

Appeal Number: ASA/05/05/9212
NASS Ref. Number: 03/12/02414
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) SAS

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 Monday the 9th day of May 2005 remitting the above mentioned appeal.
2. The appellant a 19 year old claimed national of Somalia, appeals against the decision of the Secretary of State, who on 21 April 2005 decided to refuse her application for support under Section 4 of the Immigration and Asylum Act 1999 as amended (the 1999 Act), on the grounds that the appellant did not satisfy one or more of the 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 her notice of appeal, the appellant did not request an oral hearing. I considered the appellant's request with reference to Rule 5 of the above mentioned Rules and determined that in the particular circumstances of this case, an oral hearing was not necessary for the appeal to be disposed of justly. Accordingly, I proceeded to determine the appeal under Rule 6(2) of the said Rules.
4. The appellant applied for asylum on 4 September 2003. Her application was refused on 23 October 2003 and an appeal against that decision was dismissed by an Adjudicator on 13 February 2004. The appellant sought permission to appeal to the Immigration Appeal Tribunal (IAT) as it then was. This was refused on 26 October 2004. Accordingly the appellant ceased to be an asylum seeker on 26 October 2004.

5. The appellant's application for asylum was based upon her claim that she is a citizen of Somalia and that if returned to her country of origin she would be the victim of persecution for one of the reasons listed in Article 1(a) of the 1951 United Nations Convention relating to the status of refugees as amended by the 1967 New York Protocol.
6. The Adjudicator who heard her appeal against refusal of asylum concluded that the appellant had failed to establish to the lower standard of proof required that the appellant was entitled to the international protection she seeks by virtue of either the asylum or human rights claim within her appeal. In particular, he determined that the appellant had failed to establish to the lower standard of proof required either that she was from Somalia or from the claimed minority clan.
7. By letter dated 8 April 2005, Public Law Solicitors of Birmingham requested the payment of Section 4 support to the appellant on the grounds that the appellant had instructed Christchurch Solicitors to act on her behalf in connection with a fresh claim for asylum. Their letter suggested that an application requesting that the appellant be allowed to remain in the United Kingdom on Article 3 ECHR grounds had been submitted but refused on 17 January 2004. Since that date, they were of the belief that further representations had been made. Their letter referred to a copy of a letter from Christchurch Solicitors dated 17 January 2005 by way of confirmation of the latter's instructions. I have before me an extensive bundle of documentation but the letter of 17 January 2005 is not included in the bundle.
8. Notwithstanding that I have not seen a copy of the further representations made on behalf of the appellant to the Home Office, I have been provided with a copy of the decision of the Secretary of State dated 3 May 2005. This confirms that further representations were made by Christchurch Solicitors on 29 November 2004 which were refused on 17 January 2005. Christchurch Solicitors then made further representations on 2 February 2005 and 4 April 2005 requesting that these be considered as a fresh asylum claim.
9. The letter of 3 May 2005 records that the appellant's claim has been reconsidered together with all the evidence available, including the further submissions, but that the original decision of the Secretary of State is maintained. On the basis that the Secretary of State has decided not to reverse the decision on the earlier claim, it has been determined that the further submissions made on behalf of the appellant do not amount to a fresh claim.
10. 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 dependants if –
 - (a) he was (but is no longer) an asylum seeker, and
 - (b) his claim for asylum was rejected.

11. 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. These came into force on 31 March 2005.

12. 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.

13. In relation to the entitlement of failed asylum seekers who have put in further representations by way of a purported fresh claim, Policy Bulletin 71 states

that it would not be reasonable to expect a person to leave the United Kingdom where –

“the person has submitted to the Secretary of State further representations which seek a fresh claim for asylum and these have not yet been considered. Support under Section 4 shall be provided in such cases unless it is clear to the NASS caseworker that the further representations simply rehearse previously considered material or contain no detail whatsoever.

14. Where an appellant seeks to appeal against a decision to refuse him Section 4 support, the burden of proof is upon him to prove on a balance of probabilities that he meets the criteria for a Section 4 award.
15. I have given careful consideration to all the evidence that is before me, including all documents contained in the Secretary of State's bundle of evidence, responses received from both parties to directions and detailed submissions of both parties to the appeal.
16. The issues for me to determine in this appeal are as follows:-
 - (i) Was the decision of the NASS caseworker to refuse to provide support under Section 4 on the basis of a preliminary assessment that the fresh claim application would not satisfy the requirements of paragraph 353 of HC395, when a decision had yet to be made on this issue by the Home Office ICD of the Immigration and Nationality Directorate (IND), in excess of his power/ was the decision therefore ultra vires?
 - (ii) Similarly, what is the scope of the jurisdiction of the Asylum Support Adjudicator on this issue, where a “full” decision has yet to be made by ICD IND?
17. In ASA appeal number ASA/05/04/9178 it was decided that by virtue of paragraph 2 of HC395, only those category of persons specifically mentioned therein are authorised to make decisions involving applications for leave to enter or remain in the United Kingdom. As this does not include NASS caseworkers, they do not have authority to refuse Section 4 support where a preliminary assessment of the further representations is carried out by NASS caseworkers.
18. In the circumstances, as at the date of decision, namely 21 April 2005, I am satisfied that no decision having been made on the appellant's further representations by a competent authority, NASS did not have power to refuse Section 4 support to the appellant. However, I have before me a letter dated 3 May 2005 which is a detailed analysis of the further representations made on the appellant's behalf and where the decision of the Secretary of State is to reject the further representations as a fresh claim. In the circumstances, I am satisfied that as at that date, the appellant ceased to have an entitlement to Section 4 support.

19. My decision is therefore to remit this case to the respondent to determine what if any support falls to be paid to the appellant for the period between the date of her claim and 3 May 2005.
20. Public Law Solicitors have raised the issue of jurisdiction before the ASA and argue that the issue of the appellant's Somali origin is not only central to this appeal but that it is an issue upon which the ASA must make a determination. They further argue that the question of whether it is safe for the appellant to return to Somalia is also a matter within the ASA jurisdiction and furthermore submit that "it is common ground between ourselves and NASS that the ASA has jurisdiction".
21. Whether NASS are in agreement with Public Law Solicitors or not is a matter which is not known to me. I am however satisfied that the ASA does not have jurisdiction to determine any matters relating to issues of immigration and asylum and that Asylum Support Adjudicators are bound by the findings of the Immigration Appellate Authorities in relation to these issues. On the basis that the Adjudicator was not satisfied that the appellant had established that she was a national of Somalia, I am satisfied that I do not have power to look behind that determination. Equally, where the IAT (now the Asylum and Immigration Tribunal) have determined that there is a safe route of return to a country, in the absence of the Secretary of State deciding otherwise, Asylum Support Adjudicators will be bound by that decision also.
22. As all further representations on the appellant's behalf have now been concluded, and I note that in this case, there have now been two decisions in addition to a determination of an Immigration Adjudicator and the IAT, the only option available to the appellant if she wishes to qualify for Section 4 support is to satisfy the criteria laid out in Regulation 3(1) and at least one of the five conditions of Regulation 3(2) of the 2005 Regulations.

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