



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number AS/12/03/28234/CA

UKBA Ref. 09/01/00278/002

Appellant's Ref.

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

Tribunal Judge	Mr David Saunders
Appellant	MR JKV
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 Wednesday the 11th day of April 2012, dismissing the above mentioned appeal.
2. The appellant, a 44 year old citizen of Sri Lanka, appeals against the decision of the Secretary of State who, on 27 March 2012, decided to discontinue support to the appellant under Regulation 20(1)(h) of the Asylum Support (Amendment) Regulations 2005 ("the Regulations") on the grounds that the Secretary of State is satisfied that the appellant has concealed financial resources such that the supported person has, therefore, unduly benefited from the receipt of asylum support.
3. At the hearing before me, the appellant appeared in person and was unrepresented. He gave his evidence in Sinhalese and was assisted by a court appointed interpreter. The respondent was unrepresented at the hearing.
4. The agreed facts of this appeal are that the appellant arrived in the United Kingdom on 14 December 2008 and applied for asylum on 18 December 2008. On 7 January 2009, he was granted Section 95 support in respect of both accommodation and subsistence along with his family which consist of his wife and their two dependant children. His wife is now pregnant. They were dispersed to an address in Newcastle-upon-Tyne and then Wallsend, Tyne and Wear, where they continue to reside to this day.
5. As a result of information received by the respondent – flowing from an

investigation into the appellant's financial circumstances – the Secretary of State took the view that the appellant had received access to substantial monies in addition to receipt of asylum support (either from working or from another source such as payments from friends). The respondent formed the view that this was income (or monies) which he had concealed from the Secretary of State and that, as consequence, his support (along with his family) should be discontinued on 27 March 2012. He appeals that decision.

6. The respondent's case relies upon the facts and matters set out in her termination letter of that date. She says that the appellant has failed to reveal monies that he has received from whatever source during the course of the period in which he has been in receipt of asylum support.
7. The full details are set out in the respondent's investigation report which is found at pages 106-114 of the Secretary of State's bundle having been prepared on 23 March 2012.
8. The Secretary of State considered that there was substantial evidence of monies having been received by the appellant in addition to receipt of his subsistence payments. The appellant has two Halifax bank accounts which showed deposits inconsistent with simply the provision of asylum support over a prolonged period. He has been making substantial payments in the region of hundreds of pounds to a company known as AFB & Son. This is a wholesale cash and carry enterprise for retail, food and drink and is not open to the general public. Only a business owner is said to have been able to gain access to such wholesale purchases. Account activity within his bank accounts appears to show that he regularly travels around the United Kingdom – purchases have been shown in Leeds, London, Birmingham and South Glamorgan. Further payments have also been made out of the account for various hotels, rail companies and a payment to Easyjet for airline travel. Further payments are said to have been made to a commercial credit agency, towards a loan paid to him on 16 January 2012 in the sum of £3,000 – revealed in an Experian report as to the accounts, loans and other credit information which exists in relation to the appellant. It is said that it is obvious from this that the appellant has concealed financial resources such that he has unduly benefited from the receipt of asylum support by the provision of both his accommodation and subsistence costs. This is said to breach the requirements of Regulation 20(1)(h) of the Regulations.
9. The respondent has produced a detailed bundle in support of her position; the material part of which consists of the following:-
 - (a) Copies of an Experian credit check made in relation to the appellant. This shows a number of bank accounts to include those with Halifax Plc and Northern Rock.
 - (b) A copy of the appellant's statements in relation to his Halifax Easy Cash account for the period 21 April 2009 to 9 September 2011 (inclusive). These are found at pages 42-51 (inclusive) of the Secretary of State's bundle. There are then further bank statements in relation to the period from 21 July 2011 through to 23 February 2012 which are found up to page 56. These are said to show substantial deposits to include, for example, £870 between 27 January 2011 and 7 February 2011.
 - (c) Copies of the appellant's Reward current account with Halifax Plc for the period from 2 February 2011 to 28 February 2012 found at pages 69-93 (inclusive). These are said to have shown substantial deposits paid into

this account particularly between 4 February 2011 and 22 March 2011 and, again, between 1 April 2011 and 13 April 2011. Significant payments out of the account include payments to AFB & Son (£1,302.84 between 14 February 2011 and 17 March 2011), Easyjet in relation to air travel (£99.97), train fares and accommodation at the same time £298.05) and AFB & Son (again) the sum of £185.91 on 2 April 2011. The accounts are said to be self-explanatory in this regard.

- (d) A copy of the appellant's savings account which shows that, as at 16 January 2012, the appellant had deposited the sum of £3,000. Following withdrawals, this has been reduced to zero as at 27 February 2012.
 - (e) A schedule setting out the amount of asylum support paid to the appellant and his family between 20 April 2009 and 27 February 2011 which is currently paid at the rate of £181.44 per week.
 - (f) A copy of the investigation report itself.
10. The respondent's case is that the accounts that have been obtained (and the other information that I have referred to above) demonstrate that the appellant has enjoyed the benefit of substantial sums of money from whatever source – as evidenced by way of cash payments into the accounts – which the appellant has failed to disclose. It is argued that this amounts to sufficient grounds to justify a discontinuation of support through breach of requirements.
 11. The appellant, on the other hand, simply says in his grounds of appeal, that he disagrees with the decision in that the only payments made into his account amounted to payments received by way of asylum support. He does, however, concede that a friend of his who was working at a local university, helps the family by making donations in order to pay (a) for his solicitor in relation to his asylum claim and (b) in order to help his children particularly with their studies. He is currently in Sri Lanka. He apologises for not having informed the UKBA about the money that he received but he did not know that this was necessary. He says that, without support, his family, will be destitute and homeless and that the needs of his children should be considered.
 12. In response to directions, the appellant has sought to try and provide some more information about his current financial circumstances. He attaches receipts in respect of payments made to his solicitors, Messrs Nag & Co of London, on 30 June 2011. These show payments made on that date in a combined sum of £1,450. In relation to the allegation that he owns an iPhone, he explains that this was purchased by his friend who had left him to deal with its return as it was a cloned phone which had to be returned to China and a refund obtained. I have a letter about the disputed transaction conducted over the internet. Apart from confirmatory bank statements in relation to the savings account, the appellant has provided a more up-to-date statement in respect of his Halifax Reward account which shows a closing balance (as at 30 March 2012) of £42.42 overdrawn.
 13. Separate letters from a Mr MH and a Mr NM shows separate loans having been made between October 2011 and 2012 in the combined sum of £2,000 – all of which is said to have been repaid. A further letter from a Mr SAB dated 5 April 2012 is said to confirm that he allowed the appellant to use his business account with AFB & Son – which explains the various purchases found in his account. I have also been provided with a receipt from Curry's in relation to the purchase of a Dell computer and associated equipment in the total sum of

£540.95. This purchase was made on 20 January 2011.

14. At the hearing before me, the appellant also gave oral evidence setting out his position. He confirms that what was set out in his grounds of appeal and in relation to the documentation that he had provided – showing evidence of the loans and other expenditure was entirely correct. He says that he was unaware that he would have to declare the existence of these loans to UKBA. He confirmed that these have been paid back and explained that, of the £3,000 paid to him, £2,000 was unused and returned to the lender whereas he had gathered the remaining £1,000 from a children's society (who help the children), his church and donations made by friends who were concerned about his family's plight.
15. The appellant confirmed that he had taken a flight by Easyjet from Newcastle to Bristol in order to visit the Hindu Temple there. When asked why he could not go to a local temple to worship, he explained to me that this was a special temple where he needed to worship in view of his family's current position and that there was nowhere like this near to Newcastle. As is set out in his representative's note, the appellant had attended two Test Matches at Old Trafford and Headingley. He liked cricket and it was an outlet for him and the responsibility of looking after his family in a difficult situation. The reporting of the iPhone was a mystery to him. He had never owned it – a friend who had assisted him greatly in terms of financial and other support had entrusted him with it for its return and it belonged to him (and not the appellant). He handed to me an additional letter from this gentleman, dated 9 April 2012 which explains his ownership of the iPhone. A separate letter (provided as a response to directions) accepts that he lent the sum of £1,500 to the appellant in order to assist him and his family.
16. In a case where termination of support is justified on grounds of a breach of requirement, it is for the Secretary of State to establish that breach. The standard of proof for establishing that a person has failed to disclose a material fact is upon the civil balance of probabilities but, bearing in mind the seriousness of the consequences, it requires a high degree of probability. I rely upon the case of *R v London Borough of Barnet ex parte Khawaja and Khera* [1984] 1 All E.R. 765.
17. Regulation 19(1) of the Regulations states that when deciding:

"(a) whether to provide, or to continue to provide, asylum support for any person or persons...

The Secretary of State may take into account the extent to which a relevant condition has been complied with".
18. Regulation 20(1)(h) of the Regulations states that "asylum support for a supported person and her dependants (if any) or for one or more dependants of the supported person, may be suspended or discontinued if -
 - (h) the Secretary of State has reasonable grounds to believe that the supported person or a dependant of her for whom support is being provided has concealed financial resources and that the supported person or a dependant of her or both have therefore unduly benefited from the receipt of asylum support;"
19. The accounts provided by the appellant are quite revealing. Those show quite a

significant amount of activity and both deposits and payments which would (applying common sense principles) would far exceed not only the amount of asylum support but also show a level of activity which is inconsistent with an asylum seeker's family who is simply in receipt of such support. For example, I note the deposits in his account in the sum of over £2,000 in February/March 2011 and payments made to a wholesaler within that period amounting to the sum of £1,302.84. I note payments in relation to mobile telephone usage, air travel, significant and long distance train travel, overnight accommodation, and the purchase of what may be described as "luxury" items such as computer which could not necessarily be funded by the provision of asylum support – food, clothing and other household essentials being what is expected. It may seem churlish but visits to test matches and lengthy trips to temples in another part of the country are not necessarily regarded as a priority when someone is receiving subsistence payments which are set at a lower amount than the subsistence amounts supplied to Social Security benefits. I also note that the appellant has spent £1,450 on legal fees in relation to his asylum claim. He retains £800 in cash.

20. Even if I were wrong about that, an examination of the evidence that I have seen to include documentation that the appellant has voluntarily disclosed reveals that he received at least £3,500 in loans (if not more) and that none of these payments were disclosed to UKBA as is required by his NASS agreement. His explanation that he was not aware of the need to report these loans is not an excuse. It is well established within this jurisdiction that an asylum seeker (such as the appellant in this appeal) is required to make himself familiar with the terms under which his asylum support is granted.
21. In view of these findings, the respondent's evidence (as set out in her bundle of documents) is overwhelming. It is clear to me that, having made these findings, the appellant has concealed financial resources such that he is in breach of Regulation 20(1)(h) of the Regulations.
22. In considering whether withdrawal of support for destitute asylum seekers on grounds of a breach of requirements is reasonable, I have also had to have regard to the case of *R v Kensington and Chelsea ex parte Kujtim* [1999] 2 CCLR 340 where the Court of Appeal laid down certain guidelines to local authorities as to whether it was reasonable to terminate the support of persons assisted under the National Assistance Act 1948, for a breach of requirements. I consider this decision as persuasive upon me. This case determines that it would be perfectly proper to withdraw support provided that the breach of requirements of the Regulations is both persistent and unequivocal. Given the length of time over which deposits have been made in the various accounts, I am further satisfied that this breach is both persistent and unequivocal.
23. I have further considered the question of whether or not the discontinuation of support is likely to amount to a violation of the appellant's rights under Article 3 of the Human Rights Act 1998. There is no evidence of destitution before me at present. Indeed, there appears to be evidence of substantial payments having been received by the appellant and his family (to include loans) over a considerable period of time. The appellant has been able to repay these loans. In addition, he confirmed, during the course of his oral evidence, that he retains £800 in cash. I do not, therefore, find this is the case.

24. Having said all the above, and in view of the conclusions that I have reached, I have no alternative but to dismiss this appeal.

Mr David Saunders
Tribunal Judge, Asylum Support
SIGNED ON THE ORIGINAL [Appellant's Copy]

Dated 12 April 2012