



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

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Appeal Number 37288
UKVI Ref.
Appellant's Ref.

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

Tribunal Judge	<u>Mrs Sehba Haroon Storey</u>
Appellant	<u>Mr ZN</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 made on Thursday 2nd of November 2017 allowing the appeal.
2. The appellant is a national of Azerbaijan born on 22 April 1976. His dependants include his wife and two minor children. He appeals under Section 103 of the Immigration and Asylum Act 1999 against the decision of the respondent dated 21 September 2017, to refuse him asylum support under Section 95 of the Immigration and Asylum Act 1999, (as amended) ("the 1999 Act").
3. Ms. Poyner appeared for the appellant (instructed by the Asylum Support Appeals Project (ASAP)) and Mrs. Crozier represented the respondent.
4. The appellant participated in the hearing through an Azeri interpreter. It was apparent that he experienced some difficulty understanding the interpreter because the latter spoke a different dialect to the appellant. Unfortunately, it proved impossible to secure the services of an interpreter in the dialect required. I am satisfied nevertheless that the appellant was able to take effective part in the proceedings. I have taken into account the apparent problems with interpretation, and these are reflected in my finding of fact and credibility.

BACKGROUND

5. This is the appellant's second appeal before this Tribunal. His first appeal was heard on 26 July 2017 by Judge Ripley and remitted to the Secretary of State for her to consider the additional documentary evidence produced at the hearing. The majority of the documents were in Azeri without an English translation. Judge Ripley accepted that the appellant may not be in a position to pay for certified translations and suggested that the respondent may wish to obtain translations herself.
6. The background to the appellant's entry on visit visas is set out in Judge Ripley's decision, a copy of which is annexed to this decision. I rely on the facts as detailed in her judgment unless specifically varied.

ISSUES

7. The primary issue in this appeal is whether the appellant and his dependants are destitute within the meaning of Section 95 (3) of the 1999 Act and Regulations 6 & 7 of the Asylum Support Regulations 2000 (the Regulations).

THE DOCUMENTARY EVIDENCE

8. I do not propose to list all the evidence produced in this appeal. Suffice to say that I have read the documents comprising the appeal bundle and I am familiar with the evidence contained therein. I have given specific consideration to the visa applications made by the appellant and his dependents (documents 16 – 34); a supplementary submission from the respondent (documents 50 – 52); the respondent's additional submissions in response to directions (documents 53, 64 - 65 and 69 – 71); and her submissions on Section 55 of the Borders, Citizenship and Immigration Act 2009 (the 2009 Act).
9. I have received a helpful chronology and supporting correspondence dated 26 October 2017 from the appellant's representative, (Ms. Woods, Training coordinator and Legal Advisor to the Asylum Support Appeals Project (ASAP)). I have also been provided with the appellant's witness statement dated 26 October 2017 and a letter from St Chad's Sanctuary dated 31 October 2017 addressed "To Whom It May Concern". I am grateful to counsel Ms. Poynor for her written submissions dated 26 October 2017 and 2 November 2017.

THE LEGISLATIVE FRAMEWORK

10. So far as is material, Section 95 of the 1999 Act, as amended, provides the following:

95. Persons for whom support may be provided

- (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 a period as may be prescribed.

[...]

- (3) For the purposes of this section a person is destitute if –
- (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
 - (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.
11. In circumstances where the applicant is not already in receipt of support, the prescribed period for the purpose of Section 95 is 14 days beginning with the day on which the question of destitution or likelihood of destitution falls to be determined. (Regulation 7, Asylum Support Regulations 2000 (the 2000 Regulations)).
12. Regulation 6 of the 2000 Regulations makes further provision as to ‘destitution’, including the matters to be considered by the Secretary of State in determining whether an individual is destitute for the purpose of Section 95 of the 1999 Act. Regulation 6 provides as follows:

“ Income and assets to be taken into account

- 6.—(1) This regulation applies where it falls to the Secretary of State to determine for the purposes of section 95(1) of the Act whether—
- (a) a person applying for asylum support, or such an applicant and any dependants of his, or
 - (b) a supported person, or such a person and any dependants of his, is or are destitute or likely to become so within the period prescribed by regulation 7.
- (2) In this regulation “the principal” means the applicant for asylum support (where paragraph (1)(a) applies) or the supported person (where paragraph (1)(b) applies).
- (3) The Secretary of State must ignore—
- (a) any asylum support, and
 - (b) any support under section 98 of the Act, which the principal or any dependant of his is provided with or, where the question is whether destitution is likely within a particular period, might be provided with in that period.
- (4) But he must take into account—
- (a) any other income which the principal, or any dependant of his, has or might reasonably be expected to have in that period;
 - (b) any other support which is available to the principal or any dependant of his, or might reasonably be expected to be so available in that period; and
 - (c) any assets mentioned in paragraph (5) (whether held in the United Kingdom or elsewhere) which are available to the principal or any dependant of his otherwise than by way of asylum support or support under section 98, or might reasonably be expected to be so available in that period.
- (5) Those assets are—
- (a) cash;

- (b) savings;
- (c) investments;
- (d) land;
- (e) cars or other vehicles; and
- (f) goods held for the purpose of a trade or other business.

(6) The Secretary of State must ignore any assets not mentioned in paragraph (5).

13. Regulation 7 of the 2000 Regulations provides as follows:

7. The period prescribed for the purposes of section 95(1) of the Act is—

(a) where the question whether a person or persons is or are destitute or likely to become so falls to be determined in relation to an application for asylum support and sub-paragraph (b) does not apply, 14 days beginning with the day on which that question falls to be determined;

(b) where that question falls to be determined in relation to a supported person, or in relation to persons including a supported person, 56 days beginning with the day on which that question falls to be determined.

14. Section 103 of the 1999 Act as amended provides a right of appeal to the First-Tribunal (Asylum Support). So far as is relevant, this states:

‘(1) ...(not relevant);

(2a) if the Secretary of State decides not to provide accommodation for a person under section 4, or not to continue to provide accommodation for a person under section 4, the person may appeal to the First-Tier Tribunal.

(3) On an appeal under this section, the First-Tier Tribunal may –

- (a) require the Secretary of State to reconsider the matter;
- (b) substitute its decision for the decision appealed against; or
- (c) dismiss the appeal.’

15. Section 55 of the Borders, Citizenship and Immigration Act 2009 provides:-

‘(1) The Secretary of State must make arrangements for ensuring that –

- (a) the functions mentioned in sub-section (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom; and
- (b) (not relevant).

(2) The functions referred to in sub-section (1) are –

- (a) any function of the SSHD in relation to Immigration, Asylum or Nationality;
- (b) any function conferred by or by virtue of the Immigration Acts on an immigration officer;

(b) ...(not relevant)’

THE APPELLANT'S EVIDENCE

16. I am informed that the appellant's written statement dated 26 October 2017 was prepared by ASAP with the assistance of an Azeri Interpreter. The statement does not provide the name of the interpreter who assisted the appellant or the language and dialect spoken by them. I am assured that the appellant had no problems understanding the interpreter in question, although he does appear to have experienced difficulties understanding every other interpreter that has been provided for him since his arrival in the UK.
17. At the hearing, the appellant confirmed the contents of his written statement, in which he stated the following:
- a) He arrived in the United Kingdom on 28 December 2016, accompanied by his wife and 2 children, aged 11 and 9 years.
 - b) He and his wife do not possess any assets, land, property or investments in Azerbaijan, or elsewhere. They have never held bank accounts in any country. In Azerbaijan, he earned very little money and did not need a bank account. They have no saving. They are not supported by family members, nor is any family member able to support them financially. His visa application form made no mention of a bank account.
 - c) He worked in the Azerbaijan Military Prosecution Archives as a filing clerk. He was issued with an official identification document, which he handed to immigration officials on arrival at Newcastle Airport. The document is retained by immigration officials. His annual salary was 3,600 Azerbaijani Manats (AZN) (approximately £1,570).
 - d) His wife worked for the Ministry of Education at the Azerbaijan State Pedagogical University. Her annual salary was 3,000 AZN (approximately £1,310). The university issued his wife a "bank card". The card had one purpose only, namely to enable her to withdraw her salary at the end of the month. The card belonged to the university and was reclaimed when his wife was forced to resign.
 - e) He and his wife provided a letter dated 26 September 2017 from the Chancellor of the University where she last worked. The letter confirmed that his wife had terminated her contract of employment, that the University suspended her account on 6 February 2017 and reclaimed the bank card.
 - f) He and his wife lost their employment as a direct result of the problems he was having with the Azerbaijani Authorities.
 - g) He confirmed that he owned a flat in Baku, Azerbaijan, which was sold by his agent in November 2016, for 35,000 AZN (approximately £15,285). He said the agent "did everything" because "we" were in hiding. He produced a document (accompanied by a non-certified translation) dated 24 March 2017 as confirmation, that he no longer owns a property in Azerbaijan.
 - h) He provided the respondent with a certificate of sale, which named him as the vendor of the flat, provided the name of the purchaser and the agreed sale price, as at 3 November 2016.

- i) The Baku flat was sold for cash and it is said that “all the proceeds of sale were used to pay the agent”. The agent’s charges included a fee for finding the purchaser, selling the flat, drafting and submitting the visa applications, purchasing four flights to the UK and the costs associated with hiding the appellant in a safe house. The agent also arranged for him to see a doctor and purchased medication on his behalf.
 - j) The agent completed and submitted the visa applications but the appellant was unaware of the contents until the application forms were disclosed to him by the respondent. He did not sign the application form but he did provide fingerprints, photographs and passports.
 - k) He has no income from investments as stated on his visa application form. This information was false and fabricated by the agent.
18. There were a number of inconsistencies in the appellant’s evidence concerning receipt of the proceeds of sale of the flat. Initially, he said that 35,000 AZN was given to him on completion of the sale. He then said that the money was given to a third party who brought the money to him. His evidence then changed and on the third attempt, he claimed that the sale proceeds were handed to the agent. Describing how the 35,000 AZN was spent by the agent, the appellant said that in addition to the expenditure detailed in paragraph 14 (i), the agent also provided financial support for his wife and children who were living with his mother-in-law, and he paid for all costs, transport and for “bribery and whatever”.
19. Save for the above inconsistencies, the appellant did not deviate from his evidence. When I put the inconsistencies to him, the appellant explained that the agent offered the sale proceeds to him but he told the agent to keep the money, because it was of no use to him, as he could do nothing with it.
20. With regards to the visa applications, the appellant stated that he did not know the contents of the application until this was disclosed to him by the respondent in the UK. He said that he was unfamiliar with the process and was not told that he may be interviewed when he attended with his wife and agent to provide fingerprints. He conceded that his agent may have offered bribes on his behalf to get him out of the country.

SUBMISSIONS FOR THE RESPONDENT

21. On behalf of the respondent, Mrs. Crozier made the following submissions:
- a) The respondent now accepted that the appellant and his wife were in employment in Azerbaijan as claimed and that this employment has since ceased. The respondent no longer seeks to challenge whether or not they were dismissed from their employment prior to leaving Azerbaijan (Document 53);
 - b) The respondent accepts that the certificate of sale of the Baku flat, submitted by the appellant is an authentic document (Document 53). What remains in issue is the whereabouts of the proceeds of sale of the flat. Ms Crozier referred to the appellant’s evidence in relation to this critical issue as contradictory and unreliable. She questioned the appellant’s explanation for the discrepancies in his evidence, namely difficulties with interpretation. She questioned the credibility of his statement that the entire proceeds of sale were handed to the agent, the

appellant's lack of concern that he may be interviewed in connection with his visa application, and his insistence that he did not know the contents of his visa application.

- c) Some of the information provided by the appellant on his visa application was untrue. She conceded that had he disclosed his true intentions, a visa would not have been issued. She confirmed that no evidence was available that the UK Visa Officer attempted to verify the information in the visa applications and as such, these cannot be relied upon.
- d) The Home Office can ask for specific documents and the reliability of translations of foreign documents will always be in issue. The availability of certified translations is helpful to all parties and some are central to the issue of destitution. Whilst the Home Office will always seek to test the credibility of documentary evidence, Ms. Crozier accepted that they may need to review their approach to requesting certified translations of foreign documents. She added that any organisation that considers the respondent's request for certified translations unreasonable can seek to judicially review that policy. It is not necessary, in her opinion, to involve the Asylum Support Tribunal.
- e) On the issue of any overlap of the asylum support application with the appellant's asylum application, Ms Crozier expressed the view that asylum support judges should be slow to ask questions about an appellant's asylum application. That said, however, she maintained that the decision of this tribunal is in no way binding on asylum Judges any more than decisions on asylum are binding on this tribunal. Any issues aired here relate solely to the specific issues within the jurisdiction of this tribunal. The decisions of other judges on this point are not wrong, but simply different.
- f) With specific reference to AS/17/05/36760, Mrs. Crozier argued that there is no justification for this Tribunal to decline to make findings of fact to the civil standard on matters that are relevant to asylum support and the asylum claim because findings made in this Tribunal are not binding upon the Immigration and Asylum Tribunal.
- g) In relation to Section 55, Mrs Crozier initially submitted that where the respondent refuses an application for Section 95 support, because the appellant is not destitute, the responsibility for supporting any minor children rests with the applicant. There is no referral to Social Services in these circumstances. In discontinuance cases, the procedure is different because destitution has been accepted at some stage. As such, there is a duty on the respondent to consider fully the requirements of Section 55.
- h) At the resumed hearing, Mrs. Crozier altered her position somewhat in relation to the operation of section 55. She now helpfully suggested that where an appeal against refusal of section 95 support is unsuccessful (and the appellant and his dependants are required to leave section 98 accommodation), the Secretary of State will make a referral to Social Services to consider what, if any, assistance it needs to provide to the appellant's children in the light of its duties under section 17 of the Children Act 1989.

SUBMISSIONS FOR THE APPELLANT

22. On behalf of the appellant, Ms. Poyner made the following submissions:
- a) She said that where there is potential for the Tribunal to make findings of fact that relate also to the appellant's underlying claim for asylum, the Tribunal should be slow to make findings of fact on overlapping issues, or credibility findings that go directly to the appellant's risk on return.
 - b) She stated that the respondent should not place an unreasonable burden upon appellants by requiring them to obtain documents from overseas as this could place them or their dependants at risk of harm from the authorities in the country in question.
 - c) In destitution cases, Ms. Poyner was of the view that the respondent may only consider assets identified in Regulation 6(5) that are available, or might reasonably be expected to be available to the appellant within the period of fourteen days. Furthermore, she could see no statutory provision for property such as housing, homes, jewellery, mobile phones etc to be taken into account, and in her opinion, the respondent had not put forward any legal authority for the proposition that "land" includes an appellant's home.
 - d) On the issue of certified translations, Ms. Poyner felt strongly that the respondent should not routinely ask appellants to provide these in order to discharge the burden of proof on them to prove destitution.
 - e) When considering an applicant's response to requests for further information, she felt the respondent should have regard to the applicant's mental health/other vulnerabilities. And where an applicant was required to respond to or comment on documents (e.g. the visa application) the respondent must disclose the said document. This was especially necessary where the applicant claimed not to have or not to have seen the document in question.
 - f) On safeguarding and promoting the welfare of children. Ms. Poyner felt strongly that the respondent had a duty to consider section 55 when deciding applications for section 95 support and that such duty was not discharged merely by an assertion that section 55 had been considered.

THE DECISION

Primary Issues

23. The main contested issue in this appeal is the whereabouts of the proceeds of sale of the Baku flat. The appellant has given three different versions of how the proceeds of sale were received and utilised. I accept on balance that the discrepancies in his evidence may be the result of poor interpretation. It is unfortunate that the Tribunal was unable to provide the appellant with an interpreter in his language and chosen dialect on two occasions, as a result of which much time was wasted. Consequently, I place little weight on the appellant's difficulty in clarifying the discrepancies, which may have been caused by misinterpretation.
24. I accept Ms. Poyner's submission that the respondent may only consider assets identified in Regulation 6(5) that are available, or might reasonably be expected to be available to the appellant within the period of fourteen days. I do

not, however, accept that statutory authority is lacking for the proposition that “land” includes an appellant’s home. The Law of Property Act 1925, section 205 (ix), provides that land means the actual land together with any buildings on the land, fixtures attached to the land, mines, minerals and some airspace. Accordingly, I find that the respondent is entitled to treat an appellant’s home as an asset under Regulation 6(5). I do not propose to provide guidance on whether a mobile phone is an investment asset for the purposes of asylum support. As a general rule, however, if an item of personal possession can be easily converted into cash (and vice versa) e.g. gold jewellery, or stocks and shares, it may be reasonable to treat such possessions as cash, savings or investments because they are easily converted into cash.

25. It is an important factor in my decision that the appellant volunteered information concerning the ownership of his flat and its subsequent sale. I accept that £15,000+ is a great deal of money in Azerbaijan. However, the appellant has provided a detailed and consistent account of how the money was spent and I accept his evidence that his primary concern was to leave Azerbaijan with his family, for which he was willing to spend whatever was required. Whilst £15,000+ may be a substantial sum of money to pay an agent for facilitating the exit of one individual, the cost and risk involved in assisting a family of four may be considerably greater. In addition to the cost of visa applications, internal transport and air tickets to the UK, I take into account that the proceeds of sale were also used to pay for the appellant’s medical treatment, accommodation and subsistence for the rest of the family.
26. I remind myself of the Court of Appeal judgment in *R (HK) v. SSHD* [2006] EWCA Civ 1037, and the dicta of Neuberger LJ that in many cases, some, even most, of the appellant’s story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered.
27. The appellant has not wavered in the face of robust cross-examination. For the purpose of deciding his asylum support claim, I find as fact that the appellant was assisted by an agent to secure Entry Clearance for himself and his three dependants. I further accept that the agent was given control of the proceeds of sale, to use the sum as required.
28. On the totality of the evidence before me, applying the civil standard of the balance of probabilities, I find as fact that the appellant and his dependants are destitute and entitled to the provision of section 95 support.

Secondary issue

29. I am asked to comment, in particular, on AS/17/05/26760 and AS/16/09/35812. In my judgment, it is never the role of this Tribunal to evaluate a first instance asylum claim and thus, nothing that is decided in an asylum support appeal should impact on the appellant’s asylum claim/appeal. In an appeal against refusal of section 95 support, there are essentially two issues for determination: whether the appellant is an asylum seeker whose claim has not been finally determined; and whether they are destitute within the meaning of the 1999 Act and the Regulations. These issues must be decided on the evidence before the asylum support judge, applying the civil standard of a balance of probability.
30. It is conceivable that an asylum support judge adjudicating on a case may find him or herself faced with facts in issue that significantly overlap with the asylum claim. Nevertheless, it must be possible for asylum support judges to determine

the issues that fall within their jurisdiction, namely the financial circumstances of the appellant at the relevant time. Each case must be decided on its own facts. In AS/17/05/26760 and AS/16/09/35812, the Asylum Support judge exercised caution and avoided evaluating aspects of evidence that he considered were relevant to the asylum claim. I see nothing wrong with that approach. He then went on to make clear findings on destitution, the task entrusted to him.

31. In this case, I am perhaps less concerned with the impact of my judgment on the asylum appeal because I take the view that my findings on credibility are not binding on an immigration and asylum judge – or as I am reminded – on any asylum support judge. When the time comes to make findings of fact in the appellant's asylum claim, I am confident that nothing I say here, having evaluated the evidence before me, will have any bearing on his protection claim.
32. In appeals such as this, where the Tribunal is asked to make findings about an appellant's financial situation in their country of origin, it is helpful for the Tribunal to have access to legible copies of documents before the Entry Clearance Officer or other decision-maker in the UK. Where an appellant has gained entry to the UK having first obtained Entry Clearance, it is all the more crucial that the Tribunal is provided with copies of such documentation and details of the checks carried out to establish their authenticity. It is in my view, placing an unfair burden on the asylum support judge to require them to make findings of fact on the appellant's employment, property ownership or savings abroad when these checks were not carried out overseas by the Entry Clearance Officer, who is best placed to do so. Our task would be far more achievable if evidence was tested overseas, either in face-to-face interviews or through verification of documentation through established channels. In the absence of robust checks overseas, and given the view taken by the respondent that applicants often exercise deception in order to secure entry, it is unlikely that asylum support judges will feel able to make findings on these matters.
33. It is fairly common in asylum cases for appellants to argue that their entry was facilitated by agents who dealt with all aspects of the Entry Clearance process. That argument is not always easy to square with the fact that they are required to sign the form and are responsible for the truth of the particulars therein. Be that as it may, because it is possible that appellants may not in fact have seen or approved the documents in question, they should be provided with copies before they are questioned on the contents. For his part, the appellant's evidence has been consistent in relation to this aspect of the evidence and I accept it.
34. I turn next to the requirement for appellants to obtain documentation from abroad and the requirement to submit certified translations to the respondent. Foreign documents e.g. arrest warrants, correspondence, birth and death certificates etc. are routinely provided by asylum claimants from their country of origin. I do not accept that a request for documentary evidence will necessarily place the appellant or their family and friends at risk of harm from alleged actors of persecution. It depends on whether the contact was likely to alert the alleged actor of persecution in the country of origin to the likelihood that a protection claim had been made or in a manner that might place applicants or their family members in the country of origin at risk. As was stated by the Upper Tribunal in VT (Article 22 Procedures Directive – confidentiality) Sir Lanka [2017] UKUT 368 (IAC), “[w]hether an inquiry was necessary and was carried out in an appropriate way would depend on the facts of the case and

the circumstances in the country of origin". I bear in mind that in asylum support appeals the financial information at issue (concerning income and assets) is not ordinarily such as to alert the authorities in the country of origin to any asylum-related issues. I am satisfied that in asylum support appeals, using common sense and reasonable precautions should enable most applicants to obtain the necessary evidence without endangering either the safety of appellants or their relatives and friends in their country of origin. I am entirely satisfied that the inquiries made by the appellant in this case did not endanger his or his family's safety or that of their relatives and friends in their country of origin.

35. I accept that certified translations are helpful to all parties, especially if they are central to the issue of destitution, and that the respondent is entitled to test the authenticity of the evidence. However, routinely requiring potentially destitute asylum seekers to produce certified translations, places an unreasonable and disproportionate burden on them. In my judgment, this should not normally be necessary, but if it is, the respondent is in general best placed to obtain this quickly and reliably.
36. I take on board Ms. Poynor's comment that the respondent should have regard to an appellant's mental health and other vulnerabilities. In *AM (Afghanistan) v. Secretary of State for the Home Department* [2017] EWCA Civ 1123, the Senior President of Tribunals, Gross and Underhill LJ provided important guidance on the approach to be taken by tribunals for ensuring a fair determination of asylum claims from children, young adults and other vulnerable individuals. The decision is relevant to all tribunal jurisdictions, including asylum support. The respondent is reminded that the need to deal fairly with vulnerable appellants includes giving consideration to their disabilities and vulnerabilities during the decision-making process. That may require giving a vulnerable appellant additional time to respond to correspondence or taking a flexible approach to how a response is communicated. It may also require some allowances being made when assessing credibility for discrepancies.
37. Finally, both parties made lengthy submissions on the applicability of section 55 in section 95 appeals. In my judgment, section 55 requires the respondent to have regard to the need to safeguard and promote the welfare of children when discharging any function in relation to Immigration, Asylum or Nationality. That must include the making of a section 55 decision. Accordingly, when refusing support under section 95 to a family that includes minor children, the decision letter must address how the welfare of the children will be safeguarded. I am assured and accept that the respondent will not evict a family from section 98 accommodation until an assessment has been carried out by Social Services.
38. The appeal is allowed.

Sehba Haroon Storey
Principal Judge, Asylum Support

Dated 27th April 2018

SIGNED ON THE ORIGINAL [Appellant's Copy]

Annexe A
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ASYLUM SUPPORT**

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

Tribunal Judge	Ms Fiona Ripley
Appellant	MR ZN
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 26th day of July 2017, remitting this appeal.
2. The appellant is a citizen of Azerbaijan and his date of birth is 22 January 1976. He has appealed against the decision of the Secretary of State dated 14 July 2017 rejecting an application for support for himself, his wife and their two children under Section 95 of the Immigration and Asylum Act 1999 (“the 1999 Act”) on the grounds that he has not established that they are destitute.

Background

3. A successful application was made for visit entry clearance for the appellant and his dependants in November 2016. According to information set out in letters from the respondent, it was stated in the visa application forms (“VAFs”) of the appellant and his wife that they were both employed and had access to income from investments. It was also stated that they had the equivalent of approximately £900 to spend on their visit. Visas were granted on 21 November 2016.

4. On 26 April 2017 the appellant and his family arrived at Newcastle Airport and the appellant claimed asylum. The family were admitted into temporary accommodation and a formal application for asylum support was made.
5. On 11 May 2017 the respondent wrote to the appellant setting out the information in the VAFs and seeking an explanation of why the appellant could not rely on the funds he had stated were available for his trip, why he was stating that he no longer had a property and did not have any other income or employment.
6. In a letter of 15 May 2017 the appellant replied stating that he did not complete the VAFs and that these were done by an agent. He had sold his home in around November 2016 for the equivalent of £16,000. He had used the proceeds of sale to pay for the agent's fees, visa fees and flights. The appellant had never held a bank account in Azerbaijan and nor had his wife. He was paid in cash and had provided his employment ID on his arrival at Newcastle Airport. His wife was issued by a bank card by her employer which she used to draw her wages. After she was sacked her employer returned the card. The appellant had no investments. The appellant and his wife were both only given verbal notice of the termination of their employment.
7. In the decision which is the subject of this appeal the respondent stated that in the VAFs it was stated that the family would visit London and Edinburgh and fly back to Azerbaijan on 6 January 2017. The Entry Clearance Officer (ECO) had been satisfied that they had the equivalent of nearly £900 available for this trip. The appellant had provided a document stating that he had no property but no evidence of the sale of any property, as referred to in the VAFs. It was stated in the VAF that the appellant was employed as an accountant receiving 850 AZN net and receiving income from investments to the value of 4,800 AZN. The ECO had noted evidence had been provided of the claimed employment, income and personal funds. It was also stated in the appellant's wife's application form that she worked at Azerbaijan State Pedagogical University and received 356 AZN net.
8. It was noted that the appellant had failed to provide any documentary evidence to contradict his visa application or evidence that an agent had fabricated the visas. The appellant has also failed to provide any alternative evidence as to his genuine circumstances in order to show that the documentation provided with his VAF was false. It was noted that the appellant confirmed that he did indeed own a property when the application for a visa was made, however the rest of the details in the VAF were not genuine. It was not accepted that the appellant was destitute. The respondent considered the application of Section 55 of the Borders, Citizenship and Immigration Act 2009.
9. In his grounds of appeal the appellant stated the respondent claimed that he was described as an accountant in the VAF, whereas, he worked at the Azerbaijan Military Prosecution Archives. This could be confirmed from the ID document he handed in on arrival at Newcastle Airport. It was very difficult for him to prove that the information and evidence provided by the agent was false. For example, he could not prove that he did not have a bank account. He had cooperated as best as he could.
10. In directions the respondent was requested to provide a copy of the VAFs, the documents said to have been submitted in support, notes of the ECO and any evidence of any verification checks. The respondent was also requested to provide a copy of the appellant's claim for asylum, interview notes and documentation that were stated to have been provided on his arrival at

Newcastle Airport. Finally, the respondent was requested to provide a supplementary submission addressing the points raised by the appellant in his Notice of Appeal.

11. The appellant was asked to provide evidence of his true identity, occupation, family and financial circumstances, if, as he alleged, the information in the VAFs was not correct. He was also asked to provide information about family and friends in the UK and abroad and their financial circumstances.
12. On 25 July 2017 the respondent faxed a letter enclosing further documents and providing further information in relation to his family. He stated his father had passed away and his mother was dependent on the appellant's sister and she, in turn, had two dependent daughters of her own who were in education. The appellant's sister was also unemployed. The appellant's wife's father had also died and her mother was living with her two brothers, both of whom were also unemployed. The appellant provided statements from his mother and his brothers-in-law in Azeri.
13. The appellant provide a letter from his brother who stated that he was living alone in a small one bedroom flat in Stockton-on-Tees and was dependent on Jobseeker's Allowance. He provided evidence of the latter. The appellant also provided a photograph of himself, that he stated was taken at work, and a document dated 23 September 2016, which he stated was notice of the termination of his employment. He submitted a further document which he stated was a certificate confirming the sale of his property on 3 November 2016. At the commencement of the hearing the appellant provided a small booklet which he had received in the post. He stated that this was his wife's employment booklet and it contained an entry which said that her employment ceased on 6 February 2017.

Oral Evidence and Submissions

14. The appellant attended his appeal hearing and gave his evidence Azeri. Neither party were represented.
15. The appellant stated that he decided to leave Azerbaijan in October 2016 after he had been detained for 15 days because he had revealed that the government was involved in illegal activities. The appellant's job involved filing documents in an archive. The letter confirming that his employed ceased stated that this was because he had failed to carry out his job properly. He had lost his employment before this on 23 September 2016. His wife had been later asked to meet with her employers and they had forced her to resign. She had no choice. He confirmed her place of work, as recorded on the VAF.
16. The appellant did not leave Azerbaijan after his visa was issued in November 2016 because he was in hiding outside Baku and waiting for the agent to assist him. The agent had connections which meant that he did not have to show his passport at control in Azerbaijan or Georgia, where he travelled to when he left Azerbaijan.
17. The appellant was asked why he had obtained the document dated 24 March 2017 which stated that he had no property in Azerbaijan. The appellant twice stated that the agent told him to get it and he did not know why. He then stated that the agent had been responsible for everything and had sold his property for him, because he was in hiding and had also got the report dated 24 March 2017.

18. He contacted the agent through a friend when he had to leave. He could not give any details about the friend because he did not want to put his life in danger. Whilst he was in hiding his wife was living with her own mother in Baku. An agent had accompanied him from Azerbaijan to Georgia and on the flight to Turkey. He and his family had travelled alone without any funds from Turkey to Amsterdam and then to the UK.
19. A full account of the appellant's evidence is set out in the record of proceedings.

The Law

20. Section 95 - Persons for whom support may be provided:-
- (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.
- (2) In prescribed circumstances, a person who would otherwise fall within subsection (1) is excluded.
- (3) For the purposes of this section, a person is destitute if—
- (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
- (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.
21. Regulation 6(4) of the 2000 Regulations states that in considering the question of destitution the Secretary of State must take into account:-
- 6(4) (c) any other income which the appellant, or any dependant of his, has or might reasonably be expected to have in that period;
- (d) any other support which is available to the appellant or any dependant of his, or might reasonably be expected to be so available in that period;

The period in question for new applications is 14 days.

Findings and Reasons

22. It is for the appellant to establish on the balance of probabilities that he is destitute.
23. The appellant has now provided additional documentation which he has said shows that his employment and that of his wife have both been terminated and also confirms the sale of the property. He has also provided evidence from relatives in Azerbaijan to indicate that they do not have the means to support him. All these documents are in Azeri and require translation.

24. As noted in directions, the respondent has failed to provide the VAFs or ECO notes upon which she relies to support her claim that the appellant has access to funds that he is failing to disclose. As also noted by the respondent, the appellant has not disputed that he did own his own property when the VAFs were completed. Further he has confirmed that his wife's employment details were correctly recorded. However he has now provided evidence which would indicate that he was not in fact employed, as claimed on the VAFs. The appellant, in any event, has disputed that he ever worked as an account as such. The appellant's VAF may also provide the name of an employer. The letters from the respondent (including the decision letter) provide figures for the alleged income of the appellant and his wife and different figures relating to their alleged earnings, all taken from the VAFs. It is not clear what the relationship is between those two figures. Finally, the details of the evidence seen and any verification checks carried out by the ECO would assist the Tribunal to reach a determination.
25. This appeal is remitted for the respondent to consider the further documentation provided by the appellant. As most of these documents are in Azeri, translations will be required. It is noted that the appellant has stated that he has no income and will not be able to pay for certified translations. The respondent should consider obtaining translations herself. If the decision to refuse is maintained and again appealed, then the respondent must provide the documents requested in the Directions Notice dated 20 July 2017.
26. I am remitting this appeal for the respondent to reconsider her decision.

Ms Fiona Ripley
Tribunal Judge, Asylum Support

Dated 27 July 2017

SIGNED ON THE ORIGINAL [Appellant's Copy]