

Appeal Number: ASA/06/06/13556
NASS Ref. Number: 06/06/00611/001
Appellant's Ref. Number:



ASYLUM SUPPORT ADJUDICATORS
Christopher Wren House
113 High Street Croydon CR0 1QG
Telephone: 020 8588 2500
Fax: 020 8588 2519

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

Adjudicator Mrs Sehba Haroon Storey
Appellant (s) SHH
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 on Monday the 26th day of June 2006 dismissing the above mentioned appeal.
2. The appellant, a 36 year old national of Iraq, appeals against the decision of the Secretary of State who on 14 June 2006 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 notice of appeal the appellant requested a determination on the papers "if possible" but confirmed his agreement to an oral hearing "only if necessary". On 20 June 2006, the Deputy Chief Asylum Support Adjudicator (DCASA) considered the appeal and pursuant to Rule 5(1)(b) of the aforementioned Rules and concluded that an oral hearing was necessary for the appeal to be disposed of justly. Arrangements were made for a Kurdish interpreter to be available at the hearing to assist the appellant who was duly informed.
4. At the hearing, the appellant did not attend nor was an explanation received from him for his non attendance.
5. The appellant had been issued directions for compliance no later than noon on 23 June 2006 as follows:-

“

- i) a copy of the judgement made in his asylum appeal
- ii) evidence from his Social Services Department that sets out precisely the amount and form of any support offered to the appellant, the dates during which this support was offered, the reasons for this support and any reasons why it cannot continue
- iii) evidence from the people who are responsible for the accommodation at Rocky Lane, Anfield and Plumstead Common Road, London that sets out their own details, how long the appellant resided there, whether he can now live there and, if not, why not
- iv) a detailed statement of evidence that sets out the date when support from any source of state benefits ceased, where he has lived, how that accommodation was funded and how he has supported himself since that time and why that source of support cannot continue
- v) evidence of his attempts to seek charitable or other support and the results of the same
- vi) copy bank statements (if any) for at least the last six months
- vii) signed written witness statements from as many as possible of the persons and organisations who have supported him since support from state benefits ceased that set out their addresses, the amount and form of support offered to the appellant, the dates during which this support was offered and any reasons why it cannot continue
- viii) evidence that he has been or is about to be evicted from his most recent address
- ix) evidence that would confirm that the appellant was previously offered section 4 support, the attempts made to advise him of this offer and the reasons why this support was not accepted by him
- x) evidence that he has personally sought advice from IOM/Immigration Service and written evidence from those organisations that sets out the advice given to him about the viability of return in his particular circumstances
- xi) evidence of the results of any other attempts that he has made to obtain travel documentation and/or to leave the United Kingdom
- xii) if no such steps have been taken, all evidence upon which it is intended to rely to demonstrate why he is unable to leave the United Kingdom”

6. Neither the appellant nor his representative responded to these directions.
7. At the hearing, evidence was provided by the respondent by way of proof of service of travel tickets to enable the appellant to attend the hearing. I am satisfied that the appellant was notified of the date of hearing and was provided with a travel ticket to enable him to attend his appeal hearing on 26 June 2006. In the absence of any reasonable explanation for his non attendance, the appeal was heard in his absence.

8. In his grounds of appeal, the appellant's representative asserts that the appellant cannot access adequate support and accommodation through other means. They state that he stays one/two nights in each place with friends but they have repeatedly asked him to leave. They provided a letter from one such friend which was not translated. They assert that the appellant has taken reasonable steps to return but that the area of Iraq that [the appellant] is from

“is outside the Kurdish Autonomous Zone (Khar Hassan) near Kirkuk. The route IOM could provide involves flying to Arbil and then taking a private hire taxi. Mr Hossain would still be required to sign a waiver for his safety. He has concerns about this route. There are frequent reports of bombings close to Kirkuk (see BBC news report of 13/6/06)”.

9. A copy of the BBC news report was attached. This reported the death of 16 people in a series of bomb attacks in Iraq's northern city of Kirkuk, the day after the death of Al-Zarqawi. The 16 dead included two policemen and eight civilians in one incident. In a different attack a suspected suicide car bomber was responsible for the deaths of two policeman and three civilians. In another attack a district police chief was wounded and his bodyguard killed. A further bomb went off as people gathered at the scene. The report said that the offices of Iraqi president Jalal Talabani's Kurdish PUK party were also targeted. Police opened fire on a suspected suicide car bomber causing the vehicle to explode. In other violence, a university professor was said to have been shot dead in Baghdad and at least six bodies were said to have been found in different parts of the capital showing gun shot wounds and signs of torture. The report also stated that Prime Minister Nouri Maliki had launched a security crackdown in Baghdad to try to build momentum following Zarqawi's death and intended to provide more security for Baghdad's 6 million residents. The report said that the roads into and out of the capital would be secured, people would be banned from carrying weapons and a 21:00 – 06:00 curfew was to be imposed.
10. I have considered all the documentary evidence before me. The respondent's refusal letter of 14 June 2006 asserts that the Secretary of State is not satisfied the appellant is destitute. It further states that the International Organisation for Migration (IOM), an independent non governmental organisation, is able to facilitate the appellant's return to Iraq. Home Office CID print outs confirm that the appellant was resident at an address on Plumstead Common Road, London from 22 November 2002. On 11 July 2004 he notified a change of address to Rocky Lane, Liverpool and on 22 December 2005 he notified a change of address to South Road, Liverpool. No changes of address had been notified since that date.
11. I have also had provided to me a copy of the appellant's Section 4 application form dated 5 June 2006. This appears to have been completed by the appellant's advisor, Refugee Action. In it, it is said that the appellant has been without support for two years and has had to move around different areas to stay with different friends. It then states that “it appears that he did have an

earlier Section 4 application accepted in February 2005 but it seems we were not able to inform him of the outcome”.

12. The appellant’s representative asserts that the appellant is taking all reasonable steps to leave the UK or place himself in a position to be able to leave. This is the basis of his claim for Section 4 support. It is said that having taken advice from Refugee Action, the appellant believes that the only way in which he can legally leave the United Kingdom is to make a voluntary return with the assistance of the IOM. He states that he has read the Refugee Action’s advice letter “Information on Return to Iraq” and has “considered whether to apply to the IOM to make a voluntary return to [his] town Khar Hassan”. The letter continues that after due consideration, and “taking the information from IOM into account”, the appellant believes that the journey over land from Arbil to his town would be dangerous for him and that accordingly he has decided not to apply for assistance to make a voluntary return at this time. In particular, he comments that he is unable to make the declaration required by IOM that “after due consideration and entirely of my own free will, I wish to be assisted by IOM to return to my own country”. He concludes that by informing himself about the mechanics and dangers of voluntary return to his town, and by considering whether to make a voluntary return there, he has taken all reasonable steps to place himself in a position in which he is able to leave the United Kingdom. The next step he asserts would be “to apply to make a dangerous journey and I do not believe that it is reasonable to expect me to take that step”.
13. Additional submissions received from Refugee Action state inter alia as follows:

“Yesterday we contacted IOM on behalf of Mr Hossain to request information about the route of return available for Mr Hossain. IOM informed us that Mr Hossain could return by direct flight to Arbil. From Arbil he would travel by overland private taxi to Khara Hassan (near Kirkuk). IOM have been unable to confirm the route that the private taxi would take but as the town is near to Kirkuk we would expect the route to involve travelling on the same route raised in the *Rasul* (24/2/06) case. Mr Hossain considers that this route would not be safe for him”.
14. Finally, the appellant’s representatives enclose a letter from Mr Ibrahim of South Road, Liverpool. He confirms that the appellant is his friend and “he lives with me”. Mr Ibrahim states that he has decided to go to London and has informed the appellant to find other accommodation. The letter is dated 12 June 2006.
15. At the hearing, the respondent was represented by Ms Kerr. She argued that the Secretary of State was of the opinion that a viable route of return existed for the appellant and that in order to qualify for Section 4 support, the appellant must sign up for voluntary return with IOM. She maintained that a safe route of return was available to the appellant with the assistance of IOM.

She indicated that she would not be averse to a remittal of this appeal to the Secretary of State for further consideration should I consider this appropriate.

16. It is not disputed that the appellant is a failed asylum seeker from near Kirkuk. He claimed asylum on 30 June 1999. The Secretary of State refused his claim on 22 February 2001, and an appeal against this refusal was dismissed on 17 September 2003. There is no information before me of an application for permission to appeal to the former Immigration Appeal Tribunal having been made at any stage. It would appear that the appellant's appeal rights were therefore exhausted on 1 October 2003. Since that date he has remained in the United Kingdom without lawful authority.

17. 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.

18. 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.

19. 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.
20. The burden of proof is upon the appellant to prove that he is destitute and that he satisfies one of the five categories in Regulation 3(2) aforesaid. The standard of proof is that of the balance of probabilities.
21. The appellant's application for Section 4 support was made under condition 3(2)(a) namely that the appellant 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.
22. In *R (Rasul) v Asylum Support Adjudicator and Others* [2006] EWHC 435 (Admin), Mr Justice Wilkie was invited to comment on whether the ASA had jurisdiction to consider the viability of a specific route of return available to an appellant. Justice Wilkie declined to address this issue stating that "it would not be helpful or proper for me to express **any view, however tentative, on issues which may arise hereafter under Regulation 3(2)(a)**" (my emphasis). His comment that it may be appropriate for an Asylum Support Adjudicator to consider under Regulation 3(2)(a) the viability of a route of return appropriate for an individual, was not therefore an expression of opinion by him or an attempt to bind the ASA in any shape or form into determining that such an argument had a place under Regulation 3(2)(a).
23. It is said on the appellant's behalf that he has considered the advice of Refugee Action (Choices) and on the basis of information made available to him, he has concluded that the route of return available to his home town of Khar Hassan is not safe and therefore not viable for him. Furthermore, he states that he is unwilling to sign the disclaimer required by IOM releasing them from all liability in relation to his safety in Iraq.

24. In relation to the issue of destitution, I note that the appellant has been resident at his current address since December 2005, a period of some 6 months. Prior to this, he was resident at an address for 17 months. The only evidence produced by him in support of his claim is a letter from Mr Ibrahim which states that he can no longer accommodate the appellant at the South Road, Liverpool address as he is moving to London. I note that in February 2005 the appellant applied for Section 4 support and notwithstanding that it was approved, the appellant did not take up the offer of support because Refugee Action were unable to make contact with him. This presupposes that the appellant had somewhere else to stay notwithstanding that he had claimed to be destitute at that time.
25. The evidence before me today is that since his appeal rights were exhausted in 2003, the appellant has managed to maintain and accommodate himself without any assistance from NASS for lengthy periods at the same address. The evidence does not support the assertion made by the appellant's representatives that he has survived by moving around different areas to stay with different friends with whom he stays "one/two nights". The appellant was directed by the DCASA to provide evidence of destitution but failed to do so. He was issued with a travel ticket to attend and could have given oral evidence before me of his claimed destitution but chose not to do so. I have seen no evidence that he has attempted to obtain support from charitable organisations or why his friends and/or relatives cannot continue to support him as they have done since 22 November 2002. In the absence of the same, I find that the appellant has failed to discharge the burden upon him to satisfy me to the requisite standard that he is destitute.
26. In the normal course of events, I would not proceed beyond this point as an appellant must satisfy the requirements of Regulation 3(1)(a) before consideration of Regulation 3(1)(b) is required. However, for the purpose of providing guidance to Asylum Support Adjudicators, I shall proceed to consider the appellant's argument in relation to Regulation 3(2)(a).
27. Regulation 3(2)(a) requires the appellant to take all reasonable steps to leave the United Kingdom or place himself in a position in which he is able to leave the United Kingdom. The ordinary meaning of these words do not suggest that the Asylum Support Adjudicator can consider anything other than "steps taken to leave the United Kingdom" and whether such steps are reasonable, not whether it is reasonable to take them in the first place. The reasonableness of returning him to Iraq has already been established in the course of the rejection of his asylum claim, which is a *sine qua non* of his being considered for support under Section 4. Accordingly, he cannot seek to re-open that issue in the context of Regulation 3(2)(a) whose scope is confined purely to domestic considerations.
28. In my opinion, the ASA's jurisdiction does not extend to consideration of extraterritorial issues such as the risk posed to individuals on a particular route if and when they leave the UK. If a failed asylum seeker seeks to argue that there exists barriers preventing him from reaching internal safety, where the quality of internal protection fails to meet the basic norms of civil political and

socio- economic human rights or where internal safety is otherwise illusory or unpredictable, the correct course of action is for him to lodge a fresh application for asylum and to submit his further evidence in support for consideration by the Secretary of State. Having done so, and assuming that he can prove destitution, the appellant may then be able to argue entitlement to Section 4 support under Regulation 3(2)(e). The Asylum Support Adjudicator would then assess the appellant's fresh claim on the basis of whether paragraph 353 of the Statement of Changes in Immigration Rules (HC395) as amended by HC1112 was satisfied. In doing so, the ASA would be bound by the judgment of Mr Justice Collins in the case of *R (Rahimi) v SSHD* [2005] EWHC 2838 (Admin).

29. This approach ensure that the assertions made by the appellant in relation to his individual safety upon return are first considered by the Secretary of State and if rejected, by the Asylum and Immigration Tribunal. Should the Secretary of State refuse to admit the appellant's claim as a fresh application, the appellant has the remedy of judicial review available to him.
30. In this particular case, disregarding for the moment that the appellant has failed to satisfy the destitution test, the appellant has taken the advice of Refugee Action and Choices in relation to returning voluntarily to Iraq. He has not as required by the Secretary of State, approached the IOM directly to make arrangements to return voluntarily. That amounts in my view to a failure to take all reasonable steps.
31. Nor can regulation 3(2)(a) be read as re-opening the issue of the viable route of return issue. That falls to be decided solely under Regulation 3(2)(c) and following *Rasul*, the opinion of the Secretary of State on that matter is determinative.
32. On the evidence before me, I am not satisfied that the appellant has taken all reasonable steps to leave the UK or place himself in a position in which he is able to leave. There is no evidence before me that he has made a fresh claim for asylum. He has not therefore established entitlement to Section 4 support.
33. Accordingly the appeal is dismissed.

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