

Appeal Number: ASA/02/04/2505
NASS Ref Number: 00/11/05856/001
Appellant's Ref Number:
ADDRESS



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

Adjudicator	Mr Alan D Ponting
Appellant (s)	_____
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 Thursday the 11th day of April 2002 allowing (in relation to accommodation only) the above mentioned appeal.
2. The appellant is a citizen of Iraq, born 1st January 1974. He appeals against the decision of the respondent, who on 4th April 2002 decided to discontinue support provided under Section 95 of the Immigration and Asylum Act 1999 (“the Act”) on the grounds that the appellant had failed to notify the National Asylum Support Service (“NASS”) that he was working.
3. The appellant was awarded support (both subsistence and accommodation) on 12th December 2000. At the same time he was given a copy of the NASS Agreement, which sets out the conditions subject to which support is provided. Condition number 4 requires the supported person to notify NASS immediately, and in writing, should any of a list of changes in his circumstances occur. The list includes obtaining a job.
4. On 22nd August 2001 the appellant signed a NASS confirmation letter in the following terms:

“The following is a written confirmation that I ... do not work at present and acknowledge that I informed the National Asylum Support Service on the 19th August 2001. If at any time, there is a change of circumstances, I am fully aware that I have to comply with the National Asylum Support Service Agreement.”

Exactly what the appellant is supposed to have informed NASS on 19th August is not made clear.

5. The respondent produces a Casual Worker Engagement signed by the appellant on 23rd September 2001. The appellant appears to have been working as a room attendant for Thistle Hotels PLC since then. The respondent also produces copies of the appellant's pay advices for the 24 weeks to 1st March 2002. During this period he earned a total of £2024.75 after tax.
6. By virtue of Regulation 20(1) of the Asylum Support Regulations 2000 ("the Regulations") asylum support for a supported person may be suspended or discontinued if the Secretary of State has reasonable grounds to suspect that the supported person has failed without reasonable excuse to comply with any condition subject to which the asylum support is provided. It is common ground that the appellant breached a condition of his support by failing to inform NASS that he was working. I have to consider whether he has proved, on a balance of probabilities, that he had a reasonable excuse for the breach.
7. The appellant's solicitors submit that, although it is fair to discontinue the appellant's subsistence support, accommodation should continue to be provided. He is called into work as and when he is needed. His monthly earnings are such that he could not pay for accommodation as well as his other essential living needs. They further submit that, although the appellant failed to inform NASS that he was working, he did tell Immigration Services and assumed that the information would be passed on to NASS.
8. I am not clear whether the appellant is submitting that he told Immigration Services when he was actually about to start work or whether he did no more than to obtain their permission to seek work. He may well have believed that any information given to them would be passed on to NASS. However, he ought reasonably to have notified NASS himself, and in writing, as required by the NASS Agreement. It is not submitted on his behalf that he was ignorant of the term of the NASS Agreement. Indeed, there is evidence before me that he was able to claim his 6 monthly additional single payments of support pursuant to Regulation 11 of the Regulations. This suggests that he had a reasonable grasp of the terms upon which support was provided.
9. Moreover, even if the appellant considered at the outset that it was enough to notify Immigration Services that he was working, there should have come a time at which he realised that more should be done. He was consistently earning a good deal more than the sum of £36.54 per week which he was receiving for his subsistence. When he continued to receive this element of his support after having been employed for some weeks, he ought reasonably to have understood that NASS were not in fact aware that he was working.
10. Accordingly I find that the appellant did not have a reasonable excuse for failing to notify NASS that he was working.
11. I have considered the judgment of the Court of Appeal in *R v Kensington and Chelsea ex parte Kujtim* [1999] 2CCLR 340. In the present case the appellant's breach of his support conditions persisted over a period of at least 24 weeks. Moreover, the breach was a very serious one as it led directly to the appellant

continuing to receive support to which he was no longer entitled. I therefore find that *Kujtim* does not assist this appellant.

12. However, I have also to consider the judgment of the Administrative Court in *R v Asylum Support Adjudicator and the Secretary of State for the Home Department ex parte Hussain* [5th October 2001] QBD CO/105/2001. On the evidence before me, I have to agree with the appellant's solicitors that he could not afford his own accommodation. Even if one discounts the first pay period, when his take-home pay was unrepresentatively low, he has been taking home on average slightly less than £90 per week. The respondent's own Threshold Table, which I have criticised in a number of decisions, suggests that a single person aged 25 or over requires £133.84 per week in order to meet the cost of accommodation as well as his other essential living needs. There is no evidence before me to suggest that the appellant can increase his earnings to such a figure.
13. Guided by *Hussain*, I must therefore agree that to deprive the appellant of accommodation support as well as his subsistence would be to infringe Article 3 of the European Convention on Human Rights. On this basis, and to this extent, the appeal is allowed.
14. When discontinuing support the respondent also made reference to Regulation 20(1)(b) of the Regulations. As this Regulation involves suspicion of a criminal offence, I have not thought it appropriate to consider it in a case which is being determined without an oral hearing. Moreover, even if I had determined that the discretion to discontinue the appellant's support had arisen under Regulation 20(1)(b) *Hussain* would still have compelled me to restore his accommodation.

Signed Date
Asylum Support Adjudicator