

Appeal Number: ASA/04/05/8109
NASS Ref. Number: 02/07/03698
Appellant's Ref. Number:



ASYLUM SUPPORT ADJUDICATORS
Christopher Wren House
113 High Street Croydon CR0 1QG
Telephone: 020 8688 3977
Fax: 020 8688 6075

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

Adjudicator	<u>Mrs Sehba Haroon Storey</u>
Appellant (s)	<u>GM</u>
Respondent	<u>Secretary of State</u>

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 Thursday the 3rd day of June 2004 substituting my own decision for the decision appealed against.
2. The appellant, a 23-year-old national of the Republic of Congo appeals against the decision of the Secretary of State, who on 21 April 2004 decided to refuse support to the appellant. The grounds upon which the decision is based are that having exhausted her appeal rights with effect from 29 July 2003, the appellant is no longer an asylum seeker within the meaning of Section 94 of the Immigration and Asylum Act 1999. As such she is not eligible to receive support. The Secretary of State further determined that the appellant could not be regarded as being a member of a household, which included a child who is under eighteen years of age. This is because the child with whom the appellant resides is the appellant's nephew and not dependent upon her.
3. At the hearing before me, the appellant was represented by Ms Rachel Quick. The respondent was represented by Presenting Officer Ms Lambert. The appellant was also in attendance and was assisted by independent interpreter Mr Afonso in the Lingala language.
4. Prior to the hearing and in response to directions, I received written submissions from the respondent. Ms Lambert indicated that she wished to rely upon these and the clear definition of "dependant" contained within Section 94(1)(b).
5. It is not disputed that the appellant resides with her sister in privately rented accommodation. Also residing at the property is the appellant's nephew who appears to be a British Citizen having been born at a time when his mother had indefinite leave to remain in the United Kingdom. The appellant has been in receipt of subsistence payments from July 2002 to September 2003 following

the dismissal of her appeal before an Immigration Adjudicator. I understand that there is no pending asylum claim. Nor has the Secretary of State taken any steps to remove the appellant from the United Kingdom.

6. The respondent submits that Section 95(1) of the 1999 Act makes it clear that support can only be provided to asylum seekers or the dependants of asylum seekers. Support cannot be provided to the dependants of other persons. As the appellant's nephew is the dependant of his mother, who receives child benefit and possibly other mainstream benefits in respect of her child, the respondent submits that he cannot in any way be dependent upon the appellant.
7. The respondent further takes the view that Regulation 2(4)(d) of the Asylum Support Regulations 2000 is designed to enable support to be provided to a child whom whilst not the child of the asylum seeker, is part of the asylum seeker's close family and, for one reason or another, the asylum seeker has assumed responsibility for that child. It is argued that the child must therefore be the dependant of the asylum seeker in order to form part of the household. It is further submitted that forming part of the household in this context clearly does not just mean physically living in the same property.
8. Ms Quick argues strongly against this submission. It is her case that by virtue of Regulation 2(4)(c), the appellant's nephew is a relevant person given his close relationship to the appellant and presence in her household. This brings the appellant within the definition of asylum seeker contained in Regulation 94(5). She tells me that the appellant has since her arrival in the United Kingdom, lived as a member of her sister's household and that she has consistently contributed towards the cost of maintaining that household and all persons within it, from her asylum support.
9. By way of authority for her proposition, Ms. Quick referred me to the case of *R v London Borough of Camden ex parte Diirshe* [24 February 2000] wherein Mr Justice Hooper defined the meaning of the term "dependant" as contained in the Asylum Support (Interim Provisions) Regulations 1999. The term "household" was not defined. Ms Quick submits that in the absence of a clear definition in the legislation, this term should be given its every day meaning as defined by Lord Hailsham in *Simmons v Pizzey* [1979] AC 37.
10. Section 94(1) of the 1999 Act defines "Dependant", in relation to an asylum seeker or a supported person, as meaning a person in the United Kingdom who—
 - a) is his spouse;
 - b) is a child of his, or of his spouse, who is under 18 and dependent on him; or
 - c) falls within such additional category, if any, as may be prescribed.
11. Regulation 2(4) of the Regulations defines "dependant", in relation to an asylum seeker, a supported person or an applicant for asylum support, as a person in the United Kingdom ("the relevant person") who—
 - a) is his spouse;

- b) is a child of his or of his spouse, is dependant on him and is, or was at the relevant time under 18;
 - c) is a member of his or his spouse's close family and is, or was at the relevant time, under 18
 - d) had been living as part of his household –
 - i) for at least six of the twelve months before the relevant time, or
 - ii) since birth,
- and is, or was at the relevant time, under 18.

12. Section 95(5) of the 1999 Act states the following -

“If an asylum-seeker's household includes a child who is under 18 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 18; and
- b) he and the child remain in the United Kingdom.

The term “household” is not however, defined either in the 1999 Act or the Regulations.

13. Section 95(1) requires the Secretary of State to provide, or arrange for the provision of, support for –

- a) asylum-seekers, or
- b) 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.

14. In *Simmons v Pizzey* [1979] AC 37 Lord Hailsham said that the expression “household” and membership of it is a question of fact and degree, there being no certain indicia the presence or absence of which is by itself conclusive.

15. He defined a household as possessing three characteristics namely size, the durability and intimacy of the relationship existing between the occupants and the permanency of the arrangement. Applying the dictionary definition of “household”, he concluded that something more than mere presence in a place is necessary before those present can be said to constitute a household. There must therefore be some collectivity, some communality, some organisation. The term household is therefore a word which essentially refers to people “held together by a particular kind of tie, even if temporarily separated ...”. *Santos v Santos* [1972] 2 AWL ER 247. It is also relevant that there is a domestic establishment.

16. On the facts before me, I am satisfied that the appellant does form part of a household given that this is of relatively small size and all persons within it namely the appellant, her sister, the nephew and now the appellant's own child, are closely related by blood and have an established domestic

arrangement where they pool their finances and support one another from their joint income, as well as providing each other with physical and moral support. Their relationship is clearly an intimate and durable one. Having existed since the appellant's arrival in the United Kingdom, I am satisfied that it is also a permanent one, notwithstanding the temporary nature of the appellant's immigration status.

17. Having determined that the appellant is part of a household which includes a child under the age of 18, I next come to determine whether the appellant's nephew can be treated as her dependant for the purpose of Section 95(5) of the 1999 Act and Regulation 2(4) of the Regulations. In *Diirshe* Mr Justice Hooper considered the facts in a case similar to this appeal. There, the appellant was a national of Somalia who arrived in the United Kingdom and claimed asylum. She took up residence with her five children all of whom had been granted exceptional leave to remain in the United Kingdom. Three of the appellant's sons were under 18 years of age and classed as the dependants of the eldest sibling. The family lived together in a property leased to the eldest daughter.
18. The respondent argued that although 3 of the children were under 18 years of age, they were not dependant upon the appellant. As such, it was submitted that she could not claim to be a member of a household which included a child under 18 because the children were not in receipt of support.
19. Mr Justice Hooper rejected this argument and held that the purpose behind the wording of the legislation was "an intention on the part of the Secretary of State not to break up already existing family units by requiring the asylum seeker to leave accommodation and go elsewhere in order to obtain support ...". He considered that there was no justification for reading the Regulations in the restrictive manner being argued before him and concluded that a "dependant" means any person who fits within any of the categories set out in the Regulations. That decision was not challenged by the Secretary of State.
20. Applying the reasoning of Mr Justice Hooper in relation to the definition of "dependant", and Lord Hailsham's definition of "household" in the absence of a more precise definition contained within the Asylum Support legislation, I am satisfied that the appellant's nephew is a dependant within the meaning of Regulation 2(4)(c) of the Regulations. I further find as fact that the appellant and her nephew form part of a household for the purposes of Section 95(5) of the 1999 Act.
21. Accordingly, as no steps have been taken to remove the appellant from the United Kingdom, she remains by definition an asylum seeker entitled to the provision of support.

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