



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

2nd Floor
Anchorage House
2 Clove Crescent
London
E14 2BE

Telephone: 020 7538 6171

Fax: 020 7538 6200

Appeal Number AS/13/06/30054/YB

UKBA Ref. 13/06/00242

Appellant's Ref.

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

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| Tribunal Judge | Mr David Saunders |
| Appellant | MRS YS |
| 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 2nd day of July 2013, dismissing the above mentioned appeal.
2. The appellant, a 27 year old citizen of Pakistan, appeals against the decision of the Secretary of State who, on 17 June 2013, refused her application for support under Section 95 of the Immigration and Asylum Act 1999 ("the Act") upon the grounds that it was not considered that she was destitute within the meaning of Section 95(3) of the Act and/or had intentionally deprived herself of capital so as to become destitute.
3. At the hearing before me, the appellant appeared in person and was unrepresented. She is fluent in the English language and did not require the services of an interpreter. The respondent was represented by Mrs Jones.
4. The agreed facts of this appeal are that the appellant arrived in the United Kingdom in or about 2007 to join her husband and made an application for asylum – in respect of herself, her husband and their then dependant child – on 22 June 2012. On 3 June 2013, the appellant made an application for asylum support upon the basis that she was an asylum seeker (along with her family) and that they were destitute. The Secretary of State placed them in initial accommodation in which they have since been evicted following the refusal of the appellant's application for support on 17 June 2013. It is against this decision that the appellant now appeals.

5. Section 95(1) of the Act provides that:
- “(1) The Secretary of State may provide, or arrange for the provision of, support for:
- (a) asylum seekers; or
- (b) dependants of asylum seekers,
- who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.”
6. Section 95(3) of the Act provides as follows:
- “(3) For the purpose 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.”
7. The respondent says, in her decision letter, that the appellant is not eligible for asylum support because it is believed that she has intentionally deprived herself of capital in order to bolster her application for support. Various examples of such intentional deprivation are given to include voluntarily giving funds away to a third party, paying debts before requiring to do so, discharging debts by paying more than is required, and paying debts that are not “legal” debts as such and, therefore, incapable of enforcement. It is said that the appellant and her family have done this in each and every case.
8. In addition, it is said that the appellant had substantial funds and capital in her possession prior to her application for Section 95 support. Her Nat West Bank Plc statement is said to show that, on 18 December 2012, there was a credit balance of £5,779.81. This had increased, in February 2013, to the sum of £7,998.72.
9. In addition to this, the appellant is said to have access to a property in Glasgow which she had previously rented out to tenants at the rate of £450 per calendar month. Enquiries have revealed that this property is now empty but that she pays a service charge of £41 per month. It transpires that this property belongs to her husband.
10. Further payments are noted – in her bank statements – for motor insurance, Automobile Association Membership, Sky TV, two mobile telephone accounts and various others. It is said (and claimed) that this is inconsistent with the type of lifestyle that one would expect of someone who claims that their essential living needs are not otherwise being met.
11. In support of this contention, I have been provided with a bundle of bank statements and other information within the Secretary of State’s bundle, the material part of which consists of the following:-
- (a) Copies of the appellant’s bank statements in relation to her account with Lloyds TSB Bank Plc for the period between 5 November 2012 and 24 May 2013 (inclusive). These show payments for online purchases and general living expenses – including clothing.

- (b) Copies of the appellant's bank statements in respect of her HSBC Plc account for the period 23 November 2012 to 24 May 2013 (inclusive).
 - (c) A copy of the appellant's account with Nat West Bank Plc for the period 13 November 2012 to 24 May 2013 (inclusive). These show payments to Sky Digital and in respect of a mobile telephone. There is a significant withdrawal from this account shown on both 7 May 2013 and 13 May 2013 of £1,000.
 - (d) A copy of a separate account held by the appellant with Nat West Bank Plc for the period 24 August 2012 to 13 May 2013.
 - (e) A copy of the appellant's husband's account with HSBC Plc for the period from 30 November 2012 to 24 May 2013 (inclusive). This shows a cash balance – as at 28 February 2013 – of £1,086.96 following an earlier balance of £1,780.87 as at 30 January 2013.
 - (f) A copy of the appellant's husband's account with Nat West Bank Plc for the period 18 December 2012 to 28 May 2013. This shows a balance as high as £4,798.93 as at 16 April 2013. The account shows significant transactions to include a withdrawal of £2,240 on 22 May 2013 and a further payment (in respect of a Vanquis credit account) of £1,272.83 on 28 May 2013.
 - (g) A copy of the appellant's husband's Bank of Scotland account for the period 28 November 2012 to 10 June 2013. These show a payment of rent of £650 on 1 May 2013 and a further significant payment to Vanquis bank of £1,405.13 on 16 May 2013. The running balance, at this point, amounted to just under £1,400.
 - (h) A copy of the appellant's husband's account with Lloyds TSB Bank Plc for the period 3 December 2012 to 24 May 2013. These show an entry marked ("the appellant's husband's") wages on 5 February 2013.
12. It is also noted that the appellant's husband owned a Suzuki Swift motorcar registered in 2007 – a "57" model. The appellant's husband is also said to be the owner of a property in Glasgow – a matter to which I shall return to later.
13. The appellant, on the other hand, says in her grounds of appeal, that her family as a whole are now destitute. The lifestyle that they previously enjoyed no longer exists. The transactions that could be found within the accounts amount largely to the everyday cost of living – which they enjoyed up until their recent financial hardship.
14. She maintains that neither she nor her husband have ever voluntarily given any of their own funds away to a third party. The only debt that they met was that with Vanquis bank which is revealed in the accounts – and which I have mentioned above. They were intent on paying off their debts as and when due. They borrowed money from their friend, Mr IN, in January 2013 in the sum of £4,000. This was to help them. Mr IN asked them to repay this money – which they did – and they also gave to him the Suzuki Swift motorcar (valued at £1,000) along with a payment of £3,000 to ensure that the debt was repaid.
15. It is accepted that the appellant's husband's Nat West Bank Plc statement shows a balance of £5,779.81 in December 2012 which increased to £7,998.72 in February 2013. £2,320 of that money was deposited into the account from another friend, a Mr SK. The £5,779.81 remaining was received from the appellant's father-in-law. Each of these gentlemen have provided letters in support of the appellant's claim.
16. The appellant confirms that her husband still owns the property in Glasgow. However, since 1 April 2013, it has stood empty. The real estate agents have

been trying to get new tenants but have been unsuccessful. They are required to pay an ongoing monthly service charge of £41.

17. In response to directions, the appellant has provided more information in relation to the ownership of the property. I have a copy of the transfer deed signed under Scottish law which shows that the property was bought by the appellant's husband – when he resided in Glasgow – on 16 October 2007. It was purchased for £100,000. A separate letter from the agents indicates that the property has been unoccupied and a further letter, from a mortgage broker, indicates that the property is in negative equity (subject to a mortgage with Birmingham Midshires) and that it is impossible to re-mortgage. However, I have no valuation of the property as at the present day.
18. It is also revealed that the appellants were living in an assured shorthold tenancy in Wallington until in or about May 2013. I have a copy of the Tenancy Agreement which was renewed as recently as 16 April 2013. I also have a letter from one of the landlords dated 15 May 2013 giving the appellants notice to leave the property – although it does not appear to be in the proper form that you would expect from someone seeking to evict a tenant under an assured shorthold tenancy agreement. There are no possession proceedings.
19. At the hearing before me, the appellant gave oral evidence as to her current situation and that of her family. She explained that she was now living (with her family) in a friend's house in Mitcham. They had moved out of the property in Wallington where they had been tenants – following the landlord's "notice". The situation is highly unsatisfactory. The appellant and her husband have a young child who is nearly three years of age. She is also pregnant and due to have the baby within a matter of a few weeks. They have no income and do not have permission to work in the United Kingdom following their application for asylum.
20. Whilst accepting that her husband retains the property in Glasgow, it is said to be heavily mortgaged and she has been told is now in negative equity. She has tried to explain each and every transaction that has been questioned by the Home Office. In general, she has explained that they had discharged debts in favour of the credit card and had also received monies from friends which they have had to repay.
21. The difficulty that she and her family have experienced is that they were previously reliant upon monies from her father-in-law who owns a business in Pakistan. However, that business has since faltered and he is no longer able to support them in any way. This has resulted in their having to seek the provision of asylum support because they simply do not have any money to get by.
22. The burden of proof in this appeal falls upon the appellant who has to prove, upon the balance of probabilities, that she both she and her family are destitute. This has to meet the test set out in Section 95(3) of the Act that I have set out above. In addition, I also have to take into account (as the Home Office rightly set out) whether the appellant has intentionally deprived herself of capital (along with her husband) such that she is put in a position whereby she may well be able to claim that she is destitute.
23. There is no doubt that the appellant has provided a substantial amount of information with regard to both her and her husband's finances – particularly over the past six months. This information reveals numerous accounts – accounts which appear to have been maintained in a relatively healthy condition even following the appellant's application for asylum in June 2012.

24. It may well be that the appellant's circumstances have altered following the decision by her father-in-law not to support the family – because of his own precarious financial position. However, and be that as it may, there is substantial evidence before me to show that the appellant and her husband have capital resources which could be utilised to support the family. It is of primary interest that the appellant's husband has a property in Glasgow. This property was previously rented out to tenants. It is currently empty. The appellant has two alternatives. She can arrange for either her husband to sell it, provided that it is no longer in a negative equity – or it could be tenanted out to new tenants who would provide an income.
25. There is no evidence before me as to its current valuation. I am not entirely sure that it is in a negative equity. I am told that the outstanding mortgage amounts to approximately £86,000 - £14,000 of cash having been provided by the appellant's husband at the time of purchase. I have no documentary evidence to support this. As a more extreme measure, it could very well be successfully argued (and I would agree) that the appellant and her family could go and live in the property. I am told that it is vacant, albeit unfurnished. This would provide the adequate accommodation that the appellant requires. It is, therefore, an asset which I cannot ignore.
26. I am also concerned that the appellant and her family appear to have given up a secure assured shorthold tenancy agreement which was renewed also recently. I cannot understand how, if the appellant's financial circumstances were as precarious as she suggests, that the family agreed to enter into a renewed agreement as recently as 16 April 2013. I am asked to accept that the family vacated the property upon the basis of a letter from one of the landlords who simply asked them to leave. Their eviction does not appear to follow any proper procedures laid down in the Housing Act 1988 (as amended). The notice is invalid and the appellant and her husband (who are joint tenants) could have remained living there for the foreseeable future or until at least an order for possession had been obtained.
27. I am further concerned about the level of expenditure which appears to have been passing between the various accounts. As the Home Office correctly indicates in their decision letter under appeal, there has been a significant amount of expenditure passing through the accounts on items which appear to be over and above those required for their essential living needs. For example, there is a provision of a Sky TV and two mobile telephones. The overall picture that is presented is one that is inconsistent with a destitute asylum seeker who requires the assistance of the State.
28. I also accept that the appellant has intentionally deprived herself of capital so as to qualify for asylum support. The contents of the various bank statements are self-evident. The sum of over £7,000 existed in the various accounts in January 2013 and this has been swiftly reduced. There are significant amounts of expenditure shown for the period in May and June 2013 just prior to the appellant's application for Section 95 support. This money could have been utilised to pay the rent in respect of the assured shorthold tenancy and their essential living needs for the medium term – at the very least. There does not appear to be any attempt to try and mitigate their difficult position particularly after it became clear that the appellant's father-in-law was no longer prepared to fund the family whilst they remained in the United Kingdom.

29. In these circumstances, I consider that the decision of the respondent is entirely correct. I find that the appellant and her family are not destitute and that, in any event, they have intentionally deprived themselves of capital such as to qualify for Section 95 support.
30. In respect of both these matters, I have no alternative but to dismiss this appeal.

Mr David Saunders
Tribunal Judge, Asylum Support

SIGNED ON THE ORIGINAL [Appellant's Copy]

Dated 3 July 2013