

# ASAP NEWS - JAN 06

Asylum Support Appeals Project

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## Looking ahead to more results! - ASAP AGM Nov 05

On 28 Nov 05, a packed audience attended ASAP's AGM hosted at Garden Court Chambers in central London.

Addressing the audience, Sue Willman, ASAP Chair, spoke of the achievements of ASAP in its short existence through representation at the court and training and advice to Refugee Community Organisations. She also thanked the more than 30 barristers who have provided legal representation for free at the Asylum Support Adjudicators through the weekly duty scheme and the Helen Tetlow Memorial Fund who agreed to pay for interpreters' costs of the duty scheme since 2004. "The success of this duty scheme enabled ASAP to secure enough funding from the Big Lottery Fund and City Parochial Foundation to set up a new organisation this year", she said.

Speaking at the AGM were Fazil Kawani, Head of Development at the Refugee Council, and Stephen Knafler of Garden Court Chambers. In his speech, Mr Knafler expressed his concern about asylum seekers' lack of access to legal advice on asylum support appeals, saying *'While the Home Office has access to well-paid civil servants and lawyers, who produce expert and detailed letters and, where appropriate, legal and factual submissions, the government has made no provision for asylum seekers to receive assistance in effectively presenting their cases. Worse than that, the Legal Services Commission has refused to grant funding in such cases. That's why the ASAP is so very important.'*

Their speeches were followed by a lively panel discussion of the government's use of destitution as a means of immigra-

tion control and the interpretation of the European Convention of Human Rights in attempting to safeguard asylum seekers' access to basic support.

ASAP is aiming to expand its capacity from its current staffing level of 2.5 posts through further fundraising activities in the near future. It is hoped that increased resources would enable the organisation to meet the growing demand for legal advice and representation in this area. ASAP would like to encourage more Refugee Community Organisations to become our members and to share information and expertise on asylum support issues.

If you would like to become a member and receive a copy of our Annual Report 2004/5, please contact us on 020 8684 5873.

***In this issue - ASAP AGM report, What is a paper appeal at the Asylum Support Adjudicators?, Section 4 support case study- when is someone "unable to leave the UK" for medical reasons?, Latest information for Zimbabwean asylum seekers, Update - safe route to Iraq, Next ASAP training (24 and 27 Feb 06)***



Left: Our panel at the AGM, from left, Noeleen Adams (ASAP Treasurer), Sue Willman (ASAP Chair), Stephen Knafler (Garden Court Chambers) and Fazil Kawani (Refugee Council)



Right: a packed audience participating in a discussion

## What is a paper appeal at the Asylum Support Adjudicators?

Do you want to represent your clients at their asylum support appeals but can't get to the courts in Croydon? You can do so by making a **paper appeal**. When you make an appeal to the Asylum Support Adjudicators (ASA) you can either ask for an oral hearing which means the client will go to the hearing but may be unrepresented or you can request a paper hearing.

This means that the client will not attend any hearing in person and the Adjudicator will make a decision based on information included with the appeal form. This is called, making an appeal "on the papers". If your client cannot get to Croydon due to ill health or does not want travel, why not make a paper appeal?

To make a paper appeal you need to complete the appeal

form in full including the grounds of the appeal. The grounds of appeal are all the reasons you think the decision to refuse your client support is wrong. Any evidence that supports the grounds of appeal can be included with the form. This should include information about why the client is destitute (such as letters from charities offering support or letters from friends who may have accommodated the person before but cannot any longer) and why they qualify for support (for example if a failed asylum seeker applies for section 4 accommodation because they have made a fresh claim for asylum, a copy of the fresh claim and proof of posting/delivery should be included).

A paper appeal should include as much information and sup-

porting evidence as is possibly available and address all the issues closely. If an Adjudicator thinks there is not enough information provided in order to make a decision "on the papers" he or she can call a hearing anyway. This is called a sub-oral hearing which your client will need to attend to give additional information.

Remember, as long as all the required evidence is included in the appeal form the client has as much chance of winning their appeal as they would had they attended an oral hearing.

The ASAP can provide training on making a paper appeal to the ASA, see this edition for details on our next training course. Also if you would like help completing Notice of Appeal, please call our Advice Line on 020 8684 5972.

## Section 4 support case study - when is someone "unable to leave the UK" for medical reasons?

A person can qualify for Section 4 accommodation if they are "unable to leave the UK by reason of physical impediment to travel or for some other medical reason". NASS interpret this to mean that a person must be *unfit* to travel and that person has to provide medical evidence stating specifically that they are unable to fly and how long they are likely to be unable to fly.

However, the condition states that a person can qualify for Section 4 if they are unable to leave the UK due to being unable to travel *or* for some other medical reason. The ASAP has previously argued that "some other medical reason" has a meaning other than being unable to travel. The ASA has re-

cently agreed.

In ASA 05/12/11543 the Appellant was a failed asylum seeker suffering from anxiety and depression who was, as a result, unable to take steps to leave the UK. The Adjudicator held that the phrase "other medical reason" would be redundant if it didn't have any other meaning apart from an inability to travel.

The implication of this should be that a person can still qualify for Section 4 accommodation on medical grounds if they have clear evidence of their medical condition even if that evidence does not explicitly state the person is unfit to travel.

You can see a copy of this judgement by visiting the ASA website at [www.asylum-support-adjudicators.org.uk](http://www.asylum-support-adjudicators.org.uk). Choose the menu option on the left of the screen which says *Reasons Statements* and enter the appeal reference number 05/12/11543. You can also see other reasons statements and download Notice of Appeal from the same website.

If you have any questions about this case or know of similar cases, please contact ASAP on our advice line on 020 8684 5972.

## **Latest information for Zimbabwean asylum seekers**

Failed Zimbabwean asylum seekers may have a 'well founded fear of precaution' if they return to their country of origin. This is what the Asylum and Immigration Tribunal (AIT) recently decided in a country assessment appeal hearing held in Oct 2005.

The appeal was initiated by a number of failed Zimbabwean asylum seekers who were appealing against their forcible removal from the UK on the grounds that they would be imprisoned and mistreated on return. The AIT accepted these concerns and found that there was evidence to suggest the failed asylum seekers were at risk of serious harm at the hands of the Zimbabwean authorities.

As a consequence of this ruling, the Home Office have temporarily suspended any further removals to Zimbabwe.

In light of this ruling, some members of the Zimbabwean community are now submitting

fresh claims for asylum. Individuals in this situation, who are also without any means of support or housing, may qualify for S4 support.

One of the criteria under which Section 4 support is awarded is that the person requires support in order to avoid a breach of their rights under the European Convention on Human Rights. NASS state that this covers individuals who have submitted a fresh claim for asylum which has not yet been considered by the Home Office. NASS will require proof of that these fresh representations have been submitted, normally in the form of a recorded delivery slip.

If you would like more information, please contact ASAP Advice Line on 020 8684 5972.

*Update - A Safe Route to Iraq: The End of the Matter (Issue 2, October 2005).*

*Following our report of an appeal to the Asylum Support Adjudicators (ASA) regarding returns to Iraq and the jurisdiction of the ASA in deciding whether a viable route exists, permission for judicial review has now been granted. We previously explained that ASA believe they have no power to challenge the opinion of the Secretary of State regarding the viability of a route to Iraq. It will be argued in the judicial review that NASS should make a proper assessment of whether a route is available, that the ASA do have the power to decide whether they think a route is viable. The case should be heard in February 06. R (Rasul) v Asylum Support Adjudicator & Secretary of State for the Home Department.*

## **Next ASAP training - Representing the appellants at the Asylum Support Appeals Tribunal**



In February 06, the ASAP is hosting a two day training course for Refugee Community Organisations on how to represent the appellants at the Asylum Support Appeals Tribunal.

The course will include a visit to the Asylum Support Adjudicators in order to observe real representation at the ASA. There will also be a mock tribunal hearing where you can use what you have learned and see if you can win the case! Those who participated in our last training particularly enjoyed this aspect

of the training, so don't miss it.

The training will take place on 24 and 27 February in central Croydon. You need to be ASAP members to attend this course (membership for Refugee Community Organisations is free). Only 8 places are available on the course, so if you are interested please book your place now to avoid disappointment.

If you would like more information, please contact the ASAP on 020 8684 5873 and speak to Gerry or Lisa.

**SECTION 9 REPORT** - ASAP has written a short report on our experience of representing and advising some of the failed asylum seeker families caught up in the section 9 pilot scheme. We found that many families we came into contact at the Asylum Support Adjudicators with were confused and extremely distressed by the process. The report also discusses our concerns about the way the pilot was implemented and the families' lack of access to legal advice on withdrawal of support from NASS. If you would like a copy of this report, please contact us on 020 8684 5873. There is also a very useful report on the section 9 pilot scheme published by Barnado's, 'the end of the road' – report on asylum and immigration, which can be downloaded from their website at [www.barnados.org.uk](http://www.barnados.org.uk).

## **Free ASAP factsheets**

- No 1: introduction to NASS support
- No 2: Introduction to Asylum
- No 3: Making an Appeal to the ASA
- No 4: After a Negative Decision at the ASA
- No 5: Section 4 Support for Failed Asylum Seekers
- No 6: Section 4 Support and Community Activities
- No 7: Section 9 Withdrawal of Support for Failed Asylum Seeker Families
- No 8: Breach of Conditions of Asylum support
- No 9: Introduction to Community Care
- No 10: The European Convention on Human Rights and The Human Rights Act 1998
- No 11: Introduction to Judicial Review

*If you would like a copy, please contact us on 020 8684 5873.*

## **ASAP Advice Line 020 8684 5972**

If you are advising asylum seekers about their asylum support problems and need help, you can always call our Advice Line. Our Advice Line is open:

**Mon 2pm to 4pm**

**Tue 10am to 12:30pm, 2pm to 4pm**

**Wed 10am to 12:30pm**

**Thu 2pm to 4pm**

**Fri CLOSED**

Our legal advisors are available to answer your queries and help you help your clients. Occasionally we might be able to represent your clients at the hearing in Croydon. **Please note that we do not provide immigration advice.**

ASAP believes that all asylum seekers have a right to competent, free legal advice and representation on asylum support issues. We run an Advice Line, a duty scheme at the Asylum Support Adjudicator and training courses for refugee community organisations. Please contact us if you need more information:

### **Eiri Ohtani - Co-ordinator**

Eiri@asaproject.org.uk, 020 8684 5873

### **Gerry Hickey - Legal Advice, Representation and Training**

Gerry@asaproject.org.uk, 020 8684 5874

### **Lisa Woodall - Legal Advice, Representation and Training**

Lisa@asaproject.org.uk, 020 8684 5875

## **ASAP is supported by:**

Helen Tetlow Memorial Fund  
London Legal Support Trust  
Two Garden Court Chambers  
City Parochial Foundation

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