



**FIRST-TIER TRIBUNAL  
ASYLUM SUPPORT**

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Appeal Number 38725  
UKVI Ref. T1130378

**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 Tuesday the 30<sup>th</sup> day of October 2018, dismissing the above-mentioned appeal.
2. The appellant, a citizen of Guinea born on 31 December 1986, appeals against the decision of the Secretary of State who, on 5 October 2018, decided to refuse his application for support under Section 95 of the Immigration and Asylum Act 1999 ("the 1999 Act") on the grounds that he was not destitute.
3. In his Notice of Appeal, the appellant confirms that he does not require an oral hearing of his appeal. I have considered the appellant's request with reference to Rule 27 of the Rules and I am satisfied that within the particular circumstances of this case, an oral hearing is not necessary for the appeal to be disposed of justly. Accordingly, I proceeded to determine this appeal under Rule 27 of the Rules.

**Background**

4. The decision under appeal dated 5 October 2018 is predicated on the appellant's failure to satisfy the destitution criteria as his essential living needs including accommodation are being met in full at the Immigration Detention Centre at Colnbrook. The appellant is informed that if he is granted immigration bail he can make a fresh application for Section 95 support when he is released from detention or he could make an application for Section 98 support if he has an immediate need for accommodation upon release.

5. The appellant appealed against that decision and stated that the respondent had misdirected himself in law by failing to apply the correct test for destitution and confirmed that he had been granted bail in principle on 16 May 2018 and was waiting for a suitable release address from the respondent.
6. The respondent submitted UKVI internal email correspondence dated 18 October 2018 establishing whether the appellant's indefinite leave to remain (ILR) had been revoked on or about 11 April 2017 (following deportation proceedings). UKVI confirms on the same day that the appellant's ILR has not been revoked and the appellant is therefore ineligible for asylum support on that basis.
7. The AST issued directions to both parties to this appeal.
8. The appellant was directed to provide a written response to the assertion that he enjoyed indefinite leave to remain and could therefore remedy his destitution through employment and mainstream benefit while he sought employment. He was asked to provide any evidence to show that his indefinite leave to remain had been fully and finally revoked, and evidence to show that he was still subject to a grant of bail in principle which had not been withdrawn and any other evidence to show that he was entitled to Section 95 support.
9. The respondent was directed to provide all evidence to show that the appellant continued to enjoy indefinite leave to remain, confirmation that the appellant's bail in principle had now been withdrawn and a written submission which responded to the appellant's grounds of appeal of 1 October 2018 asking the Tribunal to make two key findings namely that he was an asylum seeker as defined and that he was destitute as defined. The latter finding was important due to the appellant's current status as an immigration detainee without access to accommodation. The issue between the appellant and the respondent had been the effect of the appellant's deportation order on his indefinite leave to remain while his appeal against deportation was pending. The appellant asserts in his grounds of appeal that even if his indefinite leave to remain remains valid while his deportation appeal is outstanding he currently meets the destitution test as he cannot secure accommodation and welfare provision in order to avoid destitution. He is entitled to asylum support by virtue of his immigration status as an asylum seeker and by virtue of his destitution.

#### **The respondent's position**

10. The respondent replied to directions on 25 October 2018 submitting the following: -
  - (a) The appellant's grant of indefinite leave to remain on 27 September 2010.
  - (b) Confirmation that he had been granted bail in principle on 1 June 2018 subject to being offered Schedule 10 accommodation, such accommodation being subject to approval. The appellant is not eligible for Schedule 10 accommodation and his application for support is refused. However, UKVI advised that he may be eligible for support under Section 4(2) and he is asked to complete an application for such support.
  - (c) UKVI decision of 18 July 2018 refusing Section 4(2) support on the grounds that he is not destitute as he enjoys indefinite leave to remain.
  - (d) Response to the appellant's pre-action protocol letter of 26 July 2018.
  - (e) Decision of 4 September 2018 refusing Section 4 support on the grounds that the appellant was not destitute as he enjoyed indefinite leave to remain.

- (f) The respondent's written submission confirms that the appellant was granted indefinite leave to remain on 27 September 2010 which remains valid while his appeal against the decision to deport is outstanding. The appellant can secure public or private support until his grant of leave is revoked. The appellant was advised in writing that his ILR remained valid on 18 July 2018 and again on 26 July 2018 and again on 4 September 2018. The Home Office computer database show that the appellant's indefinite leave remains outstanding and has not been revoked. UKVI confirms that the appellant's offer of bail in principle had been withdrawn as no accommodation had been identified for him.
11. In summary the respondent confirms his position that the appellant's indefinite leave to remain renders him eligible for mainstream benefit from the DWP and for assistance with housing from his local authority. He therefore has means to obtain adequate accommodation and the means to cover his essential living needs and he is not destitute for the purposes of asylum support. The appellant can begin the process of seeking assistance from his local authority in advance of his anticipated release.

### **The appellant's position**

12. The appellant replied to directions on 25 October 2018 confirming that he has been detained since March 2018, that he had been granted bail in principle subject to the provision of suitable asylum supported accommodation. The appellant's immigration appeal to the Immigration and Asylum Chamber was dismissed on 19 October 2018 and he is currently considering whether or not to appeal that decision. As such he remains an asylum seeker as defined by Section 94(3).
13. The appellant rejects the respondent's position that his indefinite leave to remain remedies his destitution by way of receipt of mainstream benefit and/or employment. The appellant asserts that a deportation order was signed on 30 November 2017 and his indefinite leave to remain will continue until he is appeal rights exhausted at which point the current deportation order will take effect and his indefinite leave to remain will no longer exist. The appellant refers to Section 5(1) of the Immigration Act 1971 which confirms that a deportation order invalidates any leave to enter or remain granted before the Order is made or while it is in force. The appellant states that even if it is correct that he currently enjoys indefinite leave to remain he cannot remedy his destitution by obtaining mainstream benefit or employment as he has been refused asylum supported accommodation. The appellant is content to accept the respondent's position that his indefinite leave to remain has not been revoked subject to this Tribunal considering it to be correct in law. The appellant confirms that his grant of immigration bail in principle has now been withdrawn. The appellant urges the Tribunal to consider that in order for him to obtain bail from the Immigration and Asylum Chamber either in principle or in full, he needs asylum supported accommodation provided by the respondent. The respondent's decision to refuse him on the basis that he is not destitute is erroneous because the decision to detain him undermines the possibility of him being released and accessing mainstream assistance or employment. It should be noted that one of the conditions of his bail might be that he is not allowed to work. Finally, the appellant submits that he satisfies the test for Section 95 support: he remains an asylum seeker by virtue of his outstanding appeal to the Immigration and Asylum Chamber and he is destitute as defined by Section 95(3) because he does not have adequate accommodation or the means of obtaining it. Accommodation of a prison cell is not adequate and he has no accommodation available to him once he is released.

14. There was no other evidence from either party to this appeal.

### **The law and regulations**

15. Section 95(3) states that 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.
16. Regulation 4 of the Asylum Support Regulations 2000 (as amended) states:
- (1) The following circumstances are prescribed for the purposes of subsection (2) of Section 95 of the Act as circumstances where a person who would otherwise fall within subsection (1) of that section is excluded from that subsection (and, accordingly, may not be provided with asylum support).
  - (4) A person falls within this paragraph if at the time when the application is determined –
    - (b) he is a person to whom social security benefits apply.
  - (6) For the purposes of paragraph (4), a person is a person to whom social security benefits apply if he is –
    - (a) a person who by virtue of Regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000(a) is not excluded by Section 115(1) of the Act from entitlement to –
      - (i) income-based jobseeker's allowance under the Jobseekers Act 1995(b) or
      - (ii) income support, housing benefit or council tax benefit under the Social Security Contributions and Benefits Act 1992(c);
17. Regulation 6(4) of the Asylum Support Regulations 2000 (as amended) states that when taking into consideration whether destitution is likely the respondent must take into account the following –
- (a) any other income which the principal ... has or might reasonably be expected to have in that period;
  - (b) any other support which is available to the principal ... or might reasonably be expected to be 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 ... otherwise than by way of asylum support or support under section 98, or might reasonably be expected to be so available in that period.

### **Findings and reasons**

18. I accept that the burden is on the appellant to show that he will become destitute within the next 14 days. I accept the definition of destitution is found at paragraph 15 above.
19. I find that the appellant will need to demonstrate that he is destitute despite the respondent having confirmed in writing on at least three occasions that the appellant continues to enjoy indefinite leave to remain.
20. I have considered the appellant's submission regarding his having lost his ILR by application of Section 5(1) of the Immigration Act 1971 when his deportation order was signed on 30 November 2017. The respondent has confirmed that

the revocation of the appellant's indefinite leave to remain will only occur after he is appeal rights exhausted in terms of his deportation. Until such time the appellant continues to enjoy indefinite leave to remain.

21. I find that the appellant currently enjoys indefinite leave to remain.
22. I find that the benefits attached to that status take him outside the definition of destitution as defined by Section 95(3).
23. I find, in any event, that the appellant is excluded from asylum support by application of Regulation 4(4) of the Asylum Support Regulations 2000.
24. The appellant should contact the welfare services within his detention centre to establish how he might apply for mainstream benefit and assistance with housing before he is released.
25. Appeal dismissed.

Signed : Ms Sally Verity Smith  
Tribunal Judge, Asylum Support  
**SIGNED ON THE ORIGINAL** [Appellant's Copy]

Dated : 30 October 2018