



**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/12/10/29002/SB

UKBA Ref. 11/01/01603/001

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 GA
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 Friday 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 95 of the Immigration and Asylum Act (as Amended) ("the Act") subject to his satisfying the destitution criteria.
2. The appellant is a citizen of Nepal, born on 21 October 1980. He appeals against the decision of the respondent who, on 4 October 2012, refused to provide him with accommodation under Section 95 of the Immigration and Asylum Act 1999 ("the Act") on the grounds that the appellant is no longer an asylum seeker.
3. In his Notice of Appeal, the appellant confirms that he does not require an oral hearing of his appeal. I have considered the appellant's request with reference to Rule 27 of the Rules and I am satisfied that within the particular circumstances of this case, an oral hearing is not necessary for the appeal to be disposed of justly. Accordingly, I proceeded to determine this appeal under Rule 27 of the Rules.
4. The appellant applied for Section 95 support on 25 September 2012 naming his wife and their two minor children as his three dependants. That application was refused on 4 October 2012 in the following terms:

"In order for an applicant to qualify for asylum support under Section 95 of the Act, they must have an active claim for asylum in the United Kingdom (UK).

As it appears that you do not have an active asylum claim in the UK, your application for NASS support has been refused.

You may be eligible for Section 4 support..."

5. It is against that decision which the appellant appeals today.

The respondent's position

6. The respondent accepts that the appellant had been in receipt of Section 95 support from 31 January 2011 to 22 August 2012. Section 95 support was terminated due to a breach of conditions of support: the appellant had abandoned his authorised address without first informing the respondent. The respondent submits an investigation report dated 21 August 2012 confirming that the investigation was triggered by a referral regarding the appellant's oldest child who was living in Liverpool (rather than Oldham where the UKBA accommodation is situated) and going to school there. An announced visit was made to the house on 9 August 2012 at which time the appellant was not there but his wife and two children were. The appellant's wife stated that the appellant was out getting milk. The house was observed to be empty of clothes and toys. The appellant turned up 10 minutes later and stated that he had been at the doctors. On 17 August 2012 the respondent made an unannounced visit to the property in the presence of the accommodation provider and found no one at the address and that the house was bare and empty.
7. The respondent confirms that the appellant's destitution is in doubt: a letter dated 6 September 2012 confirmed that the appellant had opened two accounts on 13 September 2005. The respondent notes that the address used by Barclays bank is the address at Liverpool where the appellant had confirmed his son had been living in order to access school and is the address that he is giving now in his current application for subsistence support. Barclays Bank confirmed that from 23 July 2012 until 21 August 2012 the appellant received some £639.75 from working (despite the fact that the appellant does not have permission to work) and that he had outgoings of £188.85. A cash payment was made into this account by DK Magar of £200 in July 2012 and there was a regular direct debit to H3G for a mobile for £31 and regular card payments to John Lewis and National Express. Furthermore, the appellant had abandoned his section 95 accommodation and had been without support from UKBA for six weeks. The appellant must have access to other funds in order to have supported his family for this period of time.

The appellant's position

8. In his grounds of appeal the appellant accepts that he does not have an active asylum claim but states that for support purposes this fact is secondary to the fact that (i) he has previously been in receipt of section 95 support and (ii) he has dependant children who were his dependants at the time he became appeal rights exhausted. UKBA's policy is and always has been to provide Section 95 support in such cases.
9. The appellant's position is that Section 94(5) applies in all circumstances where someone who has ever applied for asylum continues to have dependant children under the age of 18. Families who abscond from their accommodation

are usually entitled to apply for and receive subsistence only support under Section 95 if and when they return to the asylum support system. UKBA is wrong to refuse the appellant's Section 95 support on the grounds that he is no longer an asylum seeker: UKBA policy would not refuse support to families who are appeal rights exhausted if to do so would make children destitute. As long as this family can prove its destitution, they will be eligible for asylum support regardless of the status of their asylum claim.

10. There is no other evidence from either party to this appeal.
11. The relevant law is contained in Section 94 of the Act.

Section 94(1) defines an asylum seeker as a person who is not under eighteen and has made a claim for asylum that has been recorded by the Secretary of State but which has not been determined.

Section 94(3) states that the claim for asylum is determined at the end of such period beginning (a) on the day on which the Secretary of State notifies the claimant of his decision on the claim, or (b) if the claimant has appealed against the Secretary of State's decision on the day on which the appeal is disposed of, as may be prescribed.

Section 94(4) states that an appeal is disposed of when it is no longer pending for the purposes of the Immigration Acts or the Special Immigration Appeals Commission Act 1997.

Section 94(5) states that if an asylum seeker's household includes a child who is under eighteen and a dependant of his, he is to be *treated* (for the purposes of this Part) as continuing to be an asylum seeker while –

- (a) the child is under eighteen; and
- (b) he and the child remain in the United Kingdom.

12. I have considered all the evidence before me on a balance of probabilities. I have not been asked to consider the appellant's destitution and I do not do so: the purpose of this appeal was to determine whether the appellant's eligibility for support, once the destitution criteria was satisfied, fell under section 95 or section 4.
13. First, I have considered the appellant's submissions with regard to the applicability of Section 55 of the Borders, Citizenship and Immigration Act 2009 and UKBA's stated policy of preventing destitution in asylum seeking families. I find that the respondent's obligations under section 55 and her undertaking to prevent destitution in asylum seeking families is not only met by section 95 but also by the provision of Section 4 support which is offered to destitute failed asylum seekers, with or without children, who otherwise qualify for support. The respondent confirms that the appellant may be eligible for Section 4 support, subject to his destitution being accepted, and encourages him to apply for section 4 support in the decision under appeal. I find that the respondent can meet her obligations to this family under section 55 by providing support under Section 4 or Section 95.

Second, I find that Section 94 defines asylum seekers for support purposes, not for the purposes of immigration law. I find that the words "continue to be" in subsection 5 apply to an applicant's support not his immigration status.

Third, I find the purpose of Section 94(5) was to protect individuals who applied for support at a time when they were asylum seekers but, while in receipt of support, they became failed asylum seekers. Subsection 5 prevents support from being withdrawn to families with children in their household under the age of 18: it ensures continuity of support and prevents children becoming destitute.

Fourth, I have considered the appellant's eligibility for support by way of Section 94(1) and 94(3) and find that he is no longer an asylum seeker. I accept that his claim for asylum has been determined and that he is currently a failed asylum seeker who has representations in relation to his claim to asylum outstanding with UKBA. The appellant is therefore no longer an asylum seeker by virtue of Section 94(3).

Fifth, I have considered whether the appellant is entitled to be *treated* as an asylum seeker by virtue of his two dependant sons and I accept that the appellant was in receipt of support following the final disposition of his claim to asylum by virtue of section 94(5) until 22 August 2012 when support was discontinued following the appellant's abandonment of his accommodation.

The question before me today, therefore, is whether the appellant, having had a break in receipt of support under Section 94(5) is entitled to be treated as an asylum seeker (by virtue of his two dependant sons) despite that break. I have considered the wording of Section 94(5) carefully and find that the appellant is currently a failed asylum seeker who is entitled to be treated as continuing to be an asylum seeker by virtue of his two minor sons who form part of his household. I find that he remains entitled to be treated as continuing to be an asylum seeker and that he needs to show only that he has a dependant child under the age of 18 who forms part of his household and that both he and that child remain in the UK. I am satisfied that the appellant satisfies the wording of Section 94(5).

14. For the sake of completeness, I accept that this Tribunal has considered the applicability Section 94(5) on many occasions over the past 11 years and has taken a consistent view, as set out by the Principal Judge in *AS/02/02/1872* of 26 February 2002, that the word "continuing" refers to the ongoing eligibility for support under Section 95 for those families who whilst in receipt of support exhaust their appeal rights. This approach has resulted in applicants for Section 95 support (whose support came to an end with their claims to asylum as they had no dependant minor children at that time) being refused Section 95 support following the birth of a child once appeal rights were exhausted. This Tribunal has consistently taken the view that the birth of a child, once appeal rights are exhausted, does not trigger an entitlement to be *treated* as an asylum seeker as to do so would be to make the words "continuing to be" irrelevant. The respondent has not sought to challenge the Tribunal's approach in this regard over the past decade and my decision today maintains that approach.
15. On the totality of the evidence before me, considered carefully on a balance of probabilities, I substitute my decision for that of the Secretary of State and find that the appellant eligible for support under Section 95 of the Act by virtue of Section 94(5) subject to his satisfying the destitution criteria.

Signed
Tribunal Judge, Asylum Support [File Copy]

Dated

