

Appeal Number: ASA/06/03/12859
NASS Ref. Number: 01/02/03253
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) GKF
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 Friday the 24th day of March 2006 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 23 February 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 did not request an oral hearing. 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 said Rules.
4. In his grounds of appeal, the appellant argues that it is not safe for him return to Iraq because "whatever route needs to be taken, would be very dangerous at present". Furthermore, he seeks to rely upon Reasons Statement ASA/06/02/12498. This is of course not binding upon me.
5. It is not disputed that the appellant is an unsuccessful asylum seeker from Kirkuk. He claimed asylum on 8 February 2001. The Secretary of State refused his claim on 30 April 2001, and an appeal against this refusal was dismissed by an adjudicator on 21 February 2003. An application for permission to appeal to the former Immigration Appeal Tribunal was rejected

on 8 April 2003 and the appellant's appeal rights exhausted on 28 April 2003. On 5 August 2005 the appellant was granted Section 4 support on the basis that, at that time, the Secretary of State was of the opinion that a viable route of return was not available to nationals of Iraq.

6. By letter dated 29 July 2005 to the National Asylum Support Forum, the Secretary of State revised his opinion on the issue of viability of return to Iraq. He confirmed that with effect from 1 August 2005, unsuccessful asylum seekers from Iraq applying for Section 4 support would be required to show that they were taking all reasonable steps to leave the United Kingdom or that they were otherwise eligible for support under Section 4. This requirement was extended on 1 September 2005 to Iraqi nationals already in receipt of support under Section 4. It was said that the respondent would write to unsuccessful asylum seekers advising them of this change of policy.
7. On 26 January 2006, the respondent wrote to the appellant advising him of the above change in policy and extending to him the opportunity to produce evidence that he continued to satisfy the requirements of Regulation 3 if he wished to remain in receipt of Section 4 support. The appellant failed to respond. The appellant does not seek to suggest that the letter was not received by him or that he responded to this letter but that somehow his response was not received by the respondent. I am therefore satisfied that the letter was delivered but that the appellant ignored the Secretary of State's response for further information. In the absence of the same, the Secretary of State made the decision referred to in paragraph 2 above, discontinuing the appellant's Section 4 support.
8. The respondent's letter of 23 February 2006 states somewhat briefly that a viable route of return is now available and that the appellant may not continue to receive accommodation under Section 4 on the basis of the relevant criteria. Following receipt of the appellant's grounds of appeal however, and in response to directions issued on 16 March 2006, the respondent states that the appellant is able to return to Iraq with the assistance of the International Organisation for Migration (IOM). It was said that the IOM "operates direct chartered flights to Erbil for persons who originate from within the KRG. Persons from outside the KRG can return with the assistance of the IOM through scheduled air services to Erbil or Baghdad. Contrary to some claims, it is possible for persons outside the KRG to travel by scheduled services to Erbil. Persons from Kirkuk and Mosul have returned through this route. The IOM is prepared to meet and provide assistance with onward travel to anyone disembarking from Erbil. We are satisfied that these routes of return are safe and therefore viable".
9. 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.

10. 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.

11. 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.

12. 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.
13. In *R (Rasul) v Asylum Support Adjudicator and Others* [2006] EWHC 435 (Admin), Mr Justice Wilkie 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.
14. 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. Whilst agreeing that it would not be helpful or proper for him to express any view, however tentative, Justice Wilkie stated *obiter* that “this is an argument which is appropriate, if at all, where the question arises whether the applicant has satisfied condition 3(2)(a).
15. With respect to the Learned Judge, I disagree that this argument has any place in Regulation 3(2)(a). This condition is quite specific and requires appellants to demonstrate for example that they have approached the IOM with a view to returning voluntarily to their country of nationality, (or some other country willing to admit them), or are complying with attempts to obtain travel documents to facilitate their departure. The ordinary meaning of the words in Regulation 3(2)(a), do not suggest that the Asylum Support Adjudicator 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.
16. The adjudicators 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 persecution. 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.
17. Alternatively, unsuccessful asylum seekers may raise these issues directly with IOM and it is to be hoped that where there are real risks posed on a particular route, as there were in 2005 with Highway 10, that IOM will not seek to return them. Certainly I can see no justification for failing to seek their advice on whether a safe route is available or not. Should either the Secretary of State or IOM fail in their duty to consider the issues properly, the individuals always have the remedy of Judicial Review available to them. Only in this way can the concept of finality be respected and upheld. The ASA is not an avenue for rehearing arguments on risk and persecution rejected by the Asylum and Immigration Tribunal.

18. I have given careful consideration to all the evidence before me. It is not disputed that the appellant is destitute. The only issue requiring determination is therefore whether there is a viable route of return to Iraq and if so, whether 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

19. It is the opinion of the Secretary of State that there is a viable route of return to Iraq. That opinion is determinative. The appellant failed to respond to the letter of 26 January 2006. On the basis of this lack of response, the respondent was entitled to be of the view that none of the conditions provided by Regulation 3(2) were satisfied. There is no evidence before me to suggest that the appellant has registered with IOM for voluntary return. Accordingly I find that the appellant has failed to take all reasonable steps to facilitate his departure from the United Kingdom.

20. The appeal is dismissed.

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