Tribunals Service
Asylum Support Tribunal

Asylum Support Tribunal
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Appeal Number : AST/07/07/15572
NASS Ref. : 03/09/01363/003
Appellant's Ref. :

IMMIGRATION AND ASYLUM ACT 1999
ASYLUM SUPPORT APPEALS (PROCEDURE) RULES 2000

Adjudicator	Mrs Sehba Haroon Storey
Appellant	AEA
Respondent	Secretary of State

REASONS STATEMENT

1. This Reasons Statement is made in accordance with Rule 13 of the Asylum Support Appeals (Procedure) Rules 2000 ('the Rules'), and furnishes reasons for the Adjudication given Friday the 20th day of July 2007 dismissing the above mentioned appeal.

2. The appellant, a 30 year old national of Iraq, appeals against the decision of the Secretary of State who on 28 June 2007 refused his application for support under Section 4 of the Immigration and Asylum Act (the 1999 Act) on the grounds that the appellant did not satisfy one or more conditions set out in Regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 (the 2005 Regulations).

3. In his grounds of appeal, the appellant states the following:-

> "I do not feel that it is safe to return back to Iraq as I feel my life would be in danger. I have approached IOM [International Organisation for Migration] in Liverpool about the route of return to Mosul and understand that there is no safe route available to me. The direct flight to Arbil is only available to people from one of three northern governates – Dohuk, Arbil and Sulemaniya. I would not be eligible as I am from Mosul".

4. It is not disputed that the appellant is an unsuccessful asylum seeker. He claimed asylum on 1 September 2003. The Secretary of State refused his claim on 21 October 2003, and an appeal against this refusal was dismissed by an adjudicator on 24 April 2004. An application for leave to appeal was rejected on

6 August 2004 and the appellant became appeal rights exhausted on 25 August 2004.

5. The appellant has been supported under Section 95 of the Immigration and Asylum Act 1999 (the 1999 Act) since 23 September 2003. This support ceased on 17 September 2004. The appellant applied for Section 4 support in January 2005 on the grounds that in the opinion of the Secretary of State there was no viable route of return to Iraq at that time. The application was approved on 24 January and remained in payment until 6 June 2007.

6. On that date BIA informed the appellant that Secretary of State had revised his opinion and a viable route of return was now available to him and that he should therefore take steps to register for a voluntary assisted return with the IOM. In the absence of the same, the appellant was asked to demonstrate the reasonable steps being taken by him to leave the United Kingdom or to place himself in a position in which he was able to leave. No reply having been received from the appellant, the respondent terminated his support by letter dated 28 June 2007 with effect from 17 July 2007.

7. The decision letter of 28 June 2007 states that the Secretary of State's position on voluntary return to Iraq is that this is both possible and reasonable. It maintains that there are a number of routes available for people wishing to travel to or from Iraq with daily flights into and out of Baghdad International Airport, and asserts that 2,522 individuals have returned voluntarily to Iraq between April 2005 and September 2006 with the assistance of IOM. The letter concludes that,

> "there is no evidence to date of any problems encountered by the returnees during their journey to Iraq. Taking into account the general possibility of travelling to Iraq and that a considerable number of people have returned with the assistance of the IOM, it is considered that travel from the UK to Iraq is both possible and reasonable".

The refusal letter continues, at some length, to deal with road travel safety within Iraq and concludes that the Secretary of State considers it reasonable for a returnee to travel to a destination other than an appellant's home town/village.

8. In response to directions issued on 16 July 2007, responses were received from Refugee Action on behalf of the appellant and from the Section 4 Review Team on behalf of the respondent. Refugee Action confirmed that the appellant had not applied for voluntary return because he believed it was not safe for him to return to Mosul where terrorists have threatened his family, causing them to flee to Syria. It was also said that the appellant believed it was against his human rights to expect him to return to a place where his safety could not be guaranteed. Various reports from the internet were provided to demonstrate the level of unrest and the security situation currently prevailing in Iraq. One of these document, headed "Appendix B – routes of voluntary return to Iraq", recorded inter alia, that the route of return to Mosul for this appellant would be via Arbil and then overland from Arbil to Mosul. The respondent's response to directions confirmed that Iraqis from the non-Kurdish Autonomous Zone have returned to Mosul via Arbil through IOM.

9. Both the wording of the refusal letter and the grounds of appeal appear to imply that safety of route of return is a valid consideration in the determination of whether or not an appellant satisfies the requirements of Regulation 3(2)(a). In raising the issue in the grounds of appeal, it is implied that the AST has jurisdiction to determine this matter.

10. At the hearing, the appellant produced a large bundle of material containing various reports dealing specifically with safety and security in Iraq. In the course of his evidence, he maintained (contrary to submissions made on his behalf by Refugee Action) that he had not taken any steps to prepare himself for leaving the UK. In response to specific questions, he said that he did not have a travel document to facilitate his return to Iraq, had not made any attempt to obtain one nor did he have an intention to do so. He said that had not registered with IOM for voluntary return and was not willing to do so because Iraq was not a safe place to which he could return. He added that he intended to make a fresh claim for asylum but had not done so yet.

11. Mr Mitchell, on behalf of the Secretary of State, was asked to comment on whether the respondent was seeking to concede jurisdiction on safety of route of return, as implied in the refusal letter. Not surprisingly, he argued that references within the letter to safety on return issues were mere illustrations and a response to the appellant's reasons for refusing to take steps to leave. They were not, he said, an indication that such consideration was arguable under Regulation 3(2)(a).

12. 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 dependents if,

    a) he was (but is no longer) an asylum seeker, and
    b) his claim for asylum was rejected.

13. 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.

14. 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-

(i) in England and Wales, and has been granted permission to proceed pursuant to Part 54 of the Civil Procedure Rules 1998,

(ii) in Scotland, pursuant to Chapter 58 of the Rules of the Court of Session 1994 or

(iii) in Northern Ireland, and has been granted leave pursuant to Order 53 of the Rules of Supreme Court (Northern Ireland) 1980; or

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.

15. The burden of proof is upon the appellant to prove that he is destitute and that he satisfies one of the conditions in Regulation 3(2) aforesaid. The standard of proof is the balance of probabilities.

16. In R *(Rasul) v Asylum Support Adjudicator and Others* [2006] EWHC 435 (Admin), Wilkie J held that regulation 3(2)(c) is a regulation which operates on a policy level applied to a whole country and that where the Secretary of State no longer holds the opinion required by condition 3(2)(c), his decision is unassailable. Invited to comment on whether the ASA had jurisdiction to consider the viability of a specific route of return available to an appellant, Wilkie J stated that whilst it would not be helpful or proper for him to express any view, however tentative, "this is an argument which is appropriate, if at all, where the question arises whether the applicant has satisfied condition 3(2)(a)".

17. Wilkie J's comment was clearly *obiter* and whilst deserving of careful consideration, it is not binding upon me. I remain of the view, expressed in ASA/06/03/12859, that this argument has no place in Regulation 3(2)(a). The ordinary meaning of the words in condition (a), do not suggest that the AST can consider anything other than "*steps taken to leave the UK*" and whether such steps are reasonable, not whether it is reasonable to take them in the first place. For the AST to find that the taking of reasonable steps relates at least in part to

the safety of travel within Iraq would require condition (a) to be read as if it contained the words "reasonable steps to return and to return in safety".

18. The only provision in Regulation 3 which relates in any way to matters going beyond the stage of readying oneself to leave is Regulation 3(2)(c), which concerns inability to leave resulting from a Secretary of State opinion that there is currently no viable route of return. Whatever meaning is attached to the term "viable" in condition (c), there is nothing in the wording of condition (a) to justify treating "reasonable steps" as relating in some parallel way to any aspect of the viability of route of return. There are no parallel words which would justify that.

19. The applicability of Regulation 3(2)(a) is premised on there having already been a decision on the risk on return related issue of viability of route of return. Whilst the wording of condition (a) imposes a test of reasonableness in respect of the steps being taken to leave, it is plainly one which is an objective test otherwise it would mean that a failed asylum seeker could effectively resurrect the issue on which he has failed in his asylum claim simply by deciding not to make a voluntary return.

20. The AST's jurisdiction cannot therefore extend to consideration of extra territorial issues such as the risk posed to individuals on a particular route if and when they leave the UK. That is a matter for the unsuccessful asylum seeker to place before the Secretary of State. They may do so by way of fresh application or general further representations if they consider that they remain at risk of serious harm. The matter can then be properly considered by those whose responsibility and expertise allows them to make such assessments. If the issue requires a fresh adjudication, the Asylum and Immigration Tribunal is the place where such matters ought to be determined.

21. This view finds support in a number of leading judgments of the Court of Appeal. In *GH v Secretary of State for the Home Department* [2005] EWCA Civ 1182 (GH), Keene LJ stated at [51] that,

> "[i]t may be that there will exist cases where ...the SOS has committed himself through a policy statement or otherwise to a particular method and route of return. In such a case, it may be implicit in the decision to remove from the United Kingdom that a particular method and route would be adopted and, if so, the safety of that method and route may be considered by the appellate tribunal as being part and parcel of the "immigration decision"... Like Scott Baker LJ, I take the view that the wording of section 84(1)(g) is wide enough to give the appellate tribunal jurisdiction to take into account the "*en route*" risks in such cases".

22. Scott Baker LJ had earlier expressed the view at [45] that,

> "there may be circumstances where the SOS adopts a routine procedure for removal on return so that the method or route of return is implicit within the decision to remove".

23. In *AK v Secretary of State for the Home Department* [2006] EWCA Civ 1117 (31 July 2006), Sir Mark Potter, President of the Family Division, echoed the views of Scott Baker LJ and Keene LJ in *GH* that,

> "...the tribunal would have jurisdiction to determine the safety of a particular route and method where it was clear at the time of the appeal that that route and method would be adopted".

24. In *Gedow & Ors v Secretary of State for the Home Department* [2006] EWCA Civ 1342 (17 October 2006), Hooper LJ took the argument further by accepting at [123] that in the light of *GH*;

> " it seems to me that in a Country Guidance case it may well be helpful for all concerned to know the dangers inherent in a method of return that is likely to be used, if known. Those dangers can then inform the SSHD when (or if) removal directions are made".

25. In any event, even if the AIT has no jurisdiction over the manner and method of return, it does not follow that as a consequence the AST has that jurisdiction. The only jurisdiction which is at all related to the relevant issue is Regulation 3(2)(c) but it has already been decided that that provision does not confer any jurisdiction on the AST to assess risk on return.

26. I have given careful consideration to all the evidence before me. It is not disputed that the appellant is destitute. It is the opinion of the Secretary of State that there is a viable route of return to Iraq. That opinion is determinative. The only issue before me is therefore whether the appellant is taking all reasonable steps to leave the UK. The appellant has testified that he is unwilling to take such steps as he considers that it is not safe for him to return to Iraq. For the reasons stated above, I find that I have no jurisdiction to consider the merits of such a claim. There is no other evidence before me to suggest that the appellant has registered with IOM for voluntary return, attempted to obtain a travel document in preparation for his departure or taken any other reasonable steps to leave or place himself in a position in which he is able to leave the UK.

27. Accordingly, the appeal is dismissed.

Signed:..... Date:.....
Chief Asylum Support Adjudicator