by Ms Hogben.
4. The appellant applied for asylum, as a Nigerian national, on 12 May 1995. This application was refused on 22 August 1997 and an appeal against that decision was dismissed on 18 March 1999. The appellant was deemed appeal rights exhausted on 18 April 1999. The appellant was detained in February 2012 and released, on temporary admission, on 10 June 2013. He had been awarded support under Section 4(1)(c) of the Act on 20 May 2013 but, in the event, was not released on bail. He made his application for Section 4(1) support on

27 June 2013, which application was refused on 9 July 2013 and it is against that decision which the appellant appeals today.

5. In his grounds of appeal the appellant states that he would like to be considered for support under Section 4(2) as well as Section 4(1).
6. The AST issued directions to the appellant on 17 July 2013 asking him to demonstrate his eligibility under both Section 4(1) and Section 4(2) of the Act.
7. Ms Hogben, for the respondent, addressed me and confirmed the chronology of the appellant's applications for asylum and support. She confirms the respondent's position that the appellant does not satisfy the requirements for support under Section 4(1)(a) or (b) of the Act as the appellant had not demonstrated any exceptional or compelling circumstances that would require the Home Office to provide such support. In summary, there was nothing to prevent the appellant from leaving the UK in order to avoid his destitution. With regard to his eligibility under Section 4(2), Ms Hogben confirms the respondent's position that the appellant is not eligible. He does not satisfy any of the criteria for support found at Regulation 3(2): he has not taken all reasonable steps to leave the UK and he has not made any submissions to the Home Office which refer to a claim to asylum.
8. The appellant, with the assistance of his representative, addressed me and confirmed that first, he satisfied Regulation 3(2)(e) under Section 4(2) in that he was on the point of making fresh representations in relation to his fear of return to South Sudan. He states that since his arrival in the UK some 18 years ago, he has pursued a claim for asylum as a Nigerian but when he was detained in February 2012, he told the Immigration Service that in fact he was not Nigerian but from South Sudan. He confirms that he took no steps while detained between February 2012 and June 2013 to further his claim to asylum from South Sudan or to prove his nationality or to return to that country. He states that he has only started to take steps to prove his claim for asylum or his nationality as a citizen of South Sudan since his release from detention on 10 June 2013.
9. The appellant confirms that he has an appointment on 25 July 2013 with his solicitor to talk about making a claim for asylum in terms of his fear of return to South Sudan as well as an application for leave to remain on the basis of his 18 year residency in the UK. The appellant confirms that he has not yet prepared any representations.
10. The appellant confirms that he has found things difficult since his release from detention on 10 June 2013 because initially he was granted support under Section 4(1)(c) and given accommodation at Barry House but, once it was established that he had not been granted bail, that offer of accommodation was withdrawn. He confirms that he has been living at a homeless shelter since that time and provides written evidence in this regard.
11. The appellant confirms that he made his first claim for asylum in 1995 with the assistance of a friend and that is why he made the claim as a Nigerian. He states that he has no recollection of what he told the Home Office or the Immigration Judge in relation to that claim to asylum.
12. In terms of taking any steps to return to South Sudan, the appellant claims that he has taken none to date: he has not approached the Red Cross to trace his brother, sister or uncle who all live in Juba and he has not approached the

Embassy of South Sudan in London. The appellant confirms that he did not know that such an Embassy existed.

13. The appellant confirms the respondent's evidence that the Nigerian Embassy on five occasions refused to recognise him as a national but understands that in April 2013 they had accepted his return. However, two sets of removal directions in April 2013 and in May 2013 were both cancelled; the one in April 2013 because he had been given insufficient notice of his removal and the one in May 2013 for reasons he was never given.
14. The appellant confirms that he reports to the Immigration Service every Tuesday.
15. Ms Thomas, for the appellant, submits that as the respondent was prepared to grant support under Section 4(1)(c) to the appellant in the event that he was released on bail, it is arbitrary and unlawful for the respondent to decline to offer support to the appellant under Section 4(1)(a) or (b). Furthermore, the respondent's blanket policy to refuse to consider failed asylum seekers for support under Section 4(1)(a) or (b) but only under Section 4(2) is unlawful. The Secretary of State exercised her discretion to award support under Section 4(1)(c) to the appellant and has failed to explain why she did not do so under Section 4(1)(a) or (b).
16. Ms Thomas submits that the appellant satisfies Regulation 3(2)(e) as there is concrete evidence of an appointment with his solicitors on 25 July 2013 and it is reasonable to assume that this appointment is with a view to pursuing his claim for asylum and/or his long residency claim in the UK. It is not unheard of to grant leave to remain to those of good character who are difficult to remove and therefore, given his clear destitution, it would be a breach of his convention rights to deny him Section 4(2) support. The crucial evidence in this case is that the appellant has an appointment in place with his solicitors and he is taking active steps to make an application to the Home Office. The Tribunal is asked to consider the appellant's eligibility for support under Section 4(1) and Section 4(2) in the alternative.
17. There is no other evidence from either party to this appeal.

Section 4(1)

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 Principal Judge of this Tribunal has considered the provisions of Section 4(1)(a) in four recent decisions: *AS/11/02/26112*, *AS/11/03/26412*, *AS/12/09/28892* and *AS/12/08/28780*. She determined in *26412* that it was a pre-requisite for the consideration of support under section 4(1)(a) that the appellant demonstrate destitution, which finding is reflected in the Home Office guidance.

20. The definition of destitution is contained in section 95(3) of the Act which states that "... 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." Regulation 7(a) of the Asylum Support Regulations 2000 stipulates that the period within which a failed asylum seeker must demonstrate that he is likely to become destitute is 14 days.
21. I accept the evidence before me that the appellant is destitute. I have no reason to doubt the written evidence of the appellant's homelessness. I therefore find the appellant to be destitute as defined by Section 95(3).
22. Given that the appellant has overcome the first hurdle in his application for section 4 support by demonstrating his destitution, I consider whether he satisfies the test under Section 4(1)(a) and (b) to be granted support.
23. I consider Ms Thomas' submissions with regard to the arbitrary nature of the Home Office's decision to award Section 4(1)(c) in the event that the appellant was granted bail but not to award Section 4(1)(a) or (b) support in the event that the appellant was granted temporary admission/temporary release from detention. I consider the Home Office guidance on section 4 bail accommodation and accept that a Section 4(1)(c) address is allocated to bail applicants in immigration detention who (a) have no alternative accommodation and (b) do not pose a risk to others. Support under 4(1)(c) is triggered by the grant of bail by an Immigration Judge and the release from immigration detention on bail. With regard to Section 4(1)(a) and 4(1)(b) support, however, the Home Secretary has stated that when deciding whether to exercise her discretion to award support under Section 4(1)(a) or 4(1)(b), she will look to whether there are any exceptional or compelling circumstances in the applicant's claim for support that would trigger eligibility. I therefore accept that Section 4(1)(c) support is distinguished from Section 4(1)(a) and 4(1)(b) support.
24. I then consider whether the appellant has demonstrated any exceptional or compelling circumstances which would oblige the respondent to support him under Section 4(1)(a) or 4(1)(b) and find none. I accept that the appellant has been here for 18 years and that for 16 of those years he purported to be a Nigerian national seeking asylum due to a well founded fear of persecution from Nigeria. I accept that it was only in February last year, when he was detained, that he told anyone in authority that he was a citizen of South Sudan. I accept that since that time, a period of nearly 18 months, the appellant has taken no steps whatsoever to prove his nationality either by asking the Red Cross to trace his brother or sister or uncle in Juba or by contacting the Embassy of South Sudan or by instructing a solicitor to assist him in this regard. I find that the appellant will need to take those steps to prove his nationality. I consider the appellant's appointment with his solicitors on 25 July 2013 and find that his eligibility for support by way of a future claim for asylum or a future claim for leave to remain on the basis of long residency is too remote, uncertain and in the future for me to accept that either of those two applications might trigger eligibility for support now. I accept his evidence today that he has not even begun to gather the information from South Sudan that would be required to make a claim for asylum or to satisfy the Home Office as to two of the (many) requirements of a long-term residency as described by Ms Thomas above, namely that he is of good character and that he will be difficult to remove. The appellant fails to satisfy the requirements of support for Section 4(1)(a) and 4(1)(b).

Section 4(2)

25. 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.

26. 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.

27. 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.

28. 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. Other circumstances may also give rise to a breach and Case Owners must consider each case on its own facts.

29. I consider the appellant's eligibility for support under Section 4(2) as defined by Regulation 3(2) and find, that he cannot satisfy the same. For the reasons set out at paragraph 24 above, I cannot find that any future representations trigger eligibility for support under Regulation 3(2)(e) now. I apply the (admittedly low) test found in *Birmingham City Council v. Amalea Clue and SSHD and Shelter [2010] EWCA Civ 460* and find that the appellant's possible future representations do not qualify him for Section 4 support now.
30. I therefore dismiss this appeal.

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

Dated 26 July 2013