



**FIRST-TIER TRIBUNAL  
ASYLUM SUPPORT**

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Appeal Number AS/20/08/42323

UKVI REF:  
18/08/00643

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

Tribunal Judge	<u>MS SALLY VERITY SMITH</u>
Appellant	<u>HMA</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 Wednesday 9 September 2020 dismissing this appeal.
2. The appellant appeals against the decision of the Secretary of State who on 8 July 2020 decided to refuse Section 95 support on the grounds that the appellant is no longer an asylum seeker.
3. At the oral hearing of the appeal, which was conducted by way of secure telephone conferencing on 9 September 2020, the respondent was represented by Ms Bello. The appellant was represented by Mr. Ahluwalia of the Asylum Support Appeals Project. The appellant gave his evidence in Kurdish Sorani by way of an independent court interpreter.

**The decision under appeal dated 8 July 2020**

4. The respondent's position is confirmed in the decision of 8 July 2020 as follows. The appellant is an Iraqi Kurd born 22 August 1988. He arrived in the UK on 26 June 2018 and made his claim for asylum on the same day. That claim was recorded as withdrawn by the Home Office on 31 January 2019 due to the appellant having absconded.

5. The appellant applied for section 95 support on 23 June 2020 which application was refused on 8 July 2020 on the grounds that he was no longer an asylum seeker. The respondent asserts that the appellant may be eligible for section 4 support.

**Directions and response**

6. The Tribunal warned the appellant on 25 August 2020 that his appeal may be struck out as a preliminary issue on the papers under Rule 8(3)(c) on the basis that there was no reasonable prospect of his appeal succeeding and directing him to provide by 2 September 2020 evidence to show that he is an asylum seeker entitled to section 95 support, namely that he has a claim to asylum which is recorded as such with the Secretary of State and which remains outstanding and that the respondent was wrong in asserting that his claim for asylum was withdrawn on 31 January 2019.
7. The respondent was directed to explain why the appellant may be eligible for section 4 support (as asserted in the decision under appeal) given her assertion that his claim for asylum was withdrawn (not rejected) on 31 January 2019 together with confirmation that the appellant's support, if at all, is by way of Schedule 10(9) of the Immigration Act 2016.
8. On 7 September 2020, some five days after the deadline for compliance with the Tribunal's directions, the Asylum Support Appeals Project on behalf of the appellant requested an oral hearing of this appeal on the grounds that the appellant's eligibility for support as a rejected asylum seeker by way of Section 4 should be determined. The appellant's appeal was duly scheduled for oral hearing by way of secure telephone conferencing on 9 September 2020 in order for substantive consideration to be given to the appellant's eligibility for support under sections 95 and 4.
9. **The respondent's position**  
The respondent's court bundle and written submissions confirm the appellant's immigration chronology which is rehearsed at paragraph 4 above. Ms Bello confirms that the appellant has not been an asylum seeker since his claim for asylum was recorded as withdrawn on 31 January 2019 due to the appellant having absconded by failing to attend his asylum interview on 21 December 2018.
10. Ms Bello refers to two documents in the court bundle, namely the respondent's letter of 28 December 2018 addressed to the appellant asking him why he did not attend his asylum interview of 21 December 2018 and requiring him to make contact with UKVI. Following the appellant's failure to respond, UKVI wrote to the appellant once more on 31 January 2019 confirming that his claim for asylum was recorded as withdrawn due to his failure to comply. Finally, on 18 February 2019 UKVI wrote to the appellant for the third time, terminating section 95 support as the appellant was no longer an asylum seeker. The appellant did not appeal against that decision.
11. Ms Bello apologises for the error in the decision of 8 July 2020: the caseworker identified the appellant as being possibly eligible for section 4 support: this is incorrect. The appellant is not eligible for section 4

support, his claim for asylum was withdrawn not rejected. The appellant's eligibility for support if it all lies by way of Schedule 10(9); the appellant may apply for the same via Migrant Help.

12. In summary, the appellant is no longer an asylum seeker entitled to section 95 support. He ceased to be an asylum seeker on 31 January 2019 when his claim for asylum was recorded as withdrawn. He is not a failed asylum seeker entitled to section 4 support as his claim for asylum was recorded as withdrawn, not recorded as rejected.

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

13. Mr Ahluwalia, for the appellant, sets out his position as follows.
14. First, the appellant's date of birth is 22 August 1986, not 22 August 1988.
15. Second, it is conceded that the appellant is no longer an asylum seeker and he is no longer eligible for section 95 support.
16. Third, the appellant is a rejected asylum seeker and, as such, is eligible for section 4 support. When the respondent withdrew the appellant's claim for asylum on 31 January 2019, she had rejected that claim: the appellant satisfies Section 4(2)(b). Mr Ahluwalia relies on the findings of this Tribunal in appeals 40826 and 40868 of 19 and 25 November 2019 where it was found that Rule 339M, in which asylum caseworkers are given a list of situations where they may reject a claim for asylum, indicates that a claim for asylum such as the appellant's and the claimants in 40826 and 40868 was not withdrawn but, rather, rejected. The Tribunal Judge had stated in 40826 that "in my judgement a 'deemed' or 'impliedly' withdrawn decision constitutes a rejection of an asylum claim within the meaning of section 4(2)(b)."
17. There is no other evidence from either party to this appeal.

### **The Legal Framework**

18. An asylum seeker is defined by Section 94(1) of the Immigration and Asylum Act 1999 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.

19. Section 4(2) of the Immigration and Asylum Act 1999 (as amended by Section 49 of the Nationality, Immigration and Asylum Act 2002 allows the Secretary of State to provide, or arrange for the provision of, facilities for the accommodation of a person and his dependants if –

- (a) he was (but is no longer) an asylum seeker; and
- (b) his claim for asylum was rejected.

20. 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.*

21. Paragraph 339M states:

*"The Secretary of State may consider that a person has not substantiated their asylum claim... and thereby reject their application for asylum... if they fail, without reasonable explanation, to make a prompt and full disclosure of material facts, either orally or in writing, or otherwise to assist the Secretary of State in establishing the facts of the case; this includes, for example, failure to report to a designated place to be fingerprinted, failure to complete an asylum questionnaire or failure to comply with a requirement to report to an immigration officer for examination."*

### **Findings of Fact and decision**

22. I consider Mr Ahluwalia's submission set out at paragraph 16 above carefully and on balance. I read with interest the two decisions of my judicial colleagues in 40826 and 40868. I remind Mr Ahluwalia that I am not bound by these decisions.
23. I reject Mr Ahluwalia's third submission for the following reason: I find that Rule 339M gives a list of situations where one of the respondent's decision makers may reject a claim for asylum. I do not find that if an applicant falls within that list his or her claim for asylum has been rejected. In order for me to find that a claim for asylum had been rejected, I would require evidence of notification of that rejection from the respondent by way of a decision notice to that effect and/or computer records recording that rejection.
24. I do not find that simply because an applicant falls within the list set out in Rule 339M, his or her claim for asylum has been rejected. It may be rejected at some point in the future, the respondent's decision maker

having relied, or not, on the list in 339M, but the claim might be successful. For support purposes, a claim for asylum is not rejected or accepted until the applicant is notified of the decision by the respondent: section 94(1)(a) of the Immigration and Asylum Act 1999 refers.

25. I find that in the event that an asylum claim has not been accepted or rejected but is no longer under consideration, as in the instant case, again the respondent's position will be notified to the applicant in writing and/or recorded in the respondent's computer records.
26. In the instant case, I find that not only was the appellant notified in writing on 31 January 2019 that his claim for asylum was recorded as withdrawn by the respondent, the same was also recorded in the respondent's computer records triggering the termination of his section 95 support on 18 February 2019. I note that in cases 40826 and 40868, the Tribunal Judge refers to an 'implied' withdrawal and a 'deemed' withdrawal of a claim for asylum. That is not the case here: the appellant's claim for asylum was recorded as withdrawn on 31 January 2019.
27. For the sake of completeness, I accept that this Tribunal has a long history of finding that an applicant's immigration status for support purposes is found by way of the respondent's notification and/or recording of the same by reference to section 94(1) of the Immigration and Asylum Act 1999. An applicant's immigration status for support purposes is not found by default or in the absence of such notification or recording as to do so would lead to a lack of clarity for an applicant and resultant unfairness.
28. I therefore make the following findings on balance from the evidence before me:
  - (a) the appellant was an asylum seeker from 26 June 2018, when his claim for asylum was recorded by the respondent, until 31 January 2019, when that claim was recorded as withdrawn by the respondent;
  - (b) from 26 June 2018 to 31 January 2019 the appellant's eligibility for asylum support was by way of section 95;
  - (c) he has not been eligible for section 95 support since 31 January 2019;
  - (d) the appellant's claim for asylum has not been rejected;
  - (e) the appellant fails to satisfy section 4(2)(b);
  - (f) the appellant is not eligible for section 4 support;
  - (g) when the appellant's claim for asylum was recorded as withdrawn by the respondent on 31 January 2019, he was informed of the same in writing on that date and again on 18 February 2019 when his section 95 support was discontinued for that reason;
  - (h) the appellant is not eligible for support under section 95 or section 4.
29. The appellant should make an application for Schedule 10 support with all due speed as suggested at paragraph 11 above. He should note, however, that, as his current support application was refused on the grounds of his immigration status only, his destitution has not yet been

tested by the respondent. Furthermore, in the event that his Schedule 10 application is refused, there is no right of appeal against that decision to this Tribunal.

30. Appeal dismissed.

11 September 2020

Sally Verity Smith  
Tribunal Judge, Asylum Support