

ASAP NEWS - JULY 2006

Asylum Support Appeals Project

Registered charity no. 1105625 Company limited by guarantee no. 04763838

ASAP IS ONE YEAR OLD! WHAT HAVE WE LEARNT?

That no access to legal representation equals destitution.

Many asylum seekers who lose or are refused NASS support do not appeal because they cannot get legal advice or anyone to represent them at the appeal. This means that NASS may make wrong decisions that leave asylum seekers destitute.

ASAP provides free legal representation to asylum seekers at their NASS appeals and has learnt that if an asylum seeker has good legal representation they have more chance of winning their appeal. **62%² of the people who were represented by ASAP at their hearings have had their cases allowed or remitted (sent back) to NASS to make the decision again. Only 20% of people appealing who had no representation won or had their case remitted.** This shows that representation can help reduce the number of people who are destitute.

There is no public funding available in this area of law. Very few solicitors are prepared to represent asylum seekers at their NASS appeals because they do not get paid for their work. Asylum seekers usually have no means to pay the solicitors' fees themselves as if they are destitute they will not have any money. As a result, the majority of asylum seekers who appear in person before the Asylum Support Adjudicators in Croydon must defend their right to NASS support by themselves. Not providing legal aid to allow people to get legal advice on their NASS appeals leaves a large group of (failed) asylum seekers destitute unnecessarily. NASS currently supports around 46,910 asylum seekers. However, the number of individuals who might be entitled to NASS support such as section 4 support but are not receiving it is unknown.

There are only three days to prepare a NASS appeal and if a person has no one to help them they could find it very difficult to appeal because of language problems or physical or mental health problems. 56% of the people helped by ASAP were vulnerable because of mental and physical health issues due to or caused by torture, rape, self-harm, depression, pregnancy and HIV. 70% of them had no fixed address and had been homeless for a long time when they arrived at the court.

ASAP thinks legal aid should be available for people making NASS appeals so more people can appeal and get support. ASAP also encourages more advice agencies and refugee community organisations to actively assist asylum seekers with their asylum support appeals.

FREE! Half-day training course: Introduction to NASS and Asylum Support

ASAP are offering two half day courses on the 20/9/06 to Refugee Community Organisations. The course will be a basic introduction to NASS and asylum support. The course is ideal for those who want to know a little more about NASS and asylum support. You may already be seeing clients with asylum support problems and need to know how to begin advising them or you may not be giving asylum support advice but may want to in the future.

Session 1: 9.30—12.30 (registration from 9.15)

Session 2: 1.30—4.30 (registration from 1.15)



If you are interested in attending the course please contact Lisa or Gerry on 020 8684 5873 and let us know which session you would prefer to attend. The training will take place at Friends Meeting House, Euston. **Places must be booked in advance**

ASAP can also provide free in-house training sessions or workshops which suit your organisation's needs and requirements. Your organisation needs be a refugee community organisation or voluntary advice agency based in London area which gives advice to asylum seekers. If you are interested, please get in touch with us.

ASAP AGM - 2nd November 2006

Members, friends and supporters of ASAP are invited to our AGM on Thursday 2nd November 2006 to celebrate our successful first year.

The event will take place at Human Rights Action Centre at 17 – 25 New Inn Yard in Shoreditch, near Old Street. It will start at 6:30pm and finishes at 8:30pm.

We are expecting to have a number of speakers who will talk about asylum seekers' right to food and shelter and how the current immigration and asylum policy is making many asylum seekers destitute.

Food and refreshments are also provided. We look forward to seeing you there. For further information, contact us on 020 8684 5873.

Section 4 Support :Ability to Leave The UK For Medical Reasons

Section 4 support is available to failed asylum seekers who meet strict criteria (*Regulation 3(2) of the Asylum Support (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005*). A failed asylum seeker must be destitute and then meet one of the criteria.

One of the ways in which a person can qualify for support is if they are ill and unable to travel. The person must be unable to leave the UK because of a physical impediment to travel or for some other medical reason. The Asylum Support Adjudicators have interpreted what this means in various different ways but there has recently been a judicial review which has confirmed how a person qualifies for support as a result of a medical condition .

1) The person must be unable to leave the UK. This does not mean “unfair” or “unreasonable” it simply means that the person is not able to leave the UK. The court held it was wrong to say whether a person was “unfit” to travel.

2) If the person concerned is not able to leave the UK then it should be considered why that person is unable to leave the UK. That person can argue that they cannot leave the UK because of a physical impediment to travel (for example they are heavily pregnant) or for some other medical reason (for example this could include mental health problems).

What should a failed asylum seeker do?

If a person wants to apply for Section 4

support on the grounds that they are unable to leave the UK they will need to get medical evidence to support this. This evidence can be obtained from GPs, consultants, psychiatrists, etc. Advisers should ask for the following information (examples only):

1) The name and qualifications of the person giving the medical information.

1) Details of the person’s medical problems (physical or psychiatric)

2) Whether these problems mean the person is unable to travel. This means whether the person is able to get on plane. It is not enough to say that it is desirable that the person remains in the UK or that they need treatment. If a person is unable to travel this should be stated clearly: for example; “This person is unable to travel at this point because....”

3) Details of how long the person is likely to be unable to travel.

This information should be included with the application for support. NASS have their own medical officer who will decide whether the person is unable to travel. The medical officer may disagree with the medical evidence that has been provided. In those cases an appeal should be made to the Asylum Support Adjudicators.

For advice about applying for Section 4 support or about making an appeal to the Asylum Support Adjudicators call us on our advice line: 020 8684 5972.

Section 55 and Section 4 Support

People applying for Section 4 support can be refused support on *Section 55 grounds*. *Section 55* was introduced under the Immigration and Asylum Act 2002 and gives the Home Office the power to refuse NASS support, including Section 4 support, if they believe that the person had not claimed asylum 'as soon as reasonably practicable' on arrival in the UK. This means the first claim for asylum the individual makes in the UK.

When Section 55 was first introduced the Home Office defined 'as soon as reasonably practicable' to mean those who had claimed asylum immediately upon arrival. This meant the people who claimed asylum a few hours after they entered the UK or the next day, were refused support. As a consequence several thousand asylum seekers were denied support. However, following pressure from refugee organisations and others, in 2003 the Home Office extended the definition of "as soon as reasonably practical" to mean within 72 hours of arrival.

In May 2005 the Court of Appeal ruled that the Home Office could only refuse to support to individuals under Section 55 if they could prove that the individual had access to alternative sources of support. This ruling was confirmed by the House of Lords in October 2005 who added that denying asylum seekers support and leaving them homeless with no means of buying food was a breach of Article 3 of the European Convention of Human Rights as it led to cruel and degrading treatment.

If your client has been refused S4 support on Section 55 ground and ***meets one of the qualifying criteria for Section 4***, it would be useful to check the following:

Did they claim asylum within 72 hours of arriving in the UK? If yes, then contact NASS and explain that your client claimed asylum 'as soon as reasonably practicable'.

Has your client successfully appealed against a decision not to award them Section 55 before? If yes then NASS should not apply S55 to any new claims for Section 4 support.

Is your client destitute- i.e. has no place to live or no money to buy food? If yes than contact NASS and explain that your client has no alternative source of support and that to refuse them would be a breach of their Article 3 rights. **Your client must also meet the criteria for Section 4 support as well as being destitute.**

Please note that someone who is refused Section 4 on Section 55 grounds does not have a right to appeal to the Asylum Support Adjudicators. The first option is to contact NASS to see if they will change the decision. If NASS refuse then the only other option available is to get a solicitor to judicially review their decision.

For more information on Section 55, or who qualifies for Section 4 support please contact our advice line on 020 8684 5972.

Recent Publications on Asylum Support Issues

Here is a list of useful reports and briefings on asylum seekers and destitution which were published in the last few months.

Citizens Advice published a report on problems with section 4 support. It contains a number of case studies which show that failed asylum seekers are not receiving an adequate service from NASS. You can download “Shaming Destitution: NASS section 4 support for failed asylum seekers who are temporarily unable to leave the UK” at:

http://www.citizensadvice.org.uk/index/campaigns/social_policy/evidence_reports/er_immigrationassylum/shaming_destitution

ICAR (the Information Centre for Asylum Seekers and Refugees in the UK) published a briefing on destitution amongst asylum seekers. It has lots of useful statistics and information on the work of various voluntary organisations helping destitute asylum seekers. You can download this report at:

<http://www.icar.org.uk/?lid=6575>

Migrants Resource Centre published “Seeking Asylum; a report on living conditions of asylum seekers in London”. The report was prepared by the Refugee Media Action Group and highlights daily difficulties experienced by destitute asylum seekers. You can download this report at:

http://www.migrantsresourcecentre.org.uk/documents/SeekingAsylum_000.pdf

After a Successful Appeal—Section 4 Delays

Recently, ASAP have been concerned about delays in NASS providing Section 4 support to people who have won their asylum support appeals. ASAP had received reports from community organisations that following a successful appeal, people were waiting up to 8 weeks to have their support reinstated. ASAP raised this issue at various meetings where NASS were present and produced a report. ASAP also made a formal operational complaint to NASS on this matter and have now received a response.

NASS have confirmed that the Asylum Support Adjudicators inform them an appeal is won on the same day that the appeal is heard. On receiving this notification NASS are able to book accommodation on the same day (or if it past 5pm on the following day).

After each appeal, the person appealing is given a short notice which states what decision the Adjudicator has made. If you have assisted someone with an appeal, you should contact NASS as soon as possible, if necessary a copy of the short notice can be faxed to NASS. This document should be enough to allow accommodation to be booked.

If you have any problems getting support reinstated after an appeal, ASAP may be able to advise you further. Complaints about delays can be made to: Immigration and Nationality Directorate, Complaints Unit, PO Box 1384, Croydon, CR9 3YJ.

Does your organisation want to know more about Section 4 and asylum support appeals? Let ASAP come to you!

Since June 2005, ASAP have been visiting a number of refugee and advice forums in London to raise awareness of asylum support appeals. We have found that many people know about immigration appeals and where to get Immigration advice but relatively little about asylum support appeals.

ASAP is very happy to visit your organisation to provide more information about asylum support appeals and how ASAP can help you. We can also provide informal workshops for your staff members and volunteers so that more people understand what to do when their clients' NASS support has been terminated or refused.

Organisations such as British Red Cross Refugee Unit, London Detainee Support Group and Merton Asylum Welcome invited us to their volunteer meetings. As a result their staff and volunteers had an opportunity to ask many questions about asylum support appeals in a friendly, informal setting. We are happy to visit both large and small groups.

If you would like us to visit you, please speak to Lisa, Gerry or Eiri, on 020 8684 5873 or email advice@asaproject.org.uk. We very much look forward to hearing from you.

News From the Asylum Support Adjudicators

At a recent Asylum Support Adjudicators User Group meeting (which ASAP attends) the Asylum Support Adjudicators asked if the ASAP could include the following information in our newsletter.

Interpreting:

The Asylum Support Adjudicators provide interpreters for every hearing where one is needed. On the appeal form, the person appealing can request an interpreter and state which language they need the interpreter to speak. Lots of forms have been returned stating "English". When asked which language is required it is important to state the language they speak; for example FARSI. If the person speaks a particular dialect then this should be entered on the form as well. If the wrong interpreter is booked then this could delay the hearing.

If the person does not require an interpreter then they should answer "no" on the form. Unless the person is fluent in English it is advisable to ask for an interpreter as some difficult legal terms may be used in the hearing and it is important that the person understands everything that is said.

Evidence

It is important that all the evidence that is needed for the hearing is either sent in advance or brought to the tribunal on the day. What evidence is needed will depend on the case itself but guidance can be found in the Directions (this is a list of what is required which is sent out with the notification of the date of the hearing to the person appealing or their representatives). ASAP have produced a leaflet which explains the type of evidence that may be needed. If you would like a copy please contact us (details on page 8).

Section 4 Support: Taking Steps to Leave the UK

Most people know that one of the ways of getting Section 4 support is preparing to go home by either visiting the embassy or asking the International Organisation for Migration (IOM) to arrange travel home. Many people are not aware that if IOM or the embassy cannot help a person that person can still get Section 4 support.

Mr Z was from Eritrea. He had approached IOM who told him that they would be unable to get travel documents from the Eritrean Embassy for him. As a result they were unable to assist his travel home so he was entitled to Section 4 support because he had taken reasonable steps to return home. It did not matter that he had been unsuccessful.

If you want further advice about qualifying for Section 4 support by taking reasonable steps to return to Eritrea or any other country contact our advice line. Remember, there are 5 ways to qualify for Section 4 support and trying to go home is just one of them. ASAP can advise you about the other ways a person can get Section 4 support.

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

Lisa Woodall - Legal Advice, Representation and Training

Lisa@asaproject.org.uk, 020 8684 5875

Gerry Hickey - Legal Advice, Representation and Training

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ASAP is supported by:

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

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