

Appeal Number: ASA/04/09/8678
NASS Ref. Number: 02/10/01940
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) CDO

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 8 day of October 2004 (incorrectly dated the 7 October 2004) remitting the appeal to the respondent for reconsideration.
2. The appellant is a 27 year old national of Turkey. He appeals against the decision of the Secretary of State, who on 1 September 2004 decided to discontinue support to the appellant and his wife on the grounds that the wife's application for asylum was recorded as determined on 2 August 2004 and that accordingly their period of support ended on 31 August 2004. The decision letter is addressed to the appellant's wife who has been treated as the principal applicant and records the appellant as her dependant. They were advised that there is no right of appeal against this decision under Section 103 of the Immigration and Asylum Act 1999(the 1999 Act).
3. In his grounds of appeal, the appellant states that it is only his wife who has been granted discretionary leave to remain in the United Kingdom by virtue of which she is eligible for means tested jobseekers allowance. It is submitted on his behalf that as he remains an asylum seeker in his own right, he continues to be entitled to support from the National Asylum Support Service (NASS) and that he has a right of appeal against the discontinuance of his support.
4. At the hearing before me, the appellant appeared in person and was assisted through the interpretation of Mr Saritas in the Turkish language. The respondent was represented by Presenting Officer Ms Kerr.

On 4 October 2004, directions were issued by me to both parties to the proceedings. Regrettably, no response was received from the respondent to these directions. A 40 minute adjournment of the hearing failed to secure any meaningful response. A response was however received from the appellant's representatives.

5. The facts of this case are that the appellant claimed asylum on 4 October 2002. His appeal against refusal of this claim was dismissed on 27 March 2003 by an Adjudicator of the Immigration Appellate Authority (IAA). Following an application for permission to appeal to the Immigration Appeal Tribunal (IAT), the appellant's case was remitted to the IAA and allowed on 16 June 2004. The present position is that the Secretary of State has been granted permission to appeal against that decision to the IAT and a hearing of that application remains outstanding. It is not therefore disputed that the appellant remains an asylum seeker.
6. As regards the appellant's asylum support history, he is recorded as having made an application for subsistence only support on 7 October 2002 and this was approved on 8 October 2002. The appellant continued to be in receipt of subsistence only support until 27 November 2003, when he contacted NASS to inform them of a change of circumstances, namely his marriage to another asylum seeker. It was confirmed that his wife was also in receipt of NASS support. Their request that their respective claims be merged appears to have been approved on 19 December 2003 whereupon the appellant's wife is noted to have become the principal applicant within the claim.
7. Ms Kerr tells me that there is no explanation on the NASS file for why the wife was treated as the principal applicant as opposed to her husband. She confirms however, that the couple lived in emergency accommodation on a full board basis from 12 December 2003 until support was discontinued on 1 September 2004, for the reasons aforementioned.
8. Ms Kerr submits that the appellant is entitled to asylum support but must submit a fresh application for consideration. She further argues that the appellant is not entitled to appeal the decision of 1 September 2004 because that decision was issued to the appellant's wife in respect of a claim in which the appellant is only a dependant. She asks me to find that Section 103(2) does not confer a right of appeal upon a dependant irrespective of his continuing entitlement as an asylum seeker in his own right.
9. As NASS have sought to argue that the appellant does not have a right of appeal against the decision in question and accordingly I have no jurisdiction to hear this appeal, the burden of proof rests with them.
10. I have received some interesting submissions from NASS in this case. None refer directly to the legislation. The caseworker initially sought to suggest that the appellant had never received NASS support and that the appellant's wife had been receiving support as a single person until discontinuance of that support on 1 September 2004. Following disclosure of two letters dated 8 October 2002 and 11 August 2003 from NASS to the appellant confirming

approval of his subsistence only support, NASS then sought to argue that whilst such support had been “approved”, the appellant “was not actually set up on our database as a principal NASS applicant”. It was said that the appellant’s NASS reference number continues to refer to him as a dependant of his partner notwithstanding that even after the date of their marriage, she is said only to have received support as a single applicant and not as a couple.

11. The appellant told me that he had been in receipt of subsistence only support from NASS prior to his marriage. He recalled receiving in the region of £38 per week. Following his marriage, he said the couple received approximately £70 per week. He was not able to provide any documentary evidence confirming the approval of the joint claim but I have seen evidence of the approval of his claim as a single person in October 2002.
12. What is also before me are letters from the Refugee Council One Stop service at Brixton to NASS informing them of the appellant’s marriage and seeking an alteration to their support package. These documents name the appellant’s wife as the “family head” and the appellant under the heading of “family”. There is no evidence to suggest that the couple were required to complete a fresh application for support. The support package appears to have been combined upon notification of a change of circumstances.
13. Regulation 3(1) of the Asylum Support Regulations 2000 (the Regulations) states that either an asylum seeker or a dependant of an asylum seeker may apply to the Secretary of State for asylum support.
14. Section 95(1) of the 1999 Act states that the Secretary of State may provide or arrange for the provision of support for asylum seekers or dependants of asylum seekers who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.
15. Section 94(1) of the 1999 Act defines “supported person” as an asylum seeker or a dependant of an asylum seeker, who has applied for support and for whom support is provided under Section 95.
16. Section 103(1) of the 1999 Act states that where on an application for support under section 95, the Secretary of State decides that *the applicant* does not qualify for support under that section, *the applicant* may appeal to an adjudicator. By contrast, Section 103(2) states that if the Secretary of State decides to stop providing support for *a person* under Section 95 before that support would otherwise have come to an end, *that person* may appeal to an Adjudicator. (My emphasis).
17. On the totality of the evidence before me, I am satisfied that the appellant applied for and received NASS support as a single person in October 2002. Thereafter, following his marriage to another recipient of asylum support, their claims were merged on the request of the Refugee Council. There is no indication to suggest that the appellant agreed to become a dependant on his wife’s application other than the document referred to above in paragraph 12.

18. Be that as it may, I am not satisfied that it is at all relevant to securing a right of appeal against a decision to discontinue support, that the appellant must be a principal applicant as opposed to a dependant of the principal applicant. Given the use of the term "that person" in Section 103(2) of the 1999 Act, as opposed to "the applicant", in Section 103(1), I am satisfied that Parliament intended Section 103(2) to confer a right of appeal upon any person who falls within the definition of "supported person" whose support is discontinued before that support would otherwise come to an end.
19. The decision to discontinue support to the appellant's wife was in accordance with the law as clearly having been granted leave to remain, she no longer complied with the definition of asylum seeker. The decision to stop providing support to the appellant however, is not. The appellant is not a named dependant upon his wife's asylum application and as such has not been granted leave to remain in line with her. He is however an asylum seeker in his own right as stated above and entitled to receive support from the respondent until such time as he ceases to be an asylum seeker or otherwise entitled to the provision of support.
20. I can see nothing in the 1999 Act or the Regulations to suggest that a supported person in the position in which the appellant finds himself must make a fresh application for support. The appellant's representatives inform me that the appellant's original claim, made and approved in October 2002, has never been discontinued. If that is correct, I can see no reason why a fresh application would be required in any event. In my view, it is sufficient that he or his representatives notify NASS of a change of circumstances so that any support to which he may be entitled can be recalculated, in much the same way as support was recalculated following his marriage.
21. The appellant tells me that his wife has been offered council accommodation by the local authority and that he believes he has authority to occupy the property with her. In the circumstances he no longer requires accommodation from the respondent. He does however wish to continue to receive subsistence support. This will of course require a re-assessment to be conducted into the couple's means taking full account of their joint income and liabilities.
22. Accordingly, this appeal is remitted to the Secretary of State for such enquiries to be conducted. If it transpires that the appellant and his wife have received less support than that to which they were entitled as a couple, as suggested by the caseworker, I expect such arrears to be paid to them in full. In the meantime, and whilst enquiries are being conducted, the appellant is to receive such support to which he may be entitled.

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