

Appeal Number: ASA/05/09/10091
NASS Ref. Number: 03/06/02494
Appellant's Ref. Number: TS/jaw/10874/1



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

Adjudicator SALLY VERITY SMITH

Appellant (s) PK

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 Tuesday the 4th day of October 2005 to the effect that I have no jurisdiction to hear this appeal.
2. The appellant, a citizen of Iran born on 3 November 1976, appeals against the decision of the Secretary of State who on 30 August 2005 decided to terminate support to the appellant on the grounds that he is no longer an asylum seeker.
3. In his Notice of Appeal the appellant requested an oral hearing of his appeal. He gave his evidence today in Farsi through an independent court interpreter, Mr. Nazar. The respondent was unrepresented but made written submissions.
4. The facts of this case are that the appellant applied for asylum on arrival on 6 January 2003. He applied for support from the respondent at the same time. The former application was refused and an appeal against such decision was dismissed on 26 April 2005. An application for a High Court review (filter) made on 6 May 2005 was refused on 27 July 2005. The appellant is no longer an asylum seeker and his support was terminated for that reason.
5. 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."

6. 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.
7. 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.”
8. The respondent’s appeal bundle confirms the chronology of the appellant’s applications for asylum and for support. There is no other evidence from the respondent.
9. The appellant states in his grounds of appeal that he is a person to whom Section 94(5) applies because his household includes a child who is under eighteen years of age and the child is a dependant of his. The appellant and his representatives argue that Section 94(5) must be read together with Section 94(1) and the definition contained therein of an asylum seeker so as to qualify the appellant for Section 95 support. They submit that the birth of the appellant’s son on 6 January 2005 brings the appellant within the definition of Section 94(5).
10. The appellant addressed me and confirmed that he was married, his wife having arrived in this country in June 2003 and having been granted refugee status on 28 January 2004. The couple had married on 24 March 2004 and their first child was born on 6 January 2005. The couple had lived together since their marriage, with friends until May 2004 and then in private accommodation paid for by housing benefit from May 2004 to May 2005. The family had moved to their current address in June 2004, again private accommodation paid for by way of housing benefit. The family is on a waiting list for more permanent housing through the local authority. The appellant confirmed that his wife received income support, child benefit, council tax benefit, disability benefit and child tax credit. He confirmed that his son had never been registered as his dependant for either asylum or support purposes. The child had always been registered as his mother’s (the appellant’s wife) dependant both in terms of his immigration status and his support needs. There is no other evidence from the appellant.
11. 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.

- 12. I have given careful consideration to all the evidence before me including written submissions from the respondent and oral submissions from the appellant and find that this case concerns the interpretation of Section 94(5) of the Act. Having considered the evidence before me, I find that Section 94(5) is not intended to entitle persons who are no longer asylum seekers to qualify for asylum support under Section 95 unless the child in question is a dependant at the time the adult ceased to be an asylum seeker otherwise the use of the words “and a dependant of his” in Section 94(5) has no relevance. Put simply, the fact that the appellant lives with his wife and his child as a family does not change the appellant’s status at this time, namely that of a failed asylum seeker whose child is registered as his mother’s dependant. The change of the appellant’s status to that of asylum seeker as defined by Section 95 can be achieved if and when the Administrative Court is seized of his out-of-time appeal which I understand is to be submitted shortly. When the respondent made his decision on 30 August 2004, the appellant’s son was not the appellant’s dependant for the purposes of Section 94(5) and the appellant cannot therefore be treated as continuing to be an asylum seeker for that reason.

- 13. I am satisfied that the appellant is not an asylum seeker as defined by Section 95 of the Act and that I therefore have no jurisdiction to hear this appeal.

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