



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number : AS/09/04/19474
UKBA Ref. : 05/06/00340
Appellant's Ref. :

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

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| Tribunal Judge | Ms Sally Verity Smith |
| Appellant | YC |
| 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 Wednesday the 6th day of May 2009 dismissing the above mentioned appeal.
2. The appellant, a citizen of the People's Republic of China born on 6 October 1985, appeals against the decision of the Secretary of State who refused support under Section 4 of the Immigration and Asylum Act 1999 ("the Act") on 18 April 2009 on the grounds that the appellant was not destitute.
3. The appellant gave her evidence today in Mandarin by way of independent court interpreter, Ms Hall. The respondent was unrepresented.
4. The appellant applied for asylum on 25 May 2005. This application was refused on 4 June 2005. The appellant did not appeal that decision and became appeal rights exhausted soon thereafter.
5. The appellant has never been in receipt of the respondent's support under Section 95. She applied for Section 4 support on 31 March 2009 on the grounds that (a) she was destitute and (b) she satisfied Regulation 3(2)(e) by way of her fresh representations in relation to her claim to asylum dated 24 March 2009. Support was refused on 18 April 2009 and it is against that decision which the appellant appeals today.
6. The respondent's decision of 18 April 2009 is made in the following terms:

"I am not satisfied that you meet Regulation 3(1)(a) of the Regulations as I have been unable to establish your destitution level on the information you have provided. You completed the paternity questionnaire that I sent you. Within the questionnaire you stated and signed to the effect that your relationship with LX had broken down before the birth of your daughter on 11 January 2009. You further stated and signed to the effect that you had not seen LX since the breakdown of the relationship with predates the birth of your daughter. You further state and signed that you have not married LX and LX is not in receipt of any state benefits. You failed to give any detail of LX's circumstances beyond this information.

You have submitted a copy of your daughter's birth certificate with your application for Section 4 support. LX's details appear on the birth certificate as the father of your daughter. As an unmarried couple this indicates that both of you attended the Registry ... on 16 February 2009 the date you registered your daughter's birth. This information contradicts the information you have given on the paternity questionnaire that you signed on 3 April 2009 that stated that you had no contact with LX since before the birth of your child; furthermore, the address given on the birth certificate, ... is given as the address of both of you.

Whilst this contradiction exists I cannot be satisfied that your relationship with LX ceases to exist. I am further not able to be satisfied that LX is not in a position to support you and your daughter in the absence of evidence to establish his method of support, bearing in mind he does not have recourse to state benefits.

Additionally your ... representations ... dated 24 March 2009 ... state that you enjoy an established family life and have formed a family unit and are enjoying peaceful family life in the United Kingdom. Besides stating that you have formed a strong family unit the representations also state that you have many friends in the UK. It would appear from these further representations that you have a strong and established support network to keep you from destitution whilst these further representations are being considered ..."

7. The appellant in her grounds of appeal states that she has been living with her friend ZI since 2005 but can no longer do so since the birth of her child. She confirms that LX was not present when she registered her child's birth but she was accompanied by her friend XMS at that appointment with Camden Registry Office. She submits a copy of child's birth certificate dated 27 March 2009 in which LX is clearly marked at paragraphs 4, 5 and 6 as the child's father.
8. The respondent makes a written submission following receipt of the appellant's grounds of appeal submitting two paternity questionnaires purportedly completed by the appellant. The first, dated 3 April 2009, is submitted in the appellant's name and reference number by the Refugee Council stating that the name of the appellant's daughter's father is LX born in 1985 in Hong Kong. The paternity certificate is signed and dated by the appellant on 3 April 2009. A second paternity questionnaire, forwarded in the appellant's name and reference number by the Refugee Council on 1 May 2009, named the appellant's child's father as BC born in 1987 and a Chinese failed asylum seeker. That questionnaire offers a different address and

carries a signature which is not the same as the signature on the questionnaire of 3 April 2009.

9. The AST issued directions to both parties to this appeal on 29 April 2009. The respondent was directed to submit written evidence from the Registrar of Births to the precise procedure for registering a child's birth to include the identification required in the event that the child's parents are married to each other and in the event that they are not together with any and all evidence of the immigration status of LX.
10. The respondent replied with a written submission regarding the registration of the birth of a child by a couple who are not married to each other, together with printouts with regard to the registration of births and parental rights and responsibilities. The respondent's position, following research with Camden Council, is that in the event that a child's parents are not married to each other at the time of the child's birth, the father must be present at the registration of his child's birth in order for his details to be included on the birth certificate. The only two options open to allow a father's details to be included on the birth certificate of his child in the event that (a) he is not married to the mother and (b) he is not present at the time of registration would be if both parents had completed a statutory declaration form or the mother had obtained a parental responsibility order made by a court. The respondent states that neither a statutory declaration form nor a parental responsibility order was submitted at the time of the registration of the appellant's daughter's birth and therefore it must be assumed that LX, the appellant's daughter's father, was present at the time the birth was registered at Camden on 27 March 2009. Furthermore, the respondent states that the two conflicting paternity questionnaires submitted by the Refugee Council on behalf of the appellant are discrepant.
11. The appellant was directed to produce written evidence from Camden Registry Office as to the precise procedure for registering a child's birth to include the identification required in the event that the child's parents were married or not; as to who was present when the appellant registered the birth of her child on 27 March 2009, what questions were asked of her, what identity papers she produced on behalf of herself and the person identified at parts 4, 5 and 6 of the birth certificate [which name LX as the father of the appellant's baby]. The appellant was also directed to produce written evidence from her friend who accompanied her to the registry office together with any and all evidence of her destitution by way of the support offered to her now and in the past. Liberty was given to the appellant to bring ZI, XMS and LX to the appeal hearing to give evidence on her behalf.
12. The appellant addressed me today and confirmed her grounds of appeal namely that LX had not been present at the registration of the birth of her child, that she had been accompanied by her friend XMS, that she had not at any point informed Camden Registry Office or implied that XMS was the father of her child but she had simply been asked for LX's name and nationality and she had given it.
13. The appellant states that she only submitted one paternity questionnaire with the assistance of Refugee Council to the respondent namely that of 3 April 2009 which names her baby's father as LX. She states that she has nothing whatsoever to do with the paternity questionnaire of 1 May 2009 which names her baby's father as BC. She can offer no explanation as to why the Refugee Council would have forwarded both paternity questionnaires in her name to the respondent if only one of them belonged to her. She states that

she will visit the Refugee Council in order to try and establish what went wrong.

14. The appellant states that her baby was born on 11 January 2009. She made an appointment with Camden Registry Office to register her birth on 27 March 2009. She took her friend XMS with her as she did not know how to find the registry office. She states that XMS was not asked for any identity nor was he asked any questions. She was asked for the name of her baby's father which she gave as LX. She was not asked for any identity papers in regard to LX. She was asked about his employment and she confirmed that he was unemployed. The appellant confirms that she gave no paperwork whatsoever in LX's name but verbally gave his name, nationality and employment status. The appellant states that it is not impossible that the officers at the Camden Registry Office believed XMS to be her baby's father as he was caring for the baby as she completed all the paperwork but the appellant is adamant that XMS was asked no questions by anyone at Camden Registry Office nor was he asked to produce any identity papers.
15. The appellant states that she last saw LX in March 2008 and that her baby was born in January 2009. She states that they had a relationship for two years and that the relationship broke down before she discovered that she was pregnant. She states that she telephoned him on numerous occasions when she discovered that she was pregnant and that he did not answer his calls. The appellant states that she has not made any other efforts to find him. The appellant states that LX was born in Hong Kong and was brought to England by an uncle. She states that she does not know how long he has been in the UK and she has never met his uncle. She states that LX lives with his uncle and other friends. She states that she has never visited LX's uncle's home or his friends' homes.
16. The appellant states that she was living at an address in London W1 since 2005, that she met her friend ZI, a Russian citizen, who took pity on her and allowed her to live in her house in exchange for cleaning and other household work. This arrangement broke down after the birth of the appellant's baby in January 2009 and ZI has been unequivocal in her refusal to continue the arrangement.
17. The appellant states that she has moved in with XMS, who rents a flat which he occupies and which he sublets to seven other people in order to make an income for himself. The appellant states that XMS has given his room to the appellant and her baby and has moved elsewhere until the appellant can make other arrangements.
18. The appellant confirms that the respondent has a record of two other addresses for her, one in London E3 which is an address she gave as she was released from detention in Oakington on 5 June 2005 but at which she has never lived. She states that she also gave an address in London NW8 which was that of a friend of ZI but she lived there only for one or two weeks.

There is no other evidence from either party to this appeal.

19. 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.
20. Section 4(5) of the 1999 Act (as amended by Section 10 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004 Act)) allows the Secretary of State to make regulations specifying criteria to be used in determining –
- (a) whether or not to provide accommodation, or arrange for the provision of accommodation, for a person under this section;
 - (b) whether or not to continue to provide accommodation, or arrange for the provision of accommodation, for a person under this section.
21. 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) 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.
22. I have considered the appellant's eligibility for support by way of Regulation 3(1)(a) only. I remind myself that the burden to prove destitution is on the appellant. I remind myself of the guidance offered by the House of Lords in the case of *R. v Tesema, Limbuela and Adam* [2005] UKHL 66 and the very high test for a finding of destitution in cases of this nature. The test equates to that set out in *Pretty v United Kingdom* [2002] 2SER97 although each case must be determined on its own facts.

23. I have considered all the evidence before me carefully on a balance of probabilities and find that the appellant has failed to demonstrate her destitution today.
24. First I consider the two paternity questionnaires completed by the appellant and submitted to the respondent by the Refugee Council which are both made in the appellant's name. On balance, I accept that only one, namely the first, paternity questionnaire relates to the appellant. I find on balance that the Refugee Council has erroneously completed the second paternity questionnaire on behalf of a different applicant. I accept that the two signatures are radically different.
25. Second I have considered the appellant's evidence with regard to registering her daughter's birth at Camden Registry Office and cannot accept her evidence in this regard. I accept the respondent's evidence that, in the event that parents are not married to each other, there are procedures to be followed in the event that a father is to be recorded on a birth certificate and he is not present at the time of registration. I accept that two documents might be submitted in the absence of the unmarried father at registration and that neither of those documents was submitted in this particular case. I accept that the appellant is adamant that LX was not present at the registration but the evidence before me today shows either (i) that he must have been or (ii) that procedures at Camden Registry Office are extraordinarily lax.
26. Third I have considered the appellant's evidence today that she is now living at a flat rented by her friend XMS. I have no evidence before me today that XMS's offer of support and accommodation has come to an end.
27. I find that it is not unreasonable for the respondent to expect the appellant to demonstrate that her past and current avenues of support are closed to her before finding the appellant to be destitute and I am unable to make that finding today in the absence of such evidence.
28. Although the appellant has failed to demonstrate her destitution today she is not precluded from re-applying to the respondent for support at which time she will need to demonstrate her eligibility by way of Regulation 3(1). She might demonstrate the same by producing the evidence referred to above, in particular, evidence from XMS which confirms his current support to the appellant and why it has come to an end together with written evidence from Camden Registry Office as to the events surrounding the registration of her daughter's birth on 27 March 2009. This might confirm why LX's details are on the birth certificate although (i) he is not married to the appellant, (ii) he was not present at registration and (iii) the two documents which are purportedly required in these circumstances were not submitted.
29. Appeal dismissed.

Signed
Tribunal Judge, Asylum Support

Date