



**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/12/10/29033/SB

UKBA Ref. 04/11/02488

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>DR MY</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 Friday the 26th day of October 2012, 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 1999 as amended ("the Act").
2. The appellant, a citizen of Sudan born on 18 August 1976, appeals against the decision of the Secretary of State who refused his application for support under Section 4 of the Immigration and Asylum Act 1999 ("the 1999 Act") on 11 October 2012 on the grounds that he 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").
3. The appellant gave his evidence today in English and in Arabic, through an independent court interpreter. He was represented by Ms Hickey of the Asylum Support Appeals Project. The respondent was represented by Ms Crozier.
4. The appellant applied for Section 4 support on 2 October 2012 on the grounds that (a) he was destitute and (b) he satisfied Regulation 3(2)(e). That application was refused by the respondent on 11 October 2012 on the grounds that, although his destitution was accepted, his eligibility by way of Regulation 3(2)(e) was not. It is against the decision to refuse support that the appellant appeals today.

The respondent's position

5. Ms Crozier for the respondent confirms that the appellant applied for asylum on 22 November 2004. That application was refused on 15 March 2005 and an appeal against that decision was dismissed on 16 May 2005. Permission to appeal that decision was granted to the appellant on 21 June 2005 but the appeal was dismissed on 2 November 2005. The appellant was refused permission to appeal that decision to the Court of Appeal on 7 February 2006 and he was deemed appeal rights exhausted on 7 March 2006. He lost his Section 95 support on 18 March 2006 for that reason. On 2 May 2006 the appellant applied for his voluntary repatriation to the Sudan and on 15 June 2006 he returned to the Sudan.
6. The appellant re-entered the UK on 9 May 2012 and made his application for support on 2 October 2012 on the grounds that he was destitute and he had made an application for a judicial review. The respondent refused support on 11 October 2012 on the grounds that the appellant had failed to show that he had submitted further submissions in relation to his failed asylum claim, nor had he made further submissions that he wished to be considered as a fresh asylum claim. The appellant therefore did not qualify for support.
7. Ms Crozier confirms that the respondent's current position is that the appellant has not yet submitted either a fresh claim for asylum or further submissions in relation to his failed claim to asylum. There is nothing outstanding with UKBA and there is nothing to prevent the appellant volunteering to return to Sudan.

The appellant's position

8. The appellant in his grounds of appeal had stated that he was taking all steps to ensure that his submissions were made as well as starting judicial review proceedings. At the hearing today the appellant confirms Ms Crozier's chronology at paragraph 5 above: he returned to the UK on 9 May 2012 and on the following day, 10 May 2012, he went to the UKBA in Croydon and informed them that he wished to claim asylum. The UKBA caseworker gave him a telephone number and told him to call to make an appointment to make his claim for asylum. He confirms that the telephone number was a Croydon number. The appellant then informed the UKBA caseworker that he had applied for asylum before and had left the UK and returned to the Sudan. The caseworker then took the telephone number back from the appellant and told him to go to solicitors for advice.
9. The appellant went to Duncan Lewis, solicitors, between 18 and 20 May 2012 in order to make his claim for asylum. He telephoned UKBA in Croydon and was told to go to UKBA in Liverpool in order to submit further representations in relation to his claim to asylum as he was considered to be a failed asylum seeker who was making fresh representations. Duncan Lewis contacted UKBA in Liverpool who told the appellant that he was to make his fresh claim in Croydon (sic). Duncan Lewis told the appellant to be patient: they would sort out this problem by contacting UKBA formally in order to ascertain whether he should be submitting his fresh representations in Liverpool or in Croydon. Duncan Lewis was informed by Liverpool that the appropriate venue for the appellant's fresh submissions was Croydon. The appellant got back in touch with Croydon once more who this time informed him that he should make his further submissions to the Immigration Service at Becket House. Duncan Lewis contacted Becket House in order to clarify the position and on 5 September 2012 received an email from an immigration officer at Becket House who

confirmed that the appellant was not entitled to make a fresh claim for asylum but he would be submitting further representations in relation to his claim to asylum as he was someone whose initial application for asylum was made before 5 March 2007 and he had left the UK, his case would now be managed by a regional case owner. The appellant was invited to select his region from one of six regions in the UK.

10. On 11 September 2012 the appellant went to Becket House in person and reported for the first time. He was given an IS96 and told to report again on 9 October 2012. He was told to go back to Croydon in order to submit his further representations.
11. The appellant informed Duncan Lewis of this latest development at which point Duncan Lewis informed him that his case has now been transferred from the immigration department to the public law department in order for a judicial review to be lodged to establish where he should be submitting his fresh representations. Duncan Lewis sent a pre-action protocol to UKBA on 3 October 2012 by email, receipt of which was acknowledged by UKBA on the same day.
12. The appellant applied for asylum support on 2 October 2012.
13. The appellant submits a letter from Duncan Lewis dated 10 August 2012 addressed to Becket House which is entitled 'further submissions in support of a fresh claim for asylum' as well as a letter from Duncan Lewis dated 21 August 2012 to UKBA at Electric House requesting that the appellant be given reporting conditions in order to allow him to submit his fresh claim in person.
14. There is no other evidence from either party to this appeal.

The law

15. 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.
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-
 - (i) that he appears to the Secretary of State to be destitute; and
 - (ii) that one or more of the conditions set out in paragraph (2) are satisfied in relation to him.
 - (2) Those conditions are that-

- (i) 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;
- (ii) he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;
- (iii) 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;
- (iv) he has made an application for judicial review of a decision in relation to his asylum claim;
- (v) 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. The respondent's Section 4 Instructions of 14 June 2011 state:

"An important consideration is whether the applicant can be expected to leave the UK to avoid a breach [of the ECHR]. It would not be reasonable to expect a person to leave the UK in the following circumstances (this list is not exhaustive):

- 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 to the Secretary of State further representations which are outstanding. Support under Section 4 can be provided in such cases, if there is or will be a delay in serving a decision on these further submissions, unless it is clear that the further submissions are manifestly unfounded, or merely repeat the previous grounds or do not disclose any claim for asylum at all.

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

The decision and reasons

19. I have considered all the evidence before me carefully on a balance of probabilities. I have considered the appellant's version of events since he returned to the UK in May 2012, which chronology is not disputed by the respondent and is supported by documentary evidence from Duncan Lewis and the Red Cross: the delay in processing the appellant's renewed claim for asylum is shocking given that his homelessness is not disputed.
20. I first consider whether the appellant's claim for support should lie by way of Section 95 (which is support for asylum seekers) or Section 4 (which is support

for failed asylum seekers). I apply the current case law of *R (on the application of YH) v SSHD [2008] EWHC 2174 Admin* and accept that the appellant is to be treated as a failed asylum seeker who is seeking to make fresh representations in relation to his claim to asylum of November 2004. Despite the appellant's return to his country of persecution and his subsequent return to the UK, he is not to be treated as an asylum seeker. Any renewed claim that he makes now will be considered as fresh representations in relation to his old claim for asylum. I find that the procedure for submitting those fresh representations should have been known to the UKBA caseworker at Croydon on 10 May 2012 and the five and a half month delay since that time is unacceptable.

21. I find that the appellant is a failed asylum seeker who has been attempting to renew his claim for protection in the UK since his approach to UKBA on 10 May 2012.
22. I find that the appellant has made every effort to submit his renewed claim and it is unreasonable to expect him to leave the UK before that renewed claim has been considered by UKBA.
23. I therefore find that the appellant satisfies Regulation 3(2)(e) by application of the respondent's Section 4 instructions.
24. I substitute my decision for that of the Secretary of State by determining that the appellant is eligible for support under Section 4: this appeal is allowed.

Ms Sally Verity Smith
Tribunal Judge, Asylum Support

SIGNED ON THE ORIGINAL [Appellant's Copy]

Dated 31 October 2012