



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

Address:

2nd Floor
Anchorage House
2 Clove Crescent
London
E14 2BE
asylumsupporttribunals@hmcts.gsi.gov.uk
Telephone: 020 7538 6171
Fax: 0126 434 7902
Appeal Number AS/18/06/38201
UKVI Ref.

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

| | |
|----------------|---------------------------|
| Tribunal Judge | <u>MR MARTIN PENROSE</u> |
| Appellant | <u>MISS XC</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 and gives reasons for the decision given on Friday the 22nd day of June 2018, dismissing the appeal.
2. Miss Chen is a citizen of China whose date of birth is 29 November 1991. She appeals against the decision of the Secretary of State who, on 5 June 2018 made a decision that he was not eligible for Section 95 Asylum Support. This decision was on the grounds that the appellant is not an asylum seeker.
3. Miss Chen appealed against that decision. The grounds of appeal dated 11 June 2018 state: *"Applicant's asylum claim has not been heard substantively. Applicant advises that her Article 2 and 3 ECHR 1950 rights would be breached on return to China"*. A covering letter from her solicitors Katani & Co asked that the appeal be heard in accordance with her rights within ECHR and in the interest of fairness.

The Hearing

4. The appellant appeared at the hearing by video link from Glasgow and gave evidence with the assistance of a Mandarin speaking interpreter. She was not represented. The Secretary of State was represented by Ms Bello.

5. I gave careful consideration to the appeal bundle provided by the Secretary of State (42 pages) and in addition papers provided in response to the directions (19 pages). Ms Bello handed her written submission and Miss Chen's solicitors Katani & Co submitted a statement in Miss Chen's name dated 21 June 2018 (2 pages).

The Legal Framework

6. Section 95(1) of the 1999 Act reads as follows:

(1) The Secretary of State may 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.

7. An asylum seeker is defined by Section 94(1) as:

A person who is not under eighteen and has made a claim for asylum which has been recorded by the Secretary of State and which has not been determined.

For the purposes of this part a claim for asylum is determined at the end of such period beginning –

- (a) on the day on which the Secretary of State notifies the claimant of his decision on the claim, or
- (b) if the claimant has appealed against the Secretary of State's decision on the day on which the appeal is disposed of, as may be prescribed.

8. Paragraph 333(c) of the immigration rules reads as follows:

If an application for asylum is withdrawn either explicitly or implicitly, consideration of it may be discontinued. An application will be treated as explicitly withdrawn if the applicant signs the relevant form provided by the Secretary of State. An application may be treated as impliedly withdrawn if an applicant ... fails to attend the personal interview as provided in paragraph 339NA of these Rules unless the applicant demonstrates within a reasonable time that that failure was due to circumstances beyond their control. The Secretary of State will indicate on the applicant's asylum file that the application for asylum has been withdrawn and consideration of it has been discontinued.

9. Section 55 of the Borders, Citizenship and Immigration Act 2009 states that the Secretary of State, when in relation to immigration, asylum or nationality, will have regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.

Findings of Fact

10. I make the following findings on balance from the evidence before me.
- (a) The appellant is 27 years old. She is pregnant and due to give birth on 17 July 2018.
 - (b) The appellant wishes to pursue an application for asylum.
 - (c) She arrived in the United Kingdom on 27 July 2017 and was detained on entry at Luton airport when she claimed asylum.
 - (d) She was released from detention on temporary admission on 12 September 2017.
 - (e) Temporary admission was authorised to an address she gave at 37 S Gardens, Edinburgh, which was the address of a friend called HC.
 - (f) On 20 October 2017 a letter sent by the Secretary of State to the appellant at 37 S Gardens, Edinburgh inviting her to attend and interview on 22 November.
 - (g) The appellant did not attend the interview on 22 November.
 - (h) On 23 November 2017 a letter was sent to the appellant at 37 S Gardens noting she had not attended an interview as required and explaining that her asylum claim can be treated as withdrawn if she did not give a reason for the failing to attend within 5 days. It was stated *“failure to do so will result in your claim for asylum being treated as withdrawn”*.
 - (i) On 4 January 2018 the Secretary of State noted the applicant’s asylum file to the effect that her claim had been withdrawn.
 - (j) On 4 January 2018 a letter was sent to the appellant at 37 S Gardens, Edinburgh noting she had failed to attend her asylum interview and that a letter was sent to her on 22 November advising her claim would be treated as withdrawn.
 - (k) On 8 March 2018 Katani & Co contacted the Secretary of State advising they were not acting for the appellant.
 - (l) On 3 May 2018 the appellant applied for asylum support at a police station and was accepted into initial accommodation provided by the Secretary of State. This is recorded as an exceptional adult safeguarding case because she had advised them that she was eight months pregnant.
 - (m) On 9 May 2018 the appellant submitted an ASF1 application for Section 95 support. She advised the Secretary of State she had moved to 3 D Terrace, Edinburgh on 1 October 2017 and stayed there until 3 May 2018 and that the support provided at 37 S Gardens was given by someone she could not remember the name of, who had returned to China. (Page 38).
 - (n) On 25 May 2018 the Secretary of State wrote to Katani & Co solicitors about the appellant confirming that her asylum claim was treated as withdrawn and she was not eligible for Section 95 accommodation/support. A letter stated her support would need to be terminated and that in order to “regulate” her status in the United Kingdom she will need submit a further application for leave and then make a fresh application for Section 4 support.

- (o) On 30 May 2018 the Home Office Scotland Safeguarding Team contacted Katani solicitors by phone to advise urgent action needs to be taken. Phone messages with the same content were left on 2 June 2018 and 5 June 2018.
- (p) On 5 June 2018 the Secretary of State rejected the application for support under Section 95. The refusal letter summarised the procedural history of consideration of her immigration and asylum status to date, confirmed that her asylum claim was being treated as withdrawn and that destitution had not been considered as part of consideration of her claim for support. The letter stated that if she were to appeal and was unsuccessful then the Secretary of State would at the time of eviction refer her to the “appropriate service to ensure you are provided with more suitable support for you and your child”.
11. The appellant states she never knew about her asylum interview or any of the letters which were sent by the Secretary of State to her address at 37 S Gardens. However, I do not give significant weight to her evidence because she has not given a consistent account. In her written statement of 21 June, she said she provided her solicitor with the address at 37 S Gardens when she met them in March 2018 because she was not sure of the exact address where she was staying at the time. At the hearing it was clear that she was not able to give either address, and said she had only given her solicitors a number which was her port reference number. In her ASF1 claim she said she did not know the name of the person who had lived at 37 S Gardens. In her written statement she said she did not receive Home Office letters from November 2017 and January 2018 sent to 37 S Gardens because her friend did not tell her about any mail. At the hearing she gave the name of her friend at that address but said he had returned to China at the end of September 2017.
12. In any event the appellant confirmed at the hearing that she was told when released from detention that she was only allowed to stay at 37 S Gardens. There is no suggestion that she notified the Secretary of State in any way of a change of address until she presented as homeless and made a claim for asylum support in March 2018.

Legal conclusions.

13. This appeal turns on the question of whether the appellant is an asylum seeker according to the legal provisions set out above. It is clear that the appellant was an asylum seeker for the period starting when she made her claim in July 2017. At that time, she satisfied the definition in Section 94(1). The Secretary of State argued that Paragraph 333C of the Immigration Rules applied because she failed to attend her asylum interview, and I am satisfied that the Secretary of State had justification to apply rule 333C on these facts. and she has impliedly withdrawn the claim she made in July 2017. Although there is no direct evidence of the state of the file, I am satisfied from the wording of letters sent by the Secretary of State that the file was marked to show that her application for asylum has been withdrawn.
14. The Secretary of State argue that it follows from the wording of rule 333C that she is put in the same position as if she had explicitly withdrawn her asylum claim. In terms of the wording of Section 95 it might be said that despite the withdrawal the claimant still “has been recorded” and that this state of affairs is not changed by the fact of her withdrawal of the claim. It has been argued in similar cases before this Tribunal (eg 31873) that since use of rule 333C does

not involve determination of the asylum claim and so the claim remains recorded.

15. I do not find this an attractive interpretation of the legal framework as it leads to perverse outcomes. It would mean, for example that somebody who *explicitly* withdrew their claim would still be an asylum claimant until there was a determination by the Secretary of State, something which would potentially carry appeal rights. Such a person would also be eligible for section 95 support until the Secretary of State notified him of a decision on the claim, and then she might be potentially eligible for s.4(2) support as a failed asylum seeker.
16. I prefer the position of Deputy Principle Judge Carter in 29996 which draws a distinction between an asylum claim being rejected and withdrawn: "A rejection requires a decision-making process which ends with the proper service of a rejection letter... The effect of treating an asylum claim as withdrawn is that consideration has not been and will not be made on the claim..." (para 10).
17. In my view the correct interpretation of the legal framework is that eligibility for Section 95 support ended when, in accordance with the immigration rules, she could be treated as having withdrawn her claim. From that time onwards, she had no claim recorded with the Secretary of State, not because of a determination but because of a withdrawal.
18. It is notable in this case, as Ms Bello pointed out, that the appellant has not taken any steps whatsoever in progressing her asylum claim since her release from detention. Her inactivity has gone far beyond merely failing to notify the Secretary of State of a change of address. She has failed to take any step to progress her case, despite being legally represented for over three months and the safeguarding team prompting her representatives repeatedly.
19. I do not find that the grounds of appeal raise significant issues. They are misplaced as they argue the appellant's need for international protection where there has been no substantive decision in her asylum case. As Ms Bello explained to the appellant clearly at the hearing, once she has contacted the Home Office to register her asylum claim again, another application for Section 95 support could be made.
20. I have given consideration to Section 55 of the Borders Citizenship and Immigration Act 2009 which creates a duty on the Secretary of State to safeguard and promote the welfare of children in his decision making. However, applying this to Miss Chen's unborn child, I am satisfied that the arrangement set out in the decision letter of 5 June 2018 (see paragraph 10(p) above) is sufficient and that there is no imminent risk of street homelessness or undue hardship.
21. For these reasons, the appeal is dismissed.

Signed : Mr Martin Penrose
Tribunal Judge, Asylum Support

SIGNED ON THE ORIGINAL [Appellant's Copy]

Dated 25 June 2018