



**FIRST-TIER TRIBUNAL  
ASYLUM SUPPORT**

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Appeal Number AS/18/04/37991  
UKVI Ref. E1038774

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

Tribunal Judge Ms Sally Verity Smith  
Appellant .....  
Respondent Secretary of State

**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, and gives reasons for the decision given on Friday the 4th day of May 2018, dismissing the above mentioned appeal.
2. The appellant, an Iranian national born 18 September 1980, appeals against the decision of the Secretary of State who discontinued support under Section 4(1)(c) of the Immigration and Asylum Act 1999, ("the 1999 Act") on 9 April 2018.
3. The grounds for the decision are that, following a review and pursuant to a change in legislation and policy, the appellant no longer satisfies the criteria for Section 4(1)(c) support. Although the appellant's destitution is acknowledged, it is argued that there is no legal or practical obstacle preventing him from leaving the U.K. and, in this way, avoiding any breach of his ECHR rights which may be occasioned by the withdrawal of support.
4. The appellant attended the hearing and gave his evidence in English. He was accompanied by his partner, Ms Dunne. The respondent was represented by Ms Bello.

**Background**

5. The chronology in the appellant's applications for asylum and support are contained in commendable detail in the decision under appeal of 9 April 2018. In summary, the appellant arrived in the UK on 22 October 2002 when he made his claim for asylum. He has been appeal rights exhausted in terms of his

asylum claim since 18 May 2004. On 21 November 2007 he was sent a decision to make a deportation order notice and his appeal against that decision was dismissed on 11 June 2008. He was appeal rights exhausted in terms of his deportation on 11 July 2008. A deportation order was signed and served on 3 September 2008. The appellant has spent two periods in prison following criminal convictions, in 2008 in HMP Preston and in 2010 in HMP Wormwood Scrubs. He was awarded immigration bail by an immigration judge on 21 March 2012 and has been in receipt of Section 4(1)(c) support since 26 March 2012.

### **Relevant Legislative and Policy Provisions**

6. Section 4(1) of the 1999 Act, as amended, stated:

*“The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of persons –*

- (a) temporarily admitted to the United Kingdom under paragraph 21 of Schedule 2 to the Immigration Act 1971;*
- (b) released from detention under that paragraph; or*
- (c) released on bail from detention under any provision of the Immigration Acts”.*

7. On 15 January 2018 the power to provide support under Section 4(1) of the 1999 Act was repealed by Regulation 2(d)(i) of the Immigration Act 2016 (Commencement No. 7 and Transitional Provisions) Regulations 2017 (the Transitional Provisions Regulations). This brought into force Paragraph 1 of Schedule 11 to the Immigration Act 2016 (the 2016 Act), albeit limited to Section 4(1).

8. The appellant falls within a category of persons for whom Section 4(1) support is not automatically abolished, since he was being provided with Section 4(1) accommodation immediately before 15 January 2018 and thus attracts the transitional exemption set out in Paragraph 46(1)(a) of Schedule 11 to the 2016 Act.

9. The respondent issued guidance to Home Office staff dated 16 February 2018 on the handling of transitional cases (the Transitional Cases Policy). The guidance states that:

*“Each case should be considered on its individual merits, but as a general rule support should only continue to be provided where both the following circumstances apply:*

- there is a genuine (legal or practical) obstacle that prevents [the supported person] from leaving the United Kingdom;*
- The person is likely to suffer inhuman or degrading treatment as a result of not being provided with accommodation and the means to meet their essential living needs”*

10. Caseworkers are required to undertake a human rights assessment when considering the withdrawal of Section 4(1) support, which is set out in the guidance as follows:

*“The first step in determining whether accommodation and/or support may need to be provided for human rights reasons is to note that in ordinary circumstances a decision that would result in a person sleeping rough or being without food, shelter or funds, is likely to be considered*

*inhuman or degrading treatment contrary to Article 3 of the ECHR (see: R (Limbuela) v Secretary of State [2005] UKHL 66)....*

*Where the decision maker concludes that there is no support from any ...sources then there will a positive obligation on the Secretary of State to accommodate the individual in order to avoid a breach of Article 3 of the ECHR. However, if the person is able to return to their country of origin and thus avoid the consequence of being left without shelter or funds, the situation outlined above is changed. This is because of the following:*

- *there is no duty under the European Convention on Human Rights to support foreign nationals who are freely able to return home (see: R(Kimani) v Lambeth LBC [2003] EWCA Civ 1150)*
- *if there are no legal or practical obstacles to return home, the denial of support ... does not constitute a breach of Human Rights (see: R(W) v Croydon LBC [2007] EWCA Civ 266)”*

## Submissions

11. Ms Bello confirms that the appellant has been on Section 4(1)(c) support since March 2012. She confirms that since the law changed on 15 January 2018 and Section 4(1) was repealed, the appellant is no longer eligible for support simply on the basis that he is on immigration bail. While the appellant's destitution is accepted, he needs to qualify for support. In order to be eligible for Section 4(1) support, he would need to demonstrate that he could not alleviate his destitution because there is a legal or practical obstacle to his return to Iran. UKVI had no evidence of any such obstacle to the appellant's return to Iran and support under Section 4(1)(c) was terminated as a result. Ms Bello confirms that UKVI considered the appellant's eligibility for support under Section 4(2) and Section 95 and found that he was not eligible for either.
12. The appellant gave evidence today and confirmed his intention to renew his claim for asylum. He had instructed solicitors, JM Wilson, in November 2017 but, to date, no fresh representations have been drafted and no appointment has been made at the Further Submissions Unit of the Home Office in Liverpool. He believes that his solicitors have made a request for his file from the Home Office but was unclear why this is necessary. The appellant confirms his intention to contact a refugee agency in the Birmingham area immediately in order to expedite the preparation and submission of fresh representations in relation to his claim for asylum. The appellant is adamant that he cannot return to Iran.
13. In terms of his health, the appellant confirms that he suffers from anxiety, has been prescribed Pregabalin at 600mg a day and he was referred to Forward Thinking, his local mental health team in Birmingham, some five months ago.
14. The appellant confirms that his fear of return to Iran and his anxiety have increased since the news about Iran's nuclear programme.
15. The appellant referred to his partner, Ms Dunne, and confirmed that they had been together for three years. They do not live together: Ms Dunne shares a house in Birmingham. She is unemployed and is receiving employment support allowance but plans to return to employment soon. They have no plans to marry.

## Decision

16. In this case the appellant's destitution is accepted: the key issue for the hearing was whether or not, by taking steps to return to Iran, the appellant could be expected to remedy any potential breach of his ECHR rights occasioned by the withdrawal of support, namely by way of his destitution.
17. I accept that this is a case to which the transitional provisions apply: the appellant's right of appeal against the decision of 9 April 2018 is accepted.
18. It is important to note that this exemption from the abolition of Section 4(1) support does not guarantee that the appellant continues to be entitled to this support. The effect is merely that his support did not automatically cease on 15 January 2018 and he retained a right of appeal against any subsequent decision to discontinue that support.
19. This is a discontinuance of support and I accept that the burden of proof rests initially with the respondent. The standard of proof is that of a balance of probability.
20. Support under Section 4(1) is provided at the Secretary of State's discretion, as confirmed in *Razai [2010] EWHC 3151 (Admin)* at paragraph 24. As such, the Secretary of State is at liberty to issue policies to caseworkers to guide them in exercising this discretion. Such policies may be reviewed from time to time, as occurred in February 2018 in response to the abolition of Section 4(1) support.
21. I accept that the respondent's Transitional Cases Policy applies in this case. However, the Secretary of State's policy reflects existing case law in concluding that there is no duty under the ECHR to support persons who are freely able to return to their country of origin and that, if there are no legal or practical obstacles to such return, the denial of support does not constitute a breach of ECHR rights – see *R (Kimani) v Lambeth LBC [2003] EWCA Civ 1150* and *R (W) v Croydon LBC [2007] EWCA Civ 266*.
22. The appellant's support was reviewed by the Secretary of State in the context of changes to legislation and policy: she concluded that the appellant is no longer entitled to Section 4(1) support because he is able to resolve any potential breach of his ECHR rights arising from destitution by returning to Iran.
23. On the basis of the above I am satisfied that respondent's decision is correct in law. I find that there is no practical or legal obstacle to the appellant's return to Iran. Given his status as a destitute failed asylum seeker, should he take all reasonable steps to leave the UK, he may apply to the respondent for support under Section 4(2) by application of regulation 3(2)(a). Similarly, if he submits fresh representations in relation to his claim to asylum in person to the Home Office, he may apply to the respondent for support under Section 4(2) by application of regulation 3(2)(e).
24. Taking all of the evidence and submissions into account, I find that the appellant is no longer entitled to support under Section 4(1) and his appeal is accordingly dismissed.

Ms Sally Verity Smith  
 Tribunal Judge, Asylum Support  
**SIGNED ON THE ORIGINAL** (Appellant Copy)

09 May 2018