



**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/13/03/29636/MS

UKBA Ref. 09/02/00644/003

Appellant's Ref.

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

Tribunal Judge	<u>Ms Sally Verity Smith</u>
Appellant	<u>MS AW</u>
Respondent	<u>Secretary of State</u>

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 21st day of March 2013 substituting my decision for that of the Secretary of State by determining that the appellant is eligible for support under Section 4 of the Immigration and Asylum Act (as amended) (the Act).
2. The appellant, of disputed nationality, born on 5 April 1984, appeals against the decision of the Secretary of State who, on 5 March 2013, decided to discontinue her support under Section 4 of the Immigration and Asylum Act 1999 ("the 1999 Act") on the grounds that she did not satisfy one or more of the conditions set out in Regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 ("the 2005 Regulations") and obliged her to vacate her accommodation on 4 December 2010.
3. The appellant gave her evidence today by way of an independent court interpreter in Amharic. She was represented by Mr Yates 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 Statements of Reason of her three previous appeals to this Tribunal under reference *AS/10/05/23245* of 3 June 2010, *AS/11/25563* of 9 December 2010 and *AS/11/03/26286* of 10 March 2011. I do not propose to repeat them here. In summary, the appellant has been supported under Regulation 3(2)(a) since June 2010. Her first appeal to this Tribunal was

allowed on the grounds that she was taking all reasonable steps to return to Eritrea while her approach to the Ethiopian Embassy was also noted. Her second appeal to this Tribunal was allowed on the basis that the appellant was taking all reasonable steps to return to Eritrea. Support was terminated once more on 5 March 2013 on the grounds that the appellant no longer satisfied Regulation 3(2). The respondent quotes at length from the Immigration Judge's decision of 30 July 2009 when it was found that the appellant was more likely to be Ethiopian than Eritrean and that she had as much a claim if not a greater claim to be Ethiopian than Eritrean. The respondent's position now is that she has failed to return to Eritrea, she has failed to contact family or friends to assist her to prove her identity and she has provided insufficient information to the Red Cross to enable them to make enquiries on her behalf. She has never submitted an AVR application to Refugee Action. It is against that decision which the appellant appeals today.

5. At the hearing today, Ms Crozier, for the respondent, set out the chronology of the appellant's applications for asylum and support and confirmed the reasons for the current decision of 5 March 2013, namely that in the view of UKBA and the Immigration Judge, the appellant is Ethiopian, that she can only satisfy Regulation 3(2)(a) by showing that she is taking all steps to return to Ethiopia. It is quite clear from the chronology of the appellant's Section 4 history that she has failed to take all steps to return to Eritrea, she has failed to contact her family and she has failed to satisfy the Eritrean authorities that she is Eritrean. UKBA acknowledges that the appellant has made an approach to the Immigration Service at Dallas Court in order to process an application for an emergency travel document to return to Eritrea and that this failed due to her inability to prove her Eritrean identity (page P1 of the court bundle refers). Ms Crozier acknowledges that the appellant has made renewed applications to the Ethiopian Embassy and to the Eritrean Embassy with the assistance of SP in February and March 2013 (pages H1 and G1-G2 of the court bundle refers). Ms Crozier submits that in order for the appellant to satisfy Regulation 3(2)(a) she will need to show what steps she has taken since her last appeal to this Tribunal in March 2011 to leave the UK for Ethiopia.
6. The appellant, with the assistance of her representative, addressed me and confirmed that she has always believed herself to be Eritrean because she was born in Eritrea of Eritrean parents. She confirms that both her parents were born in Eritrea. She confirms that her father moved to Ethiopia from Eritrea when she was two years old and that she and her mother followed. She confirms that her father had a sister in Ethiopia but that her aunt was also Eritrean. She confirms that she lived with that aunt for a while. She confirms that she has never applied to be recognised as stateless as she believes herself to be Eritrean. Her inability to prove her Eritrean nationality has not altered her view of her nationality.
7. The appellant confirms that she had approached the Ethiopian Embassy because UKBA insist that she is Ethiopian and that she visited the Ethiopian Embassy on 14 March 2013. She also confirms that she has spoken to the Ethiopian Embassy on three or four occasions and has been told that unless she has any evidence that she is Ethiopian she will not receive any form of travel document from the Ethiopian authorities. She states that it is the lack of an Ethiopian identity document which causes the Ethiopian authorities in London to refuse to assist her. She says that the Eritrean authorities in London have given her exactly the same reason for failing to assist her, namely her failure to provide any form of any Eritrean identity document. She confirms that both her parents had Eritrean identity documents. She is unsure what documents her two half sisters held as they were both still minors when she left

Ethiopia. She confirms that she did not have an Eritrean or Ethiopian identity document at the time that she left Ethiopia as she, too, was a minor at that time.

8. The appellant confirms that she has on one occasion been in possession of an Eritrean identity card which was given to her by the Eritrean Embassy in Beirut in approximately 2006. She states that she was being exploited by her employer in the Lebanon and the Eritrean Embassy in Beirut took pity on her and issued her with an identity document in order to assist her. She filled in an application form at the Embassy in Beirut in order to get this document. She states that she lost this document when taking a boat journey to Italy from Turkey. The boat ran into difficulties and the passengers were obliged to throw most of their possessions overboard.
9. The appellant states that she told the Eritrean Embassy in London that she had had an identity document issued by the Eritrean Embassy in Beirut during her visits of 2010 and 2012. She is unable to explain why there is no reference to this identity document in any of the written statements that had been prepared on her behalf.
10. The appellant confirms that she is now willing to leave the UK. She states that she has not been believed here, she has no regularised stay in this country and it is time for her to go. She confirms that she made representations, while in receipt of Section 3(2)(a) support, on 2 June 2011 which were rejected on 5 August 2011. She understands that her claim for asylum has been rejected for the last time. She confirms that she has not thought of making an application to be recognised as stateless as she had never believed herself to be stateless. However, given her current difficulties with both the Eritrean and Ethiopian authorities, she will take advice.
11. In summary, the appellant confirms that the steps she has taken since her last hearing at this Tribunal two years ago are:
 - (i) her contact with the Red Cross in June 2012 (page M1 of the court bundle refers);
 - (ii) her multiple telephone calls to the Eritrean and Ethiopian embassies;
 - (iii) her visits to the Eritrean Embassy (page H1 of the court bundle refers);
 - (iv) her visits to the Ethiopian Embassy (page G1 of the court bundle refers);
 - (v) her approach to the Immigration Service at Dallas Court for an emergency travel document for Eritrea (page P1 of the court bundle refers);
 - (vi) her approach to the Immigration Service at Dallas Court for an emergency travel document for Ethiopia – her interview is on 19 April 2013 (pages C1 and D1 of the court bundle refers);
 - (vii) her response to UKBA's reviews of 10 August 2011, 28 May 2012, 7 August 2012 and 1 March 2013.
12. The appellant asks the court to note that her most recent approach to the Eritrean Embassy predates the current decision to terminate support and is therefore an indication of her ongoing efforts to leave the UK and not triggered by her support coming to an end.

13. There is no other evidence from either party to this appeal.
14. 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) she was (but is no longer) an asylum seeker; and
 - (b) her claim for asylum was rejected.
15. Section 4(5) of the 1999 Act as amended by Section 10 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004 Act) allows the Secretary of State to make regulations specifying criteria to be used in determining -
 - (a) whether or not to provide accommodation, or arrange for the provision of accommodation, for a person under this section;
 - (b) whether or not to continue to provide accommodation, or arrange for the provision of accommodation, for a person under this section.
16. 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.
17. 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 she 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 her.
 - (2) Those conditions are that-
 - (a) she is taking all reasonable steps to leave the United Kingdom or place herself in a position in which she is able to leave the United Kingdom, which may include complying with attempts to obtain a travel document to facilitate his departure;
 - (b) she is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;
 - (c) she 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) she 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.
18. Distinguishing applicants for support under 3(2)(a) who experience genuine barriers to return for reasons beyond their control from applicants who exploit known difficulties in return to their countries of origin is always a complex task.
19. In this particular case, it is difficult to establish whether the appellant's failure to satisfy both the Eritrean and the Ethiopian authorities that she is a national of either of those countries (due to her inability to prove her identity) is because she is withholding information she could provide or because despite all her efforts she cannot prove her nationality through no fault of her own.
20. Be that as it may, I accept that the appellant is currently taking all reasonable steps to leave the UK. Her continued contact with the Ethiopian authorities and with the Eritrean authorities with the assistance of her friends and the written statements that she has provided satisfy me that she is taking those steps. I am satisfied that she has approached the Immigration Service in order to request assistance of an emergency travel document for Eritrea which has failed and I am satisfied that she is now pursuing the same request to the Immigration Service this time with a view to a return to Ethiopia. I accept that she has made a written request to the Immigration Service in this regard and that she will be interviewed by the Immigration Service at Dallas Court in due course.
21. While these steps are being taken, I find that the appellant satisfies Regulation 3(2)(a). The respondent will, of course, monitor the appellant's ongoing eligibility for Section 4 support under Regulation 3(2)(a).
22. The appellant will be aware that in order to continue to satisfy Regulation 3(2)(a) she must continue, at all times, to take all reasonable steps to leave the UK. She is now aware that the respondent will not consider steps to return to Eritrea to satisfy this Regulation given the Immigration Judge's finding that she is more likely to be Ethiopian than Eritrean. The appellant will need to pursue all efforts to return to Ethiopia in order to continue to satisfy Regulation 3(2)(a). If and when she has exhausted that avenue she will need to consider her position.
23. I substitute my own decision for that of the Secretary of State in determining that the appellant satisfies the criteria for Section 4 support by way of Regulation 3(2)(a).

Ms Sally Verity Smith
Tribunal Judge, Asylum Support

SIGNED ON THE ORIGINAL [Appellant's Copy]

Dated 26 March 2013