



Tribunals Service
Asylum Support Tribunal

Asylum Support Tribunal
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Appeal Number : AST/07/04/15053
NASS Ref. : 02/05/04885/002
Appellant's Ref. :

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

Adjudicator	<u>Ms Sally Verity Smith</u>
Appellant	<u>MS</u>
Respondent	<u>Secretary of State</u>

REASONS STATEMENT

1. This Reasons Statement is made in accordance with Rule 13 of the Asylum Support Appeals (Procedure) Rules 2000 ("the Rules") and gives reasons for the Adjudication given on Tuesday the 24th day of April 2007 dismissing the above mentioned appeal.
2. The appellant, a citizen of Sri Lanka born on 26 April 1969, 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 11 April 2007 on the grounds that the appellant did not satisfy 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 requested an oral hearing of his appeal and a notice of hearing was duly dispatched to him together with a travel warrant in order to facilitate his attendance. The appellant contacted the AST in writing stating that he had not been at his accommodation at the time of delivery of his travel warrant and had not been aware that the Post Office delivery card related to his travel warrant. The appellant had therefore not received his travel warrant and requested an adjournment of his hearing. The adjournment was denied by the AST on the grounds that if the Adjudicator determined on the day of hearing that an adjournment was required then one would be granted. I have considered the appellant's position and determined that no prejudice would be caused to the appellant by proceeding to hear the appeal in his absence as no oral evidence was required from him. The respondent was represented by Mr. Quesada.
4. The appellant applied for asylum on 12 May 2002. This application was refused on 3 December 2003 and an appeal against that decision was dismissed on 16 March 2004. The appellant was deemed appeal rights exhausted on

30 March 2004 and lost his support by way of Section 95 of the Act on 20 April 2004 for that reason. The appellant has been supported by Social Services in Newcastle under Section 21 of the National Assistance Act 1948 ("the 1948 Act") since September 2004.

5. The appellant applied for Section 4 support on 5 April 2007 on the grounds that (a) he was destitute as his support under Section 21 of the 1948 Act was to come to an end on 17 April 2007 and (b) he required support in order to avoid a breach of his ECHR rights as he had further representations outstanding since 11 August 2004. The support application was refused on 11 April 2007 and it is against that decision which the appellant appeals today.
6. Mr. Quesada for the respondent confirms the appellant's applications for asylum and support. He confirms that the respondent's decision is predicated on the appellant's failure to satisfy Regulation 3(1), namely his destitution, as well as his failure to satisfy Regulation 3(2). The appellant's representations of 11 August 2004 failed to satisfy Regulation 3(2)(e) on two counts. First, the representations were based solely on the appellant's personal injury claim and did not relate in any way to the appellant's claim to asylum. Furthermore, and in any event, these representations had been refused in writing by the Home Office on 18 April 2007.

There is no other evidence from the respondent.

7. With regard to the appellant's eligibility by way of Regulation 3(1), namely his destitution, the appellant submits correspondence to and from Newcastle City Council which confirms that the appellant's support is to be terminated on 27 April 2007 on the grounds that Social Services takes the view that the appellant does not have a need for care and attention for the purposes of Section 21 of the 1948 Act.
8. With regard to the appellant's eligibility by way of Regulation 3(2)(e), the appellant makes the following three submissions. First, support is required in order to avoid a breach of his ECHR Article 6 rights. The appellant has a personal injury claim outstanding. He submits a letter from his solicitors in this regard dated 20 April 2007 which confirms that a claim form was issued on 31 July 2006 and served on the insurer's nominated solicitors on 22 November 2006. The defence was received on 8 January 2007 and an allocation questionnaire was allocated on 14 February 2007. The defendant in its defence has admitted primary liability for the appellant's injuries but there is an allegation of contributory negligence. Currently an order is awaited from the court which will set out a timetable for dealing with the appellant's claim and it is anticipated that the final hearing for the assessment of damages is likely to be from October 2007 onwards. It is asserted that the appellant's presence in the UK is "most important" in order that he might give instructions on his claim, prepare a witness statement, any on-going issues which might arise in relation to his claim which will apply right up to the final assessment of damages hearing when his attendance in court will be required. The appellant would have difficulty in returning from Sri Lanka for his final hearing as he would not be able to raise the fee for his return flight. Second, he requires support to pursue his application for leave to remain in the UK. Third, he requires support to pursue his claim for support from Newcastle City Council.
9. The appellant accepts that his representations of 11 August 2004 have been refused in writing by the Home Office on 18 April 2007.

10. The appellant confirms that he intends to apply for a judicial review of both the Home Office decision of 18 April 2007 and the decision of Newcastle City Council to terminate his support.
11. 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.
12. 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.
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. 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;

- (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;
- (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.
14. I have considered the appellant's eligibility for support by way of Regulation 3(1)(a). I remind myself of the guidance from the House of Lords in *R v SSHD ex parte Adam, Limbuela and Tesema* [2005] UKHL 66 in which it is well established that there is a very high threshold in respect to the test of destitution in cases of this nature. I remind myself that the burden to prove destitution is on the appellant. I also remind myself of the respondent's Policy Bulletin 71 paragraph 5.2 in this regard and the presumption of destitution following the termination of support. I accept the evidence before me today that the appellant has been supported by Newcastle City Council under Section 21 of the 1948 Act since September 2004 and that such support will come to an end on 27 April 2007. I have no evidence before me today to suggest that support will be continued after that date and I find the appellant to be destitute in the absence of that support. I find that he satisfies Regulation 3(1)(a).
15. I have then considered the appellant's eligibility for support by way of Regulation 3(2)(e).
16. First, I consider the assertion that he requires support in order to pursue his claim for leave to remain and I reject the same. The appellant's application of 11 August 2004 was not one for asylum. His claim to asylum was fully and finally determined in March 2004 and has not been repeated by the appellant since that time. As it has been found that there is no ECHR Article 3 violation by way of his return to Sri Lanka, there can be none by refusing his support while he remains in the UK without authority. I apply the guidance of the Administrative Court in *AW, R (on the application of London Borough of Croydon) and A,D, and Y, R (on the application of London Borough of Hackney) & SSHD* [2005] EWHC 2950.
17. Second, I consider the appellant's assertion that he requires support in order to pursue his claim against Newcastle City Council and find it wanting for the reasons given at paragraph 16 above.
18. Third, I consider the alleged violation of his ECHR Article 6 rights by way of the respondent's decision to refuse support. I have had due regard to the respondent's Policy Bulletin 71 at paragraph 5.3(v) and the case of *R v an Immigration Officer (ex-parte John Quaquah)* CO/4738/98 as a precedent for finding a potential ECHR Article 6 violation in the event that the appellant be required to leave this country while he prepares his civil action. I find that the appellant's injury was sustained some three and a half years ago and that he has not explained why a statement of evidence has not yet been taken. Neither

has it been demonstrated that he must remain in the UK until October 2007 and that the evidence required by solicitors cannot be obtained from Sri Lanka. On balance, I find that the appellant's submission with regard to ECHR Article 6 ECHR while not without merit is unproven.

19. However, the appellant has been appeal rights exhausted since March 2004, over three years ago. He has no leave to remain in this country and has no claim for asylum outstanding. He is required to leave this country and must do so at some point. The remedy against the appellant's destitution can therefore be found by way of Regulation 3(2)(a): should the appellant satisfy Regulation 3(2)(a) by way of an application to return to Sri Lanka with the assistance of the International Organisation for Migration ("IOM"), he would be entitled to Section 4 support. Given the particular circumstances of the appellant's case, which he should explain in full to the IOM, he would be given ample opportunity to instruct his solicitors in the manner outlined in the letter of 20 April 2007 before he returned voluntarily to Sri Lanka.
20. The appellant should note that although he has failed today to demonstrate his eligibility for Section 4 support by way of Regulation 3(2), he is not precluded from re-applying for Section 4 support to the respondent at any time in the future. At that time, he will need to demonstrate his eligibility for such support by way of Regulation 3(2) only as his eligibility by way of Regulation 3(1) is accepted at paragraph 14 above.
21. Having given careful consideration on a balance of probabilities to all the evidence that is before me, including all the documents from both parties to this appeal, I dismiss this appeal.

Signed

Asylum Support Adjudicator

Date