



Tribunals Service

Asylum Support

FAX

To: Mrs B Nazrah Ismail **Fax no:** 0208 711 6235 2nd Floor
 Anchorage House
 2 Clove Crescent
 London
 E14 2BE

From: Clerk to the AS Brian

No. of pages: 8 Telephone: 020 7538 6171
(Incl. this one)

Date: 05/06/2014 **Time:** Fax: 020 7538 6200

Message:

Appellant(s) : Mr Mohammed Afham Jainudeen Ismail
Home Office Reference No. : 10/10/00644/003
AS Reference No. : AS/14/05/31456/ZM **Your Reference No.:**

Subject: Appeal against Home Office

Enclosures:

AS Notification of Appeal	<input type="checkbox"/>	Invalid Appeal Notice 1	<input type="checkbox"/>
Appellant's Notice of Appeal	<input type="checkbox"/>	Invalid Appeal Notice 2	<input type="checkbox"/>
Appellant's Supporting Documents	<input type="checkbox"/>	Invalid Appeal Notice 3	<input type="checkbox"/>
Rule 22(2) (a) Letter 1.Inv & OOT	<input type="checkbox"/>	Notice of Hearing	<input type="checkbox"/>
Rule 22(2) (a) Letter 2. Inv.	<input type="checkbox"/>	Tribunal Judge's Directions	<input type="checkbox"/>
Rule 22(2) (a) Letter 3.OOT	<input type="checkbox"/>	Decision Notice	<input checked="" type="checkbox"/>
Withdrawal Notice	<input type="checkbox"/>	Statement of Reasons	<input checked="" type="checkbox"/>

Other

The above papers have today been sent to:

Appellant
 Respondent

The contents of this facsimile message are private and confidential

**IF ANY PART OF THIS FAX IS UNCLEAR
PLEASE TELEPHONE:**



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

2nd Floor
Anchorage House
2 Clove Crescent
London
E14 2BE

Telephone: 020 7538 6171

Fax: 020 7538 6200

Appellant
Respondent
Representative
File
Other

:
AS/14/05/31456/
Appeal Number ZM
:
Home Office Ref. 10/10/00644/003
Appellant's Ref. :

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

Tribunal Judge Ms Joanna Swaney
Appellant (s) Mr Mohammed Afham Jainudeen Ismail
Secretary of State
Respondent Secretary of State

DECISION NOTICE

My decision is as follows:

~~(a) The appeal is remitted to the Respondent to reconsider the matter,~~

~~(b) The appeal is dismissed,~~

(c) I substitute my own decision for the decision appealed against as follows:

The appellant is entitled to the provision of support in accordance with Section 4 of the Immigration and Asylum Act 1999 (as amended by Section 49 of the Nationality, Immigration and Asylum Act 2002).

Ms Joanna Swaney
Tribunal Judge, Asylum Support

Wednesday, 04 June 2014



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

Address:

Mr Mohammed Afham Jainudeen Ismail
47B Colchester Avenue
London E12 5LF

2nd Floor
Anchorage House
2 Clove Crescent
London
E14 2BE

Telephone: 020 7538 6171

Fax: 020 7538 6200

Appeal Number AS/14/05/31456

UKBA Ref. 10/10/00644/003

Appellant's Ref.

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

Tribunal Judge	<u>Ms Jo Swaney</u>
Appellant	<u>Mr Mohammad Afham Jainudeen Ismail</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 (the Procedure Rules), and gives reasons for the decision given on Wednesday the 4th day of June 2014 substituting my decision for that of the respondent.
2. The appellant, a citizen of Sri Lanka born on 13 July 1979, appeals against the decision of the Secretary of State who on 15 May 2014 decided to refuse his application for subsistence only support under Section 95 of the Immigration and Asylum Act 1999 (the 1999 Act) on the grounds that subsistence only support could not be provided to him where the Secretary of State was not satisfied as to the adequacy of the appellant's accommodation.
3. The appellant requested an oral hearing of his appeal. He attended and gave evidence in English. His wife also attended the hearing and acted as his representative. The respondent was represented by Mr Little, a presenting officer.
4. The appellant initially made an application for accommodation and support pursuant to section 95 of the 1999 act. His application was granted and he was offered accommodation in Birmingham. The appellant refused to travel to Birmingham on the grounds that his children were established in school in London and because he had a number of medical conditions requiring treatment. The respondent declined to provide the appellant with accommodation in the London area and maintained the offer of accommodation and support in Birmingham. The appellant appealed against the decision and his appeal was heard on 13 May 2014. The appellant was advised that section

103(2) of the 1999 Act does not provide for a right of appeal against the location of accommodation provided and that consideration would be given whether or not to strike out his appeal pursuant to rule 8(2) of the Procedure Rules. The appellant responded to the tribunal advising that he had made an application for subsistence only support and that he no longer required accommodation. The tribunal therefore treated his appeal as an appeal against a decision to refuse to provide subsistence only support and went on to determine it. The tribunal remitted the matter to the respondent in order for the respondent to reconsider the application for subsistence only support and to provide a properly reasoned decision. The decision dated 15 May 2014 is the outcome of the respondent's reconsideration and is the subject of this appeal.

5. The appellant provided a substantial amount of documentation in support of his appeal. The appellant also provided a detailed skeleton argument in which his submissions were set out. It was for this reason that the hearing did not begin at 10:00 as it was necessary for me to consider all of these documents before hearing the case.
6. I reserved my decision at the end of the hearing in order to further consider all of the evidence and submissions available to me before reaching my decision. The fact that I have not set each piece of evidence or each submission out in full does not mean that it was not considered. The reasons for my decision are set out below.
7. In her decision dated 15 May 2014 the respondent gave the following reasons for refusing to grant the appellant subsistence only support:

Your appeal against the Secretary of State for the Home Department's (SSHD) decision to provide accommodation for you and your dependants in Birmingham was heard at the First-Tier Tribunal Asylum Support and decided on 13 May 2014. A copy of the tribunal's decision has been attached for your ease of reference.

The tribunal judge remitted the matter to SSHD to make a properly reasoned decision on whether or not you are entitled to subsistence only support.

The matter has not been considered by the SSHD herself but on her behalf by an official of the Home Office.

It is noted that you are not an asylum seeker. You were provided support to avoid a breach of your rights within the Human Rights Act 1998 and under the European Convention on Human Rights (ECHR).

In considering the matter due regard has been given [to] the statutory guidance to Home Office on making arrangements to safeguard and promote the welfare and best interests of children issued under section 55 of the Borders, Citizenship and Immigration Act 2009. It must be noted that this is not the only consideration.

Under the provisions of section 97 of the Immigration and Asylum Act 1999 ("the Act") due regard was given [to] the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation. As a general rule accommodation is allocated in areas outside London and the South East.

On your application for Asylum Support Application Form (ASF1) you have indicated that you wish to be provided subsistence only support at [47B C Avenue, London]. However our investigations revealed that you were served a Notice to Quit in March 2014. You were required to vacate the property by 11th April 2014. You were therefore not entitled to remain in the property after 11th April 2014 and there are proceedings in the County Court to require you

to vacate the property at [47B C Avenue]. It is deemed that you do not have adequate accommodation. Under the circumstances you may be deemed to be deliberately making yourself and your dependants homeless. Be advised also that you may be deemed to have breached the child protection laws.

Section 95(1) of the Act provides the Home Office with power to accommodate asylum seekers who are destitute. Section 95(3)(b) of the Act defines a destitute person as one who has **“adequate accommodation or the means of obtaining it, but cannot meet his essential needs.”**

Section 95(6)(a) of the Act provides that in determining whether accommodation is “adequate” the Secretary of State may take into account **“that the person concerned has no enforceable right to occupy the accommodation”**.

Based on the above and on information available, we are not satisfied that your current accommodation is adequate. We are therefore not minded to provide you subsistence only support for you and your dependants' essential needs at [47B C Avenue] which would have been your address for support and immigration control purposes.

With your children's welfare in mind you might wish to consider taking up our earlier offer of both accommodation and subsistence support which has been held open for you.

8. In essence this appeal was about whether or not the respondent was entitled to refuse to provide the appellant with subsistence only support on the grounds that the accommodation he proposed to remain in is not adequate.
9. Section 95 of the 1999 Act provides that:
 - (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) Where a person has dependants, he and his dependants are destitute for the purpose of this section if they do not have and cannot obtain both—
 - (a) adequate accommodation, and
 - (b) food and other essential items.

...
 - (4) In determining whether accommodation is adequate for the purposes of subsection (2) or (3) the Secretary of State must have regard to any matter prescribed for the purposes of this subsection.
 - (5) In determining whether accommodation is adequate for the purposes of subsection (2) or (3) the Secretary of State ***may not*** have regard to—
 - (a) ***whether a person has an enforceable right to occupy the accommodation,***
 - (b) whether a person shares all or part of the accommodation,
 - (c) whether accommodation is temporary or permanent,
 - (d) the location of the accommodation, or
 - (e) any other matter prescribed for the purposes of this subsection.
(emphasis added)
10. Regulation 8(3) of the Asylum Support Regulations 2000 (the 2000 Regulations) provides:

- (1) Subject to paragraph (2), the matters mentioned in paragraph (3) are prescribed for the purposes of subsection (5)(a) of section 95 of the Act as matters to which the Secretary of State must have regard in determining for the purposes of that section whether the accommodation of—
 - (a) a person applying for asylum support, or
 - (b) a supported person for whom accommodation is not for the time being provided by way of asylum support, is adequate.
- (2) The matters mentioned in paragraph (3)(a) and (d) to (g) are not so prescribed for the purposes of a case where the person indicates to the Secretary of State that he wishes to remain in the accommodation.
- (3) The matters referred to in paragraph (1) are—
 - (a) whether or would be reasonable for the person to continue to occupy the accommodation;
 - (b) whether the accommodation is affordable for him;
 - (c) whether the accommodation is provided under section 98 of the Act, or otherwise on an emergency basis, only while the claim for asylum support is being determined;
 - (d) whether the person can secure entry to the accommodation;
 - (e) where the accommodation consists of a moveable structure, vehicle or vessel designed or adapted for human habitation, whether there is a place where the person is entitled or permitted both to place it and reside in it;
 - (f) whether the accommodation is available for occupation by the person's dependants together with him;
 - (g) whether it is probable that the person's continued occupation of the accommodation will lead to domestic violence against him or any of his dependants.

...
- (5) In determining whether a person's accommodation is affordable for him, the Secretary of State must have regard to—
 - (a) any income, or any assets mentioned in regulation 6(5) (whether held in the United Kingdom or elsewhere), which is or are available to him or any dependant of his otherwise than by way of asylum support or support under section 98 of the Act, or might reasonably be expected to be so available;
 - (b) the costs in respect of the accommodation; and
 - (c) the person's other reasonable living expenses.

11. Section 96 of the 1999 Act provides the ways in which support can be provided. Regulation 10 of the 2000 Regulations provides the kind and levels of support for essential living needs. Regulation 10(2) provides that asylum support in respect of essential living needs may be expected to be provided in the form of cash. Nothing in any of the provisions referred to makes the provision of support conditional upon having adequate accommodation.
12. In making an offer of both accommodation and support to the appellant, the respondent has accepted that (a) he is eligible to receive support and (b) that he is destitute. I do not therefore need to consider either of these matters. Accordingly, I turn to the question of whether or not the respondent can provide subsistence only support to a person who she considers does not have adequate accommodation. It is my view that she can.
13. Section 95 sets out the circumstances in which the respondent may provide asylum support to a person. The provisions set out above that relate to the adequacy of accommodation are for the purpose of assessing whether or not a person who has applied for accommodation is in need of it. An applicant seeking accommodation will only be provided with it under this provision if they

can show that their current accommodation is not adequate or if they cannot obtain adequate accommodation. In this case the appellant did not apply for accommodation and therefore it is my view that there is no need to assess whether or not his current accommodation is adequate. There is nothing in the 1999 Act or the 2000 Regulations that requires or permits the respondent to make an assessment of the adequacy of the applicant's accommodation in which they propose to reside. Furthermore, there is nothing in the Act or the Regulations which makes the provision of subsistence only support conditional upon an applicant's accommodation in which they propose to stay being adequate. In my view to introduce such a requirement is ultra vires.

14. I find therefore that the respondent having made a determination that the appellant is destitute and eligible for support, ought to have granted subsistence only support as the appellant requested. Even if I am wrong in this, I find that the respondent's consideration of the adequacy of the appellant's accommodation was flawed.
15. The respondent considered the appellant's current accommodation is not adequate on the grounds that he has been served with a notice to quit and that there are County Court proceedings in progress to enforce his eviction. At the hearing the appellant accepted that he had received a letter asking him to leave the property and advising that if he did not, proceedings in the County Court would be commenced. A copy of this letter was before me. He stated however that he has not received any further communication regarding this matter either from his landlord, the landlord's solicitors or the County Court indicating that proceedings have commenced and I find there is insufficient evidence to conclude that they have.
16. The appellant stated that the accommodation was provided to him and his family by Newham social services pursuant to their duty towards his children. He was not paying rent for the accommodation himself. He stated that Newham had previously advised him that they no longer considered they had a duty towards his children and that they would no longer accommodate the family. He also stated that Newham social services visited the family on 28 May 2014 with a view to reassessing whether or not they continue to owe a duty to his children and should therefore reopen his case.
17. It is clear from the respondent's decision letter that she has misunderstood and misquoted section 95 of the 1999 act. She refers to section 95(6) when in fact it appears she was quoting section 95(5). Moreover, she is under the impression that she *may* take into account whether or not the appellant has an enforceable right to remain in his accommodation when considering whether or not that accommodation is adequate. In fact what the provision states is the opposite – the respondent *may not* take into account whether or not the appellant has an enforceable right to remain in the accommodation when considering its adequacy. The only factors the respondent may take into account are set out in regulations 8(3)(b) and (c) of the 2000 Regulations (set out above). The respondent may take into account whether or not the accommodation is affordable and whether or not it is provided on a temporary basis only while the application for support is being considered.
18. The appellant does not pay for his accommodation at present. The accommodation was provided to him by social services and he has not paid for it in the past. An assessment is being carried out to determine whether or not social services will continue to pay for it in the future. Pending either eviction proceedings or a decision that Newham will continue /resume providing accommodation for the appellant and his family, the appellant is not paying for

AS/14/05/31456/JS

his accommodation and the question of whether or not he can afford it is therefore not relevant. The appellant is not provided with accommodation under section 98 of the 1999 Act and regulation 8(3)(c) of the 2000 Regulations is not relevant.

19. On this basis I find that the appellant's current accommodation is adequate for the purposes of this appeal and that he should therefore be provided with subsistence only support pursuant to section 95 of the 1999 Act.
20. I substitute my decision for that of the respondent.
21. I note that the appellant made a number of submissions in relation to other matters including the respondent's consideration of the best interests of his children. Given my decision, I have not dealt specifically with each of these submissions because it is not necessary to do so.

Signed J K Swaney
Tribunal Judge, Asylum Support

Date 4 June 2014