



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

2nd Floor
Anchorage House,
2 Clove Crescent,
London
E14 2BE
T: 020 7538 6171
F: 0126 434 7902

Appeal Number : AS/17/05/36760
H.O. Ref. :
Appellant's Ref. :

IMMIGRATION AND ASYLUM ACT 1999
THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL)
(SOCIAL ENTITLEMENT CHAMBER) RULES 2008

Tribunal Judge	<u>Mr Ian A Lewis</u>
Appellant	<u>MG</u>
Respondent	<u>Secretary of State</u>

STATEMENT OF REASONS

1. This Statement of Reasons is made in accordance with Rule 34(1) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 ("the Rules"), and gives reasons for the decision made on 12 May 2017, after an oral hearing, allowing the appeal.
2. The Appellant is a national of Libya born on 9 April 1991. He appeals under section 103 of the Immigration and Asylum Act 1999 against a decision of the Secretary of State dated 26 April 2017 to refuse support under section 95 of the Immigration and Asylum Act 1999 (as amended).
3. The Appellant was represented by Mr Wood of ASAP. The Respondent was represented by Ms Bello. The Appellant participated in the hearing through an interpreter: I ensured mutual understanding at the outset and no language difficulties became apparent during the course of the hearing.
4. I have given careful consideration to all the evidence that is before me both oral and documentary. I have borne in mind that where an Appellant appeals against a decision to refuse section 95 support, in the main the burden of proof is on the Appellant, to the civil standard of a 'balance of probabilities', to establish that he meets the criteria for support.

5. However, there is a narrow group of cases to which it is appropriate to make an exception to the general approach. I have ultimately determined that aspects of this particular appeal fall into that category of cases.
6. Where the claimed circumstances leading to destitution arise for reasons which also found an undecided asylum claim, or significantly overlap with the substance of the asylum claim, it raises a conundrum as to the approach to be taken by this Tribunal. It is not ordinarily the role of this Tribunal to evaluate a first instance asylum claim. Moreover the standard of proof applicable in evaluating an asylum claim – reasonable likelihood – is a lower standard than that applicable in determining entitlement to support – the usual civil standard of a balance of probabilities. The provision of support to an asylum seeker who genuinely needs it, is an important mechanism to enable an asylum seeker to pursue his or her claim, and is an essential part of the protection mechanism of the genuine refugee. In such circumstances it would run contrary to the system of protection if this Tribunal were in effect to evaluate the substance of an asylum claim applying the civil standard of proof and reach a conclusion that an asylum seeker was not entitled to support – and thereby interfere with that person's ability to present his/her asylum claim – in circumstances where the same asylum seeker would not need to establish his/her substantive asylum claim – that relates to the same facts - to the same standard of proof in order to be granted asylum.
7. Accordingly, in my judgement, in the rare circumstance where an issue in relation to destitution under a section 95 application or appeal relates to circumstances that substantially overlap with the as yet undecided asylum claim of the applicant/appellant, the Respondent's support assessment team decision-maker, and in turn the Asylum Support Tribunal, should not seek to evaluate the substance of the facts relied upon common both to the issue of asylum and Asylum Support, beyond the analogous approach adopted in section 4 cases with reference to further submissions – that is to say to consider no more than if the evidence relating to both the asylum claim and the issue of destitution is to be characterised as clearly abusive or manifestly unfounded. Only in such a circumstance would a refusal of support be justified. Any other approach runs the risk of frustrating the ability of a genuine asylum seeker to present their asylum claim by denying them accommodation and support on the basis of an evaluation of facts to a higher standard than those same facts require to be evaluated in the course of a consideration of the asylum claim itself.
8. I explore the applicability of this different approach to the standard of proof in the context of the instant appeal below.
9. The principal issue in the appeal is 'destitution'. Pursuant to section 95 of the 1999 Act, destitution will be established if the Appellant "*cannot obtain both (a) adequate accommodation, and (b) food and other essential items*", or will become unable to do so within 14 days.
10. The Appellant came to the UK in January 2015 as a student. He is still enrolled at Cardiff Metropolitan University on an MSc course in Information and Communication Technology Management which he is due to complete in August 2017. I have not been provided with the details of the Appellant's most

recent grant of leave to enter or remain – the Respondent retains the Appellant's passport and no copy or details of his current leave have been provided. Nonetheless it is common ground that he left the UK on 24 January 2017 on a flight to Tunisia. He had purchased a return ticket and it is apparent that at the time of his departure he intended to return to the UK to resume his studies under a continuing leave.

11. In the event when he returned to the UK on 11 February 2017 he claimed asylum. He then made an application for asylum support using form ASF1 submitted on 13 February 2017.
12. The Respondent wrote to the Appellant on 28 February 2017 requesting further information. With the assistance of 'Asylum Help' the Appellant made a response on 13 March 2017 by way of a narrative statement together with supporting documents. Amongst other things he attempted to give a breakdown of transactions shown in his bank statements, together with some supporting evidence in respect of the information provided. The supporting evidence included letters from persons to whom debits in the bank statements related.
13. The Appellant's account includes a claim that he left the UK in possession of £7700 in cash which he wished to pass to his family in Libya. It was the Appellant's case that his father had disappeared and was no longer able to support him in the UK. Indeed his father's business and the family home had been attacked by militia. The Appellant stated at the hearing that this was because his father was pro-Gadaffi. When in Libya the Appellant had himself been detained and ill-treated, and the £7700 taken. The Appellant considered he had been targeted because of his father's support for Gadaffi, and moreover he himself had been accused of being active in the UK in support of resurrecting the old regime. The Appellant has produced a photograph of his back showing injuries; he says he took this himself shortly after his return to the UK. He has also now produced an extract from GP records relating to a consultation on 12 April 2017 supportive of the notion that he was tortured in Libya in early 2017.
14. The Respondent wrote again to the Appellant on 22 March 2017 requesting further information. The Appellant again made a detailed response seeking to address the matters raised by the Respondent and enclosing items of supporting evidence.
15. Thereafter the Respondent refused the Appellant's application for support for reasons set out in the decision letter of 26 April 2017. The letter is a matter of record on file and accordingly I do not set out its full contents here. In essence the Respondent relied upon the following matters in refusing the application:
 - (i) It was not considered credible that the Appellant would have returned to Libya with £7700 if he knew his family was in trouble with the militia.
 - (ii) The Appellant had not produced documentary evidence detailing the demise of his father's business.

(iii) The Appellant had not explained why he had borrowed money from a friend which he had later had to pay back (thereby explaining the debits from his bank account).

(iv) The Appellant's account had been depleted by £24,000 in the period September to December 2016. The Appellant had not provided an adequate 'paper trail' in support of his offered explanation for the depletion of these funds.

(v) The Appellant did not provide evidence that he had asked for a refund of his university course fees.

16. In my judgement the matters summarised at 15(i) and (ii) above are inextricably linked with the substance of the Appellant's asylum application. Accordingly it is not possible to make findings of fact in these regards relevant to the support application and appeal without evaluating credibility in circumstances where the credibility assessment is inevitably going to involve evaluating aspects of evidence that are relevant to the asylum claim.
17. As regards the supposed failure to explain reasons for borrowing money, it seems to me that the Appellant did offer such reasons: eg see his response of 13 March 2017 where he explained that there were often delays in receiving transfers of funds from his father and at such times he borrowed from others, and thereafter paid them back when he received funds from his father. The Appellant offered the entirely plausible explanation that he borrowed to manage cash flow problems.
18. I find the Respondent's reasoning in respect of the notion of the Appellant requesting a refund of university fees somewhat disingenuous. I note that in his ASF1 application under the Heading 'Additional Information' the Appellant indicated a preference to be dispersed to Cardiff to allow him to continue his studies. In his response of 13 March 2017 the Appellant similarly requested that he be dispersed to the Cardiff area to complete his studies, stating "*I am currently in temporary dispersal accommodation in Oldham, so cannot attend classes*". He did not state that he had abandoned his course and it was clear that he wished to continue to study. The question of a refund quite simply did not arise. Further in this context in his response to the request of 22 March 2017 the Appellant not only stated in terms "*I am still registered with them, they are not going to refund the money because I am supposed to finish the course*", but he also produced a letter from the University dated 3 February 2017 confirming that he was able "*to continue on to complete the writing up phase of your Programme*", with a 'hand-in' date for his dissertation of 31 August 2017. Implicit in this is that the Appellant's continuation to completion of his course was not contingent on attending classes because he was now only required to complete his dissertation.
19. Given the above circumstances, in my judgement the only matter of any real issue in the decision letter was the question of the depletion of the Appellant's account in the latter part of 2016. Accordingly the 'live' evidence and submissions at the hearing focussed on this matter.
20. I note the following:

(i) The Appellant has explained the main substance of the debits from his account in the following ways.

(a) He repaid Mr Aeyman Najeb Suliman Abohasan £11,000 between 8 September 2016 and 23 September 2016. He made a number of different transactions because he could not transfer more than £2000 in any one transaction with on-line banking without further authority from his bank; Mr Abohasan had not been pressurising him for the money; the money went into accounts for which Mr Abohasan gave him the details. At the time the Appellant did not give any real thought as to whether the payments were going into the same or different accounts. A letter purportedly from Mr Abohasan has been provided by way of confirmation.

(b) He repaid £3650 to Mr Ahmed Derna on 6 October 2016. This money had been loaned as part payment of his university fees. The Appellant had had to seek specific authorisation from his bank before making a transfer in this sum; he described the process of contacting the bank for authorisation. A letter purportedly from Mr Derna has been provided by way of corroboration.

(c) The Appellant lent £7700 to Mr Abohasan, paid in instalments between 28 September and 26 October 2016. In due course Mr Abohasan paid the Appellant back in cash, and it was this cash that the Appellant took with him when he travelled to Libya via Tunisia.

(ii) The Appellant has additionally provided explanations for other relatively smaller transactions shown in his bank account during this period.

(iii) The Appellant was cross-examined about the transactions at the hearing.

(iv) In my judgement the Appellant has provided a consistent account by way of explanation; there is nothing inherently implausible in his account; his oral evidence suggested he was recalling matters of actual experience – for example in describing the process of seeking authorisation for a payment in excess of £2000 and in explaining how two payments had been made using his debit card at the counter of a branch in Roath Park.

(v) The Appellant has provided supporting evidence that he held £7700 in cash when he left the UK by way of a customs declaration made when he entered Tunisia. The Respondent has provided a CID printout confirming that the Appellant returned to the UK with only £105 in cash and a few Tunisian dirham. It is not otherwise disputed that there are no funds in his bank accounts.

21. The Respondent's case in this context is based on an absence of supporting documentary evidence – a 'paper trail' – in respect of transactions with Mr Abohasan and Mr Derna.

(i) The Respondent's letter of 22 March 2017 requested in respect of the £7700 lent to Mr Abohasan and later repaid to the Appellant "*the paper trail for this money i.e. you must show the transactions debited from your friend's account prior to you leaving the UK, your friend's business accounts that would lead him to require assistance from you and evidence how in such a short period of time he was able to repay you in full*". The decision letter of 26 April 2017 references this request and the Appellant's failure to provide the requested documentary evidence.

- (ii) In terms of supporting documentary evidence, the Respondent's letter of 22 March 2017 requested in respect of the £3650 repaid to Mr Derna evidence of the initial loan being paid into the Appellant's account by way of a transaction shown on a bank statement. However, in oral evidence the Appellant said that the money was paid by Mr Derna directly to the university.
22. Ms Bello also argued that the Appellant had not produced any identification evidence in respect of either friend. I note that he was not specifically requested so to do by the Respondent in the course of the application, and no such point was raised in the decision letter. The Directions issued by the Tribunal did not seek such evidence either.
23. The Appellant acknowledges that he has not produced the specific documents requested by the Respondent. In oral evidence he said he did ask both his friends for their bank statements but both declined to provide them, pleading confidentiality.
24. I have considered all matters in the round. I am not prepared to draw an adverse inference from the absence of the documents sought by the Respondent. No such documents are specifically under the direct control of the Appellant, and I am satisfied that it is more likely than not that such documents were not readily available to the Appellant. Generally I would only be prepared to draw an adverse inference from a failure to provide documents that might reasonably be considered readily accessible. Further, on balance, I do not consider the absence of such documents significantly undermines the other positive qualities of the Appellant's testimony in respect of the depletion of his bank account that I have identified above.
25. For the reasons given above I do not consider it appropriate to evaluate the Appellant's account of the loss of £7700 or the loss of support from his father, beyond observing that I consider that such matters cannot be characterised as without foundation particularly in light of the supporting evidence of claimed torture. I have also indicated above that I do not consider there to be any substance to the Respondent's reasoning in respect of reclaiming university fees, or the supposed absence of an explanation for why friends had loaned him money at different times.
26. In all such circumstances I find that the Appellant has satisfied me on a balance of probabilities that he is presently without sufficient funds to meet both the cost of adequate accommodation and the cost of food and other essential items for the next 14 days. I find that the Appellant is destitute, and therefore has shown that he meets the statutory criteria for section 95 support.
27. The appeal is allowed pursuant to section 103 of the 1999 Act.

Mr Ian Lewis
Tribunal Judge, Asylum Support

SIGNED ON THE ORIGINAL [Appellant's Copy]

Dated 12 May 2017

