

Appeal Number: ASA/04/09/8617
NASS Ref. Number: 04/08/01707
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) ARAMA

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 5th day of October 2004 allowing the above mentioned appeal.
2. The appellant, a 29 year-old national of Sudan, appeals against the decision of the Secretary of State dated 17 August 2004. The decision letter stated that the appellant's asylum application has been "recorded" as having been refused on 17 March 2004 and that the appellant's asylum claim "became Appeals Rights Exhausted" on 02/04/04 because of non-compliance. The Secretary of State therefore decided that the appellant was no longer an asylum seeker as defined by Section 94 of the Immigration and Asylum Act 1999 (the 1999 Act) and that in the light of this the appellant's application for Section 95 support need not be entertained.
3. In his grounds of appeal, the appellant asserted that the Secretary of State cannot properly be satisfied that he has ceased to be an asylum seeker because no decision on his asylum claim has been communicated to him. He confirmed that it is his intention to appeal the said decision but that until such time as he receives it, he is not in a position to pursue an appeal.
4. At the hearing before me, the appellant was represented by counsel Ms Tracey Bloom, the respondent was represented by Mrs Stevenson. The appellant attended in person and was assisted through the interpretation of Mrs Saadi in the Arabic language.

5. The facts of this case are that the appellant applied for asylum on 17 February 2004 and was provided with emergency accommodation. On or around 18 February 2004 the appellant was admitted to City Hospital with chest pains and remained in hospital until his discharge on 15 April 2004. Refugee Action, who had assisted the appellant in obtaining emergency accommodation, were aware of his hospitalisation. Evidence before me suggests that they were notified of his discharge and arranged for the appellant to be accommodated in new emergency accommodation on that day. The appellant was clearly considered to be seriously unwell and I am satisfied that this is not a case of him having absented himself without the knowledge and consent of his accommodation providers.
6. The appellant had been issued with a Statement of Evidence Form (SEF) on 17 February 2004 that he required to complete and return by 2 March 2004. It is argued that owing to his ill health he was unable to comply with this time limit but upon discharge from hospital he instructed Harbans Singh & Co Solicitors, of Birmingham to act on his behalf. On 28 April 2004 the solicitors submitted the appellants completed SEF by recorded delivery and provided an explanation of why it was submitted out of time. I have seen a copy of this letter. I understand that they have not received any communication from the Secretary of State and are unaware of the appellant's claim having been determined on grounds of non compliance.
7. Mrs Stevenson for the respondent provided a brief chronology of events. She confirmed that the appellants asylum claim has been recorded as refused on 17 March 2004 but that other than this, she has no information available on either the contents of the decision notice, nor the address to which it was served.
8. Ms Bloom for the appellant, provided extensive documentation in support of her client's appeal and asked me to find that the respondent has failed to discharge the burden upon him to prove on a balance of probabilities that the decision of 17 March 2004 had been properly served upon the appellant. She maintained that it had not and in the circumstances, the appellant had not been afforded an opportunity to appeal against that decision and must therefore remain an asylum seeker for the purpose of Part VI of the 1999 Act.
9. I have given careful consideration to all the evidence that is before me. It is worth noting that none of it originates from the respondent. Directions were issued to both parties on 29 September 2004 and required a response to be delivered to the Asylum Support Adjudicators on or before 12 noon on Monday 4 October 2004. The respondent was asked to provide,
 - (a) A copy of the full refusal of asylum letter and proof of the manner of posting;
 - (b) Confirmation of the address to which the refusal letter was sent;
 - (c) Confirmation of whether the respondent was aware that the appellant was a hospital in-patient during the period 19 February – 15 April 2004;

(d) Evidence upon which the Secretary of State proposed to rely to support the assertion that the appellant's asylum claim had been determined and his appeal rights exhausted.

10. The respondent failed to provide the information within the timescales stipulated or at all. In addition, they failed to provide Mrs Stevenson, their Presenting Officer with the necessary information either.
11. Regulation 4 of the Immigration (Notices) Regulations 2003 requires that the decision maker must give written notice to a person of any Immigration decision or EEA decision taken in respect of him which is appealable. Regulation 7(1) states that a notice required to be given under Regulation 4 may be given by hand, sent by fax, or sent by postal service in which delivery or receipt is recorded to an address provided for correspondence by the person or his representatives or where no address for correspondence has been provided by the person, the last known or usual place of abode or place of business of the person or his representatives. Regulation 7(4) states that where a notice is sent by post in accordance with paragraph 7(1) it shall be deemed to have been served, on the second day after it was posted if it is sent to a place within the United Kingdom, "unless the contrary is proved".
12. As stated above, the respondent was asked to provide a copy of the decision of 17 March 2004 together with details of service. I am aware that similar requests have been made directly to the Asylum Directorate within the Home Office, by the appellants solicitors, but to no avail.
13. On the evidence before me, I am satisfied that the respondent has been aware of the appellant's place of abode since 16 February 2003. When not residing in emergency accommodation, the respondent was aware through the service provider of his emergency accommodation, that the appellant was an in-patient of City Hospital. It is not disputed of course that the appellant failed to submit his SEF on time. If however the respondent was minded to refuse his asylum application on the grounds of non-compliance, the appellant was entitled to have that decision served upon him at his place of abode on 17 March 2004, namely City Hospital. I do not know whether that was done nor, does it seem does anyone else.
14. In *R (ona Anufrijeva) v Secretary of State for the Home Department and Another* [2003] UKHL 36, it was held by their Lordships that it is a fundamental principle that a constitutional state "must accord to individuals the right to know of a decision before their rights can be adversely affected. The antithesis of such a state was described by Kafka: a state where the rights of individuals are overridden by a hole in the corner decisions or knocks on doors in the early hours, that it is not our system". Referring to the determination of an asylum seekers application, Lord Steyn commented that such a decision is of such fundamental importance to the individual that he must be informed of it so that he can decide what to do. "... [N]either cost nor administrative convenience can in such a case conceivably justify a different approach".

- 15. I have had presented to me a copy of the bundle of documents before the Administrative Court in connection with judicial review proceedings issued on behalf of the appellant. I have had sight of the witness statement of Mr Timothy Douglas Shotton, a solicitor employed by the Community Law Partnership. He states at paragraph 16 of his statement that on 16 September 2004 he spoke to an employee within NASS's Head Office. She is said to have considered their computer records and advised him that the decision to refuse the appellant's asylum claim on grounds of non-compliance "had not been sent to the claimant or any representatives but that it had simply been placed on his file".
- 16. Ms Bloom for the appellant submits that until such time as the respondent submits his decision to refuse the appellant's asylum claim in accordance with the above stated Regulations, any decision recorded merely on the file is not one which can properly operate so as to disentitle an appellant to asylum support. That seems to me to make perfect sense.
- 17. On the totality of the evidence before me, I am satisfied that the Secretary of State has failed to demonstrate that a decision refusing the appellants asylum claim has been made and validly served upon him or his authorised representatives in accordance with the Immigration (Notices) Regulations 2003. Until such time as there is compliance with the service requirements of these regulations, I am satisfied that the appellant remains an asylum seeker within the meaning of Section 94 of the 1999 Act and is entitled to support under Part VI of that Act.
- 18. Appeal allowed.

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