

Appeal Number: ASA/05/10/10339
NASS Ref. Number: 03/08/02361
Appellant's Ref. Number:



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

Adjudicator Mrs Sehba Haroon Storey
Appellant (s) A E-H
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 Tuesday the 1st day of November 2005 dismissing the above mentioned appeal.
2. The appellant, a 34 year old national of Iraq, appeals against the decision of the Secretary of State who on 18 October 2005 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. At the hearing before me, the appellant was represented by Ms Fancott of the Hammersmith and Fulham Community Law Centre (HFCLC). The respondent by represented by Ms Kerr. The appellant was in attendance at the hearing and gave evidence through the interpretation of Dr Freeman in the Arabic language.
4. It is not disputed that the appellant and his wife are failed asylum seekers from Mosul in northern Iraq. On 27 August 2005, the respondent refused to provide Section 4 support to the appellant on identical grounds to the present appeal. The appellant appealed and the matter was considered and dismissed on the papers by adjudicator Mr Richard Briden on 13 September 2005.
5. The present appeal relates to a fresh application for Section 4 support made on behalf of the appellant by HFCLC by letter dated 29 September 2005. They argued that the appellant was entitled to Section 4 support on the grounds that he was unable to leave the United Kingdom because no viable route of return

is currently available to him. Their letter dealt at length with concerns over the various proposed routes of return available to Iraqis willing to return voluntarily to Iraq. They stressed that their client could not return via the route to Erbil on the basis that only Kurdish Iraqis living within the Kurdish Autonomous Zone (KAZ) can safely return via this route. They emphasised that the appellant is an ethnic Arab from Mosul and therefore cannot utilise this route.

6. In their letter dated 18 October 2005, the respondent accepts that the appellant cannot return to Erbil but maintains that other safe routes of return are available including to Baghdad from where it was said that the appellant can make the “relatively short journey” to Mosul. The appellant tells me and I accept his evidence that Mosul is in fact in the region of 500 km from Baghdad.
7. The appellant’s representatives maintain that the only route available to Baghdad is via a scheduled airline flight organised by the International Organisation for Migration (IOM) but that only those Iraqis in possession of original identity documentation can return via this route. They state that their client has made genuine attempts to obtain these documents from the Iraqi Consulate in London but has failed to do so because he does not possess an original Nationality Certificate and the Civil ID without which the Consulate will not issue a passport. They maintain that their client is taking reasonable steps to place himself in a position in which he was able to leave the United Kingdom and in the circumstances they argue that he satisfies the criteria for support under Regulation 3(2)(a) and (c) of the 2005 Regulations.
8. By letter dated 31 October 2005, the appellant’s representatives submitted further evidence in support of their appeal in particular a witness statement signed by the appellant of the same date confirming the steps he has taken to obtain new Iraqi ID. Also enclosed were submissions drafted by Counsel Mr Simon Cox on the issue of the ASA’s jurisdiction in relation to Regulation 3(2)(c). I confirm that I have taken these fully into consideration in reaching my decision.
9. 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.
10. 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.

11. Ms. Fancott relies upon the arguments advanced by Counsel that the Secretary of State is required to act lawfully when deciding what opinion to reach on a question of viability and that on an appeal raising an issue under regulation 3(2)(c) of the 2005 Regulations, the adjudicator should only dismiss the appeal if satisfied that the Secretary of State's opinion:

- a) is based upon the particular facts of the individual concerned;
- b) took into account the material relevant to the decision;
- c) is consistent with the Secretary of State's published statements;
- d) is one which is open to the Secretary of State to reach.

12. Ms. Kerr relies upon the respondent's decision letter.

13. I have given careful consideration to all the evidence before me. The burden of proof is upon the appellant to demonstrate that he is destitute and that he satisfies one or more of the conditions contained in Regulation 3(2) above. In relation to condition (c) of the said regulation, a route of return is viable if it is expressed to be so in the opinion of the Secretary of State. In my judgment,

that opinion is determinative. Counsel Mr Simon Cox and Ms Fancott for the appellant disagree.

14. It is not disputed that the appellant is destitute. The only issues requiring determination are 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 the United Kingdom, which may include complying with attempts to obtain a travel document to facilitate his departure.
15. Prior to commencement of the hearing, both parties were provided with copies of the judgment of the Court of Appeal in *GH v SSHD* [2005] EWCA Civ 1182 (an appeal concerning the ambit of section 82 of the Immigration and Asylum Act 2002) and copy judgment of Collins J refusing permission to proceed to judicial review against the decision of the asylum support adjudicator in ASA/05/06/9526. Ms. Fancott argued that both were distinguishable from the current appeal.
16. In refusing permission to proceed Collins J held that the adjudicator's reasoning that "in order to become viable, a route of return has to be viable in the opinion of the Secretary of State", was correct and disclosed no arguable error of law. In *GH*, Scott Baker LJ held that Parliament had intended that there should be no freestanding right of appeal against removal directions and that the remedy for any directions made by the Secretary of State which were arguably unlawful because they breach the United Kingdom's international obligations, would be judicial review. Keene LJ, agreeing with the judgment of Scott Baker LJ added that "[where] removal directions are set which allegedly give rise to a real risk to the appellant, any challenge to those directions will have to be by way of judicial review".
17. The decision of Collins J is binding upon the ASA whilst *GH* is of persuasive authority. I therefore find that in relation to condition (c) of regulation 3(2) aforesaid, the opinion of the Secretary of State that there is a viable route of return to Iraq is determinative.
18. In the circumstances, in order for the appellant to qualify for section 4 support, he must demonstrate that he is taking reasonable steps to facilitate his return to Iraq. Ms. Fancott asks me to find that this condition is satisfied because the appellant has attempted to obtain a passport and ID documents from the Iraq Consulate. She was unable to provide a satisfactory explanation for her client's failure to register with IOM other than to concede that he continued to fear a return to Iraq.
19. I also had the benefit of hearing the appellant. He confirmed that he had approached his Consulate upon the instructions of his representatives. He maintained however that even if a passport and ID documents had been issued to him, he would not be willing to return to Iraq at the present time because he did not consider it safe to do so.

20. On the totality of the evidence before me, noting that the opinion of the Secretary of State that there is a viable route of return to Iraq, and that the appellant has failed to register with IOM for voluntary return, I find that the appellant has failed to take all reasonable steps to facilitate his departure from the United Kingdom. The appellant can avoid the effects of destitution by cooperating with the IOM.
21. The appeal is dismissed.

Signed:

Chief Asylum Support Adjudicator

Date: 4 November 2005