



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number AS/11/12/27841
UKBA Ref. 11/03/00787
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 NS</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 Thursday the 29th day of December 2011, substituting my decision for that of the Secretary of State by determining that the appellant and his wife are eligible for support under Section 4 of the Immigration and Asylum Act 1999 as Amended ("the Act").
2. The appellant, a citizen of Iran born on 1 September 1980, appeals against the respondent's decision of 9 December 2011 discontinuing his support under Section 4 of the Act.
3. The appellant gave his evidence today in Farsi by way of an independent court interpreter. He was represented by Ms Hickey of the Asylum Support Appeals Project. The respondent was represented by Mr Jack.
4. The chronology of the appellant's applications for asylum and support is contained in the statement of reasons AS/11/10/27510 of 14 October 2011 and I do not propose to repeat it here. In summary, the appellant and his dependent wife were awarded support following that allowed appeal. Support was terminated on 9 December 2011 on the grounds that the appellant had not submitted further representations in relation to his claim to asylum, (referred to in his appeal hearing 27510) and, furthermore, his wife's pregnancy was not sufficiently advanced to warrant support under Regulation 3(2)(b). Mr Jack confirms that the appellant's wife will need to be 34 weeks pregnant in order to satisfy the respondent's Section 4 instructions with regard to eligibility for Section 4 support in pregnancy.

5. The appellant, with the assistance of his representative, addressed me today and confirmed that the representations in relation to his claim to asylum (referred to in his appeal hearing 27510) have still not been submitted to UKBA. He states that his eligibility for support lies by way of Regulation 3(2)(b) and the complications his wife is currently experiencing in her pregnancy.
6. The appellant states that his wife was visited at home yesterday by her general practitioner as she cannot stop vomiting and she is currently at a hospital appointment today. The appellant submits the following written evidence:-
 - (a) Letter of 8 November 2011 from the Stepping Hill Hospital of Stockport offering the appellant's wife an obstetric ultrasound on 3 January 2012;
 - (b) Letter of 8 November 2011 from the Stepping Hill Hospital of Stockport offering the appellant's wife an obstetric ultrasound on 14 February 2012;
 - (c) Undated letter from Joanne Holmer, midwife, confirming that the appellant's wife is 28 weeks pregnant and due to deliver on 20 March 2012. She does not recommend that the appellant's wife take any flight at this stage: her pregnancy has been classed as "complex and therefore high risk" because of her mental health state. She is under a consultant at Stepping Health Hospital. She is taking thyroxin for an underactive thyroid and she has been classed as high risk and therefore at increased risk of obstetric emergencies which if they occurred during a flight might have fatal consequences;
 - (d) Letter dated 31 August 2011 from the Stepping Hill Hospital referring the appellant's wife to the mental health team and requesting a psychiatric assessment and psychological support as she is hearing voices and seeing visions;
 - (e) Letter dated 12 December 2011 from Stepping Hill Hospital confirming that the appellant's wife is waiting for an appointment from psychological therapy services as there are concerns about the appellant's wife's mental health and the wellbeing of her unborn child;
 - (f) A MATB1 showing an estimated date of delivery of the 20 March 2012;
 - (g) Letter dated 21 September 2011 from a public health practitioner (asylum seekers, refugees, gypsies and travellers) confirming that the appellant's wife is pregnant and has additional health problems, these concerns are serious enough to require a referral to a specialist for which she is awaiting an appointment;
 - (h) The appellant's wife's obstetric notes which confirm on 16 August 2011 that the appellant has a high risk factor – hallucinations and anxiety state due to post traumatic stress and that she has been referred [to psychiatric services] and on 26 August 2011 that the appellant has been referred for both psychology and psychiatric assessment.
7. Mr Jack submits that the appellant's wife's severe mental health difficulties do not prevent her from flying. The appellant's wife would be offered a medical escort, and until she is 34 weeks pregnant, there is no evidence to suggest that she is unable to fly. Her problems in pregnancy are entirely due to her mental health problems and are not physical in nature. The appellant's pregnancy has been categorised as high risk on social grounds because she is in a high risk group namely she is a destitute failed asylum seeker. The appellant and his wife could avoid the effects of their destitution by volunteering to return to Iran as there are currently no barriers to their departure.
8. Ms Hickey submits that eligibility for support under Regulation 3(2)(b) in pregnancy is not restricted to impediments to travel for purely physical problems

and that the appellant's wife's severe mental health problems clearly indicate that she is unable to travel, that the combination of her most recent midwife's letter, the close monitoring she is receiving with two ultra sound scans in January and February 2012 together with the need for psychiatric and psychological support suggest that the appellant satisfies Regulation 3(2)(b) by way of her pregnancy.

9. There is no other evidence from either party to this appeal.
10. 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. 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) [not relevant to this appeal]
- (b) he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;
- (c) [not relevant to this appeal]
- (d) [not relevant to this appeal]
- (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.

11. The appellant and his wife's destitution are accepted by the respondent.
12. I have then considered the appellant's wife's eligibility for support under Regulation 3(2)(b). I have had due regard to the respondent's Section 4 instructions which state that "if a female applicant applies for Section 4 support on the ground that she is in the late stages of pregnancy, and therefore unable currently to leave the UK, the applicant must provide ... recent medical documentation confirming pregnancy and stating the expected date of delivery (EDD) ... *Unless there are complications with the pregnancy supported by medical evidence that the applicant's health and/or that of the unborn child may be at risk, support must not normally be granted until a good six weeks before the EDD* (emphasis added). I make the following findings:
- (a) that the appellant's wife's EDD is 20 March 2012;
 - (b) that she is currently 27 weeks pregnant and is more than twelve weeks from EDD;
 - (c) that, in the normal course of events, she might not be eligible for support until six weeks before her EDD;
 - (d) that the requirements of Regulation 3(2)(b) are satisfied by a combination of

- (i) her advanced state of pregnancy; and
 - (ii) her severe mental illness which includes auditory and visual hallucinations; and
 - (iii) the application of the respondent's own policy in regard to complications in pregnancy
13. The appellant and his wife are entitled to support by way of Section 4 until such time as the appellant's wife is able to leave the United Kingdom following the birth of her child. I substitute my decision for that of the Secretary of State and determine that the appellant and his wife currently satisfy the criteria for Section 4 support by way of Regulation 3(2)(b).
14. Appeal allowed.

Signed Ms Sally Verity Smith
Tribunal Judge, Asylum Support

Dated 3 January 2012

SIGNED ON THE ORIGINAL [Appellant's Copy]