



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number AS/18/01/37748
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IMMIGRATION AND ASYLUM ACT 1999
THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL)
(SOCIAL ENTITLEMENT CHAMBER) RULES 2008

Tribunal Judge	Ms Gill Carter
Appellant	MR AM
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 Wednesday the 7th day of February 2018, in which I dismiss the above mentioned appeal.
2. The appellant, who is a citizen of Afghanistan in his late twenties, appeals against the decision of the Secretary of State who, on 12 December 2017, refused to provide support under Section 4(1)(a) and/or (b) of the Immigration and Asylum Act 1999 (the 1999 Act) (as amended) on the grounds that the appellant had not demonstrated any exceptional circumstances warranting the provision of support and was not destitute.
3. The appellant attended the oral hearing. Given the nature of the questions to be resolved, his oral evidence was not needed and he was unable to make any relevant submissions, but he followed the proceedings and confirmed his understanding through the services of an independent interpreter in the Pashto language.
4. The appellant was not represented at the hearing itself, but was advised by the Asylum Support Appeals Project (ASAP) prior to hearing. Given that the appeal would focus largely on legislative provisions, I provided a copy of the relevant material to the appellant's ASAP advisor prior to the commencement of the hearing and permitted extra time for advice to be given. The respondent was also unrepresented.

Background

5. The respondent's summary shows that the appellant lodged an asylum claim on 13 March 2008, which was deemed withdrawn on 31 January 2014. The appellant was recorded by the respondent as an absconder between 26 March 2008 and 28 September 2016. He previously came before this Tribunal on 2 June 2017 and this account of his immigration history was confirmed at that time.
6. At the hearing of 2 June 2017 the appellant confirmed that there had been no fresh representations or attempts to reopen his asylum claim made since he failed to comply with the immigration process in 2008. Also in June 2017, he expressed an intention to instruct Duncan Lewis Solicitors to prepare further representations for submission to the Home Office on his behalf. Most recently, a further submissions appointment, set for late 2017, was cancelled and Duncan Lewis confirm that a fresh appointment has now been booked for 12 April 2018.
7. On 10 March 2017 the appellant made his first application for support to the Home Office. The application was made under Section 4(1) and was dismissed by a Judge at this Tribunal on 2 June 2017. The Tribunal Judge accepted the appellant's destitution, but found that his arguments with regard to his medical conditions and possible further representations were insufficient to warrant a grant of support under Section 4(1), since he could be expected to return to Afghanistan in order to alleviate his destitution.
8. The appellant subsequently made another application for support under Section 4(1), which is recorded as received by the respondent on 29 November 2017 and is dated 27 November 2017. It is the 12 December 2017 refusal of that application which is the subject of the current appeal.

The Relevant Legislative Provisions

9. Section 4(1) of the 1999 Act, as amended, states:

"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".*
10. 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), which commenced the provisions of paragraph 1 of Schedule 11 to the Immigration Act 2016 (the 2016 Act), albeit limiting those provisions to Section 4(1).
11. Regulation 2(d)(ii) of the Transitional Provisions Regulations commenced paragraph 46 of Schedule 11 of the 2016 Act insofar as it relates to transitional

provisions relevant to the repeal of Section 4(1). The pertinent Transitional Provisions Regulations read as follows:

“2. The following provisions of the 2016 Act come into force on 15th January 2018—

(d) in Schedule 11—

(i) paragraph 1 (abolition of power to support certain categories of migrant) to the extent that it repeals section 4(1) of the 1999 Act;

(ii) paragraph 46 (transitional and saving provisions) so far as it relates to the repeal of section 4(1) of the 1999 Act.”
[sic]

12. Paragraph 46(1) of Schedule 11 to the 2016 Act sets out those persons who remain unaffected by the above repeal and states as follows:

“The repeals made by paragraphs 1 and 2 do not apply in relation to—

(a) any person for whom accommodation is being provided under section 4 of the Immigration and Asylum Act 1999 immediately before the day on which those paragraphs come into force,

(b) any person who has made an application before that day for accommodation to be provided under that section and whose application has not been determined or withdrawn before that day,

(c) any person who has appealed before that day against a decision not to provide accommodation for the person under that section, or a decision not to continue to provide accommodation for the person under that section, and whose appeal has not been determined or withdrawn before that day, and

(d) any dependant of a person within paragraph (a), (b) or (c).”

My Findings

13. This is an application for support and therefore the burden of proof is upon the appellant. The standard of proof is that of a balance of probability. However, for the reasons given below, I did not proceed to examine either the appellant's destitution or the merits of his application for Section 4(1) support. This is because, in light of the 15 January 2018 repeal of Section 4(1), I must have regard to the Transitional Provisions Regulations and the provisions of paragraph 46(1) of Schedule 11 to the 2016 Act when determining any residual right to support under Section 4(1) that the appellant may have.

14. In this case it is significant that the appellant's application for Section 4(1) support was made in November 2017 and rejected by the respondent on 12 December 2017. He cannot therefore benefit from the repeal exemption set out in paragraph 46(1)(b) of Schedule 11, since he did not have a pending Section 4(1) support application as at the 15 January repeal of Section 4(1) support.

Neither can he benefit from paragraph 46(1)(a) since he has never been provided with support under Section 4(1).

15. I turn therefore to paragraph 46(1)(c) and the date of the appellant's appeal. By virtue of paragraph 46(1)(c), if the appellant had a pending appeal against the refusal of Section 4(1) support as at 15 January 2018, this appeal would continue and, if found to be meritorious, Section 4(1) support could be granted by this Tribunal.
16. However, the appellant's notice of appeal against the refusal of Section 4(1) support was dated 25 January 2018 and received by this Tribunal on 26 January 2018. Therefore it was submitted too late to benefit from the paragraph 46(1)(c) exemption.
17. I note in the grounds of appeal that an explanation for its late delivery is given by the appellant's advisors at the British Red Cross inasmuch as the decision to refuse support was originally sent by the respondent to the wrong Red Cross address and there were delays within the Red Cross itself with regard to offering an advice appointment. These are no doubt the reasons why the duty judge exercised his discretion to admit the appeal out of time at this Tribunal.
18. Nonetheless the Transitional Provisions Regulations and paragraph 46(1) of Schedule 11 to the 2016 Act are clear - Section 4(1) support is no longer a legislative provision available to this appellant. He does not, however, remain entirely without the ability to make a support application, since he is a person who had temporary admission prior to 15 January 2018 and will therefore now be subject to immigration bail. Accordingly he may apply to the Secretary of State to exercise the new powers of support set out in paragraph 9 of Schedule 10 to the 2016 Act. These new support provisions are not a matter for this Tribunal.
19. The appellant is, however, not entitled to support under Section 4(1) and I therefore dismiss this appeal.

Ms Gill Carter
Deputy Principal Judge, Asylum Support

SIGNED ON THE ORIGINAL [Appellant's Copy]

Dated 7 February 2018