

Appeal Number: ASA/07/02/14740
NASS Ref. Number: 06/11/00488
Appellant's Ref. Number:



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

Adjudicator	Ms Sally Verity Smith
Appellant (s)	YY
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 gives reasons for the Adjudication given on Thursday the 22nd day of February 2007 to the effect that I have no jurisdiction to hear this appeal.
2. The appellant, a citizen of the People's Republic of China born on 24 December 1978, appeals against the decision of the Secretary of State who on 18 January 2007 decided to refuse support to the appellant on the grounds that she is excluded from support under the Immigration and Asylum Act 1999 ("the Act") and the Asylum Support Regulations 2000 ("the Regulations") as she is no longer an asylum seeker.
3. In her Notice of Appeal the appellant confirms that she does not require an oral hearing of her appeal. I have considered the appellant's request with reference to Rule 5 of the Rules and I am satisfied that within the particular circumstances of this case an oral hearing is not necessary for the appeal to be disposed of justly. Accordingly, I proceed to determine the appeal under Rule 6(2) of the Rules.
4. The appellant applied for asylum on 13 April 2000. This application was refused on 16 September 2000 and an appeal against that decision was dismissed on 3 January 2001. The appellant was deemed appeal rights exhausted on 22 January 2001 at which time she ceased to be eligible for support by way of Section 95 of the Act.
5. The appellant applied for Section 95 support on 27 October 2006 on the grounds that (a) she was destitute and (b) she was eight months pregnant. The appellant was admitted into emergency accommodation by the respondent who wrote to the appellant on 18 January 2007 stating that she was not eligible for

Section 95 support as her claim to asylum had been determined on 22 January 2001. The appellant was therefore no longer eligible for support by way of Section 95 of the Act. It is against that decision which the appellant appeals today.

6. I remind myself that the purpose of asylum support is to provide support for asylum seekers and their dependants who are destitute. Section 94(1) of the Act defines an asylum seeker as -

“...a person who is not under eighteen and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined.”

7. Section 94 of the Act continues to define what is meant by a claim for asylum being determined, the circumstances in which an appeal may be treated as having been disposed of and provisions relating to the giving of a notice by the Secretary of State.

8. Section 94(5) of the Act, however, states as follows:-

“If an asylum seeker’s household includes a child who is under eighteen and a dependant of his, he is to be treated (for the purposes of this Part) as continuing to be an asylum seeker while –

- (a) the child is under eighteen; and
- (b) and the child remains in the United Kingdom.”

9. The appellant, in her grounds of appeal, states that she is eligible for support by way of Section 94(5) because of her dependant child. She submits a copy of a birth certificate showing that her daughter was born on 6 December 2006.

10. Asylum support is only available to asylum seekers and, in order to qualify for such support, an applicant must fulfil the definition of asylum seeker contained within Section 94(1). The purpose of Section 94(5) is to protect applicants with dependant children who apply for support at a time when they are asylum seekers within the meaning of Section 94(1) but, whilst in receipt of support, they cease to be asylum seekers. Subsection 5 prevents support from being withdrawn from such persons and ensures continuity of support.

11. I have given careful consideration to all the evidence before me including the submissions received from both parties and find that this case concerns the interpretation of Section 94(5) of the Act. Having considered the evidence before me, I find Section that 94(5) is not intended to entitle persons who are no longer asylum seekers to qualify for asylum support under Section 95 unless they were in receipt of such support at the time they ceased to be asylum seekers, otherwise the use of the word “continuing” in section 95(5) has no relevance. Put simply, the birth of the appellant’s child on 6 December 2006 did not change the appellant’s status at that time in order to bring her within the definition of an asylum seeker. When the appellant applied for asylum support on 27 October 2006 she was not an asylum seeker, she had in

fact ceased to be an asylum seeker some six years before and the birth of her daughter does not alter that fact.

12. In the instant case, I am satisfied that the Secretary of State has correctly decided that the appellant is not entitled to Section 95 support as she was not an asylum seeker on the relevant date of 27 October 2006, namely the date upon which she applied for asylum support.
13. An option available to the appellant may be to seek support under Section 4 of the Act. I note that the appellant applied for Section 4 support on 30 January 2007 and that that application was refused by the respondent on 14 February 2007. I have no evidence before me that the appellant has appealed against that decision. The appellant may wish to seek the advice of Refugee Action in Liverpool in this regard.
14. I am satisfied that the appellant is not an asylum seeker as defined by Section 95 of the Act and I am therefore satisfied that I have no jurisdiction to hear this appeal.

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