



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number AS/12/02/28098/BG

UKBA Ref. 10/04/01280

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>MR DAG</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 Tuesday the 24th day of April 2012, dismissing the above mentioned appeal.
2. The appellant, who is age disputed, was born in the Sudan of Ethiopian and Eritrean parents. He appeals against the decision of the Secretary of State who removed him as a dependant of his mother's award of support under Section 4 of the Immigration and Asylum Act 1999 ("the Act") on 23 February 2012 on the grounds that his date of birth had been assessed as 22 April 1993, he was therefore over the age of 18 years and no longer eligible for support as his mother's dependant.
3. The appellant appeared before me via a video link from Leeds and his mother sat alongside him. He was represented in London by Mr Hopkins of the Asylum Support Appeals Project. He gave his evidence by way of an independent court interpreter in London in Amharic. The respondent was unrepresented.
4. The chronology of the appellant's applications for asylum and support are contained in the Statement of Reasons of his two previous appeals to this Tribunal under reference AS/12/02/28098 and AS/11/12/27852 and I do not propose to repeat them here. In summary, the respondent made her first decision to remove the appellant from his mother's grant of Section 4 support on the grounds cited at paragraph 2 above on 16 December 2011. An appeal against that decision was remitted to the respondent by this Tribunal on 3 January 2012 on the grounds that she had failed to provide any evidence of the

appellant's date of birth. The respondent terminated support once more on the grounds cited at paragraph 2 above on 14 March 2012. An appeal against that decision was dismissed by this Tribunal on the grounds that the respondent had now provided an age assessment conducted by Kent County Council Social Services on 22 April 2010 at which time the appellant's date of birth was assessed as 22 April 1993. The AST decision was set aside under Regulation 37(2)(d) of the Rules on 13 April 2012 and re-listed for hearing today.

5. This appeal is determined by reference to:

Regulation 2 of the Asylum Support Regulations 2000.

- (4) *In these Regulations "dependant", in relation to an asylum-seeker, a supported person or an applicant for asylum support, means, subject to paragraph (5), a person in the United Kingdom ("the relevant person") who-*
- (a) *is his spouse;*
 - (b) *is a child of his or of his spouse, is dependant on him and is, or was at the relevant time, under 18;*
 - (c) *is a member of his or his spouse's close family and is, or was at the relevant time, under 18;*
 - (d) *had been living as part of his household -*
 - (i) *for at least six of the twelve months before the relevant time; or*
 - (ii) *since birth,**and is, or was at the relevant time, under 18;*
 - (e) *is in need of care and attention from him or a member of his household by reason of a disability and would fall within subparagraph (c) or (d) but for the fact that he is not, and was not at the relevant time, under 18;*
 - (f) *had been living with him as a member of an unmarried couple for at least two of the three years before the relevant time;*
 - (g) *is living as part of his household and was, immediately before 6th December 1999 (the date when the interim Regulations came into force), receiving assistance from a local authority under section 17 of the Children Act 1989(a);*
 - (h) *is living as part of his household and was, immediately before the coming into force of these Regulations, receiving assistance from a local authority under -*
 - (i) *Section 22 of the Children (Scotland) Act 1995(b);*
 - or*
 - (ii) *Article 18 of the Children (Northern Ireland) Order 1995(c); or*
 - (i) *has made a claim for leave to enter or remain in the United Kingdom, or for variation of any such leave, which is being considered on the basis that he is dependant on the asylum-seeker; and in relation to a supported person, or an applicant for asylum support, who is himself a dependant of an asylum-seeker, also includes the asylum-seeker if in the United Kingdom.*
- (5) *Where a supported person or applicant for asylum support is himself a dependant of an asylum-seeker, a person who would otherwise be a dependant of the supported person, or of the applicant, for the purposes of these Regulations is not such a dependant unless he is also a dependant of the asylum-seeker or is the asylum-seeker.*

- (6) *In paragraph (4), "the relevant time", in relation to the relevant person, means –*
- (a) *the time when an application for asylum support for him was made in accordance with regulation 3(3); or*
 - (b) *if he has joined a person who is already a supported person in the United Kingdom and sub-paragraph (a) does not apply, the time when he joined that person in the United Kingdom.*
- (7) *Where a person, by falling within a particular category in relation to an asylum-seeker or supported person, is by virtue of this regulation a dependant of the asylum-seeker or supported person for the purposes of these Regulations, that category is also a prescribed category for the purposes of paragraph (c) of the definition of "dependant" in section 94(1) of the Act and, accordingly, the person is a dependant of the asylum-seeker or supported person for the purposes of Part VI of the Act.*
- (8) *Paragraph (7) does not apply to a person who is already a dependant of the asylum-seeker or supported person for the purposes of Part VI of the Act because he falls within either of the categories mentioned in paragraphs (a) and (b) of the definition of "dependant" in section 94(1) of the Act.*
- (9) *Paragraph (7) does not apply for the purposes of any reference to a "dependant" in Schedule 9 to the Act.*

Section 94(1) of the Immigration and Asylum 1999 Act defines a *dependant*, in relation to an asylum seeker or a supported person, means a person in the United Kingdom who -

- (a) *is his spouse;*
- (b) *is a child of his, or of his spouse, who is under 18 and dependent on him; or*
- (c) *falls within such additional category, if any, as may be prescribed.*

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.*

The criteria to be used in determining eligibility for and provision of accommodation to a failed asylum-seeker under Section 4 are

- (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.*

6. Mr Hopkins confirms that the appellant arrived in the UK alone (only a matter of weeks before his mother) and had been treated as an unaccompanied minor

and supported by Kent County Council. Once his mother arrived in the UK and had made her applications for asylum and asylum support, the appellant joined her as her dependant both in terms of her claim to asylum and her claim for support on 24 June 2010. It is accepted that the appellant and his mother's claim for asylum came to an end on 25 January 2011 and that that claim for asylum has not been repeated: neither the appellant nor his mother have any representations in relation to their claim to asylum outstanding. Mr Hopkins acknowledges that the respondent extended Section 95 support to the appellant and his mother until after the appellant's 18th birthday by application of Section 94(5). The decision of 27 April 2011 terminating Section 95 support is clear: the appellant and his mother became appeal rights exhausted in January 2011 but support was only terminated on 27 April 2011, after the appellant turned 18, reflecting the appellant's rights under Section 94(5). The appellant's mother was awarded Section 4 support in May 2011 under Regulation 3(2)(b) and the appellant was awarded support as her dependant. The appellant has not qualified for Section 4 support, or indeed Section 95 support, in his own right but only as a dependant of his mother.

7. Mr Hopkins submits that the appellant is entitled to be treated as his mother's dependant for the purposes of Section 4 support because he was her dependant at the 'relevant time' as defined by Regulation 2(6) namely at the time when he made his application for Section 95 support on 24 June 2010. At that time, even accepting the Kent County Council date of birth of 22 April 1993, the appellant was 16 years old. His entitlement to be treated as his mother dependant remains throughout the currency of his Section 95 support as well as his Section 4 support. The respondent is precluded from terminating support to the appellant following his 18th birthday on 22 April 2011 by application of Regulation 2(4)(b): he is his mother's child, is dependant on her and was at the time of his first application for support under the age of 18.
8. Mr Hopkins confirms that the words *or was at the relevant time* are referred to throughout Regulation 2(4). If it had been the intention of Parliament that all dependant minors were obliged to qualify for support in their own right following their 18th birthdays, Regulation 2(4) would simply state *is under 18*: the words *or was at the relevant time* would be redundant. The wording of Regulation 2(4) allows dependency to continue past an 18th birthday as long as the dependant was under 18 at the time the application for asylum support was made.
9. Mr Hopkins submits that, with respect, paragraph 12 of the Statement of Reasons AS/12/02/28098 cannot be correct namely that an applicant can only be eligible for Section 4 support as a dependant while he remains under the age of 18. If this were the case, Regulation 2(4) would not on four separate occasions refer to an applicant being under 18 *at the time he made his application for support*.
10. Mr Hopkins submits that the appellant's mother's application for Section 4 support on 3 May 2011, following termination of Section 95 support, does not cause a change in the "relevant time". The "relevant time" is the time the appellant made his application for Section 95 support as his mother's dependant and that date is fixed at 24 June 2010, not a year later when they applied for Section 4 support.
11. Mr Hopkins submits in the alternative, in the event that the tribunal finds that the "relevant time" is the date of the Section 4 application, that the appellant should be considered as his mother's dependant under Regulation 2(4)(i) namely he is his mother's dependant for the purposes of their claim for asylum.

12. Finally, it is submitted that the appellant qualifies for Section 4 support in his own right, in any event, as he satisfies Regulation 3(2)(e): it is not reasonable to expect the appellant to leave the UK while he is the primary carer of his mother. The appellant made an application for Section 4 support in his own right on 19 April 2012. That application remains under consideration with UKBA.
13. There is no other evidence from either party to this appeal.
14. I have considered all the evidence before me carefully on a balance of probabilities. I am grateful to Mr Hopkins for his detailed and most helpful oral and written submissions.
15. First, in the absence of any evidence to the contrary, I accept the appellant's date of birth as 22 April 1993 as detailed in the comprehensive report prepared by Kent County Council.
16. Second, I accept the interpretation of Regulation 2 as set out at paragraph 8 above: an individual does not lose her/his status as a dependent when s/he reaches the age of 18. If this were the case, Regulation 2(4)(b), (c), (d) and (e) would simply refer to '*is 18*' and not '*is, or was at the relevant time, under 18*'.
17. Third, I consider whether the "relevant time" is when the appellant made his application for Section 95 support (when he was 16 years old) or when he made his application for Section 4 support (when he was 18 year old). To that end I consider the specific and distinct eligibility criteria for support under Sections 95 and 4.

The appellant and his mother's Section 95 support came to an end for a reason: their claim for asylum had been fully and finally determined by January 2011 and, had the appellant been over the age of 18 at that time, Section 95 support would have been terminated immediately. It was because the appellant was under the age of 18 that he and his mother benefited from the provisions of Section 94(5) and support continued until his 18th birthday.

Once support under section 95 came to an end in April 2011, the appellant's mother applied for Section 4 support at which time she had to qualify under a stringent set of specific eligibility criteria.

The award of Section 4 support is not automatic: there are three steps to qualification for Section 4 support only one of which is in common with the criteria for section 95 support: both demand that the applicant is destitute. Thereafter the criteria change: (a) for Section 4 support the respondent must be satisfied that the applicant is a failed asylum seeker; for Section 95 the respondent must be satisfied that the applicant is an asylum seeker and (b) for Section 4 support, a third criteria must be satisfied as set out under Regulation 3(2). The respondent in this case found that the appellant's mother satisfied Regulation 3(2)(b). The appellant was added to that award as his mother's dependant. The respondent now asserts that was in error as he had already attained his majority.

Having considered the specific and distinct eligibility criteria for support under Sections 95 and 4, I cannot accept that the "relevant time" for a Section 95 application remains the "relevant time" for a later application for Section 4 support.

I therefore find that the "relevant time" for the purposes of today's appeal is the date on which the appellant and his mother applied for Section 4 support,

namely 3 May 2011 at which time the appellant had already attained his majority.

18. Fourth, I consider whether the appellant can be considered as his mother's dependant by way of his dependency on her claim for asylum and I find that he cannot: the appellant and his mother's claim for asylum was fully and finally determined in January 2011. I have no evidence before me that that claim has been renewed or repeated by the appellant or his mother since that time. The appellant's mother's eligibility for Section 4 support is not by way of further representations in relation to her claim for asylum (and that of her son) but by way of Regulation 3(2)(b) which criteria has no bearing on her fully determined claim for asylum.
19. While I remain intrinsically sympathetic to Mr Hopkins' submissions regarding the overriding need for family unity and the need to protect young people from falling into destitution when asylum support comes to an end, I find that in this particular case the appellant cannot continue to be treated as his mother's dependant for support purposes. I accept that he was protected from destitution while still a minor by the provision of section 94(5).

Had the appellant's mother made further submissions in relation to her asylum claim (and that of her son) which remained outstanding, the appellant may have qualified as her dependant under Regulation 2(4)(i). However, that is not the case: the appellant and his mother's claim for asylum was fully and finally determined some 15 months ago and has not been revisited since.

Alternatively, had the appellant turned 18 while in receipt of Section 4 support, I would have found that his ongoing entitlement as his mother's dependant would have been established.

For the sake of completeness, I find that section 94(1) does not apply: the wording here, in contrast to Regulation 2(4), is clear: the dependant must be under 18.

20. In summary, the appellant is an adult failed asylum seeker, his claim for asylum having been fully and finally determined in January 2011. He is now over the age of 18 and does not satisfy any of the criteria for dependency found at Regulation 2 or Section 94: the respondent should not have included him in his mother's award of Section 4 support in May 2011. His eligibility for support will be considered on an individual basis and I accept that he made his own claim for support on 19 April 2012. I am confident that the respondent will allow the appellant to remain with his mother while that application is considered and that careful consideration will be given to the appellant being allowed to remain with or near his mother if he qualifies for Section 4 support.
21. Appeal dismissed.

Ms Sally Verity Smith
Tribunal Judge, Asylum Support

SIGNED ON THE ORIGINAL [Appellant's Copy]

Dated 27 April 2012