



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number AS/11/12/27868/SB

UKBA Ref. 01/04/04140

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 SM
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 Friday the 6th day of January 2012, dismissing the above mentioned appeal.
2. The appellant, a citizen of Iraq born on 20 March 1981, appeals against the decision of the Secretary of State who, on 14 December 2011, refused support under Section 4 of the Immigration and Asylum Act 1999 as amended ("the Act"), on the grounds that the appellant no longer satisfied one or more of the conditions set out in Regulation 3 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 Kurdish Sorani by way of an independent court interpreter. The respondent was represented by Mr Earle.
4. The appellant applied for asylum on 18 April 2001 which application was refused on 25 April 2001 and an appeal against that decision was dismissed on 30 July 2001. The appellant was deemed appeal rights exhausted on 17 September 2001 and lost his Section 95 support at that time for that reason. The appellant made his next application to the respondent some nine years later on 12 July 2010 when he made further representations in relation to his claim to asylum. These were purportedly rejected in writing by UKBA on 6 August 2010. The appellant made his Section 4 application on 13 December 2011 on the grounds that (a) he was destitute and (b) he had representations in relation to his claim to asylum outstanding dated 12 July 2010. The appellant's

support application was refused on 14 December 2011 on the grounds that he was not destitute and, in any event, did not satisfy Regulation 3(2)(e) as he has no further representations outstanding.

5. In his grounds of appeal the appellant states that he has not yet received a decision from UKBA rejecting his outstanding representations. He states that his representations of 12 July 2010 remain outstanding with UKBA. He submits the following documents:
 - a. a letter from UKBA addressed to his solicitors dated 5 November 2010 confirming that his application remains under consideration as part of a backlog of older asylum cases with UKBA.
 - b. a letter from his solicitors dated 10 November 2010 confirming that the appellant's case is among a backlog of older cases that UKBA is currently working on to conclude. The appellant's case had been dealt with by the Case Resolution Directorate and should be determined by July 2011.
 - c. a letter from his MP dated 8 December 2010 confirming that the appellant's claim of July 2010 remains outstanding with UKBA.
 - d. a letter of 16 May 2011 from his solicitors confirming that UKBA would not be making a decision on his outstanding claim, which has been passed to UKBA in Leeds for a decision, until he provided his current address.
 - e. a letter dated 24 October 2011 confirming that solicitors have requested an update from UKBA as regards to the progress of his application.
 - f. a letter dated 7 December 2011 from his solicitors confirming that the appellant has not reported since September 2010 and the Immigration Service is therefore unable to relax his current reporting restrictions. Furthermore, as the appellant is listed as an absconder he is at risk of detention. UKBA has advised that it is unlikely to make a decision with regards to the appellant's claim until he starts reporting to the Immigration Service on a regular basis: the fact that the appellant has not been reporting as required could be held against him while making a decision in regards to his claim to asylum.
6. The AST issued directions to both parties to this appeal on 30 December 2011:
 - a. The respondent was directed to provide a copy of UKBA's decision said to reject the appellant's outstanding representations, referred to in UKBA's letter of 5 November 2010 and the appellant's MP's letter of 8 December 2010, together with evidence of correct service of same.
 - b. The appellant was directed to provide evidence of his eligibility for support under Regulation 3(2) in the event that the UKBA complied with directions.
7. At the hearing today, Mr Earle, for the respondent, confirms that the appellant's outstanding representations of 12 July 2010 which had been submitted in person were determined in writing by UKBA on 1 June 2011. He submits a copy of UKBA's decision of that date today, with a copy to the appellant. Furthermore, and in any event, Mr Earle confirms that this decision was sent to the North of England Refugee Service as part of today's court bundle. The six page decision dated 1 June 2011 which is contained at annex F74 of the respondent's bundle is addressed to the appellant's solicitors. Mr Earle states that, in the normal course of events, the decision would have been sent by first class post to the appellant's solicitors but he has no evidence that that was in fact done. Mr Earle confirms that UKBA's decision not to serve this decision on the appellant until he had started reporting is confirmed in the correspondence referred to above. He confirms that the appellant started reporting again, after

an absence of approximately one year, in December 2011 and that the decision of 1 June 2011 will be served on him in person at his next reporting event.

8. The appellant addressed me today and confirmed that he had not received the decision of 1 June 2011 rejecting his outstanding representations until today. He states that he has not received a copy of the court bundle which was sent to the North of England Refugee Service. He confirms receipt of the decision today. The appellant confirms that he was not reporting, as required, to the Immigration Service for most of 2011 having stopped reporting in January 2011. The appellant confirms that he started reporting again on 21 December 2011 and he reported again on 4 January 2012. His next reporting event will be 11 January 2012 as he is required to report weekly.
9. There is no other evidence from either party to this appeal.
10. 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.
11. 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.
12. 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 he 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 him.
 - (2) Those conditions are that-
 - (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.

13. 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."

14. I have considered all the evidence before me carefully and on a balance of probabilities.
15. I consider the respondent's Section 4 Instructions of 14 June 2011 and accept that Regulation 3(2)(e) will apply to circumstances where it is unreasonable to expect the applicant to leave the UK. This usually relates, but is not exclusive, to the submission to UKBA by the applicant of previously unconsidered material in relation to a claim to asylum. I accept that the respondent refused the appellant's support on the grounds that he had no outstanding representations pending consideration with UKBA and that, in any event, he was not destitute. I accept that the decision to reject the appellant's representations of 12 July 2010 is dated 1 June 2011 and was submitted to the appellant by the respondent in the court bundle of 29 December 2011 and that a further copy has been given to the appellant by hand today.
16. It is unfortunate that UKBA decided not to serve the decision of 1 June 2011 on the appellant's solicitors or on the appellant as a 'punishment' for the appellant's failure to comply with his reporting restrictions. This seems to be self-defeating by UKBA: given that the appellant had a solicitor on the record as well as a Member of Parliament both of which were requesting a speedy response to the appellant representations of 12 July 2010, UKBA's decision not to furnish either the solicitor or the Member of Parliament with the decision to reject the appellant's outstanding representations appears to do nothing more than encourage a non-compliant failed asylum seeker to continue to fail to comply. I accept that Mr Earle will be investigating the reasons for UKBA's approach in this particular case.

17. I find that the appellant is no longer eligible for support as he no longer satisfies Regulation 3(2)(e). His representations were concluded in writing by UKBA on 1 June 2011 and I am satisfied that the decision has been served on the appellant twice, once in the respondent's court bundle on 29 December 2011, and again by the respondent today.
18. The appellant's eligibility for support rests on his satisfying one of the criteria by way of Regulation 3(2). If and when the appellant satisfies one of those criteria, it is open to him to reapply for Section 4 support. At that time, he should note that his destitution is not currently accepted by the respondent.
19. Appeal dismissed

Signed Ms Sally Verity Smith
Tribunal Judge, Asylum Support

Dated 11 January 2012

SIGNED ON THE ORIGINAL [Appellant's Copy]