

ASAP NEWS - OCT 05

Asylum Support Appeals Project

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Safe Route to Iraq – The End of the Matter?

From 1 Aug 2005, the Home Office announced that Iraqis applying for “hard case” support under Section 4 of the Immigration and Asylum Act 1999 will be required to show they are taking all reasonable steps to leave the UK or that they are otherwise ineligible for Section 4 support. From 1 Sep Iraqis already in receipt of Section 4 support have been required to show they continue to be eligible for section 4 support or take all reasonable steps to leave the UK otherwise support would be withdrawn. The reason for this is that the Secretary of State has expressed an opinion that there is now a viable route of return to Iraq facilitated by the International Organisation for Migration (IOM). This means that Iraqis can no longer rely on condition (c) of Regulation 3 of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 which rendered a person unable to leave the UK in the absence of a viable route to their country of origin.

At the time of writing, the routes which are in operation, following the discrediting of the overland route from Jordan along Highway 10 as unsafe, are flights to Erbil and Baghdad. It was held by IOM that only those people from and returning to the Kurdish Controlled Governants (Dohuk, Erbil, Suleimaniyah) would be permitted on the Erbil flight. An Iraqi

from Mosul, for example, would have to take the Baghdad flight. At this time Iraqi Airlines who offer the flight will only accept Iraqis who have secondary Iraqi ID. Potentially an Iraqi with no Iraqi ID and who is returning to an area outside of the Kurdish Controlled Governants cannot undertake the route deemed viable by the Secretary of State.

Realising the implications of the new policy on the large number of Iraqis who would now be facing destitution if they did not agree to sign up with IOM to travel on one of these routes, the ASAP represented two test cases at the Asylum Support Adjudicators with appellants who would not be permitted on the Erbil flight and who NASS had not identified they have the requisite ID to be suitable for a flight to Baghdad.

It was submitted in these cases that the Secretary of State could not have intended the expression of opinion that there was a safe route to Iraq to be interpreted as a blanket policy due to the fact there is more than one “viable route” available. The ASAP argued that in fact each case should be regarded on its individual merits and the Adjudicators were invited to consider whether there was a viable route for a particular client rather than apply the wording of the regulation to Iraqis as a class.

This argument ultimately failed with the Asylum Support Adjudica-

tors choosing instead to interpret the regulations literally and deciding that for the purposes of the regulations, the Secretary of State only has to express an opinion that a viable route to Iraq exists even if it is not accessible to all Iraqis. As the Secretary of State has said there is a viable route any argument that there is not a viable route for a particular individual must fail.

It is also possible to approach the argument from a different perspective. Instead of arguing that there is no viable route for a given individual, an Iraqi who approached the IOM and was told he could not be assisted because he, for example, was returning to an area outside of the KCG could then make a section 4 support application under condition (a) of Regulation 3 claiming that he was taking steps to leave the UK. Support would then be granted on that basis.

This does however leave a grey area, namely is the wording of the regulation (c) intended to be applied as a blanket policy and is it really irrelevant whether or not the route is practically viable if it simply theoretically viable. As the debate on returns to Iraq continues it seems this is not the end of the matter.

For more information, contact the ASAP Advice Line on 020 8684 5972.

In this issue - Safe Route to Iraq - The End of the Matter?, ASAP AGM on 28th Nov, Section 9 - Evaluating its Impact on Families, Getting NASS to Change Their Minds, Free ASAP Training on Representing Appellants at the ASA etc

Invitation to ASAP AGM on Mon 28th November 2005

The ASAP will hold its Annual General Meeting on Mon 28 Nov 05 from 6:30pm to 8:30pm at Garden Court Chambers at 65 - 70 Lincoln's Inn Fields in central London.

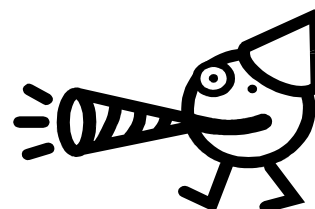
We are delighted to have two distinguished speakers - Fazal Kawani who is the Head of Development at the Refugee Council and Stephen Knafler who is a barrister at Garden Court Chambers. They will talk about "safe route to Iraq" issues, its impact on asylum support for failed Iraqi / Kurdish asylum seekers and other

new developments in asylum support. There will be a Question and Answer session for you to participate.

We would like to encourage as many Refugee Community Organisations as possible to attend our AGM and find out more about our work and how we can help your clients. If you have not joined the ASAP, don't worry. Membership is free for any Refugee Community Organisation, so just come along to the AGM and sign the form on the day.

Members will receive quarterly newsletter and can attend the ASAP training sessions for free.

The ASAP Management Committee and the staff members are looking forward to welcoming you on the night and enjoying the refreshments together. If you would like to come, please call 020 8684 5873.



Section 9 - Evaluating its Impact on Families

In our last Newsletter, we informed you of a new piece on legislation known as Section 9. Section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004 allows NASS to withdraw support from failed asylum seeking families, with dependent children, who are judged as not taking steps to voluntarily leave the UK. This new legislation came into force on 1 Dec 2004.

The policy is currently being applied on a pilot basis in three parts areas of England with 116 families involved. As of the end of Sep 2005, 32 families have had the support termi-

nated with around 60 families under consideration.

Families who are having their support terminated have a right to appeal to the Asylum Support Adjudicators (ASA). Many have chosen to do so and the ASAP have represented a number of families with their appeals. Most families, however, lost their appeal on the basis that they have failed to take steps to leave the UK.

NASS are now in the process of carrying out an evaluation of section 9 to find out whether it has

been a 'success'. Once the evaluation has been completed they have stated that they will consider rolling out the policy across the country.

The Refugee Children Consortium (RCC) are lobbying Parliament to repeal Section 9 under the current Immigration, Asylum and Nationality Bill. They will be urging all MPs to vote to for a repeal of the legislation and to stop the policy being rolled out nationally. For more information on the work of the RCC contact the Children's Society.

Getting NASS to Change Their Minds ? Is it possible?

In some cases it may be possible to negotiate with NASS to get them to withdraw their decision to refuse or terminate support. This would be suitable in cases where NASS have not followed their own procedures or have been unaware of a change in the asylum seekers circumstances.

The following two case studies highlight when it might be appropriate to take this course of action.

A is an asylum seeker for the DRC. In Sept NASS wrote to her stating that they were withdrawing her support on the basis that she had been absent from her accommodation for more than 7 days - unauthorized absence from NASS accommodation for 7 consecutive days constitutes a breach of one of the many conditions attached to

receiving support. The refugee community organisation helping her with her appeal contacted the ASAP for advice. They informed us that their client had recently undergone treatment in hospital and had gone to stay with a friend while she recovered. We advised the refugee organisation to contact NASS and explain the situation to them. Following their intervention NASS agreed not to withdraw her support.

An Iraqi asylum seeker had applied for s4 support in July, on the basis that there was no safe route of return to his country. Until the 1st of August the Home Office accepted that there was no safe route of return to Iraq and had provided several thousand Iraqi failed asylum seekers with Section 4 sup-

port on this basis (see also article on Section 4). The Home Office also gave assurances that anyone applying for support prior to the change of policy, would be awarded it.

However, despite applying for support prior to policy change, NASS refused him on the basis that he had used an outdated Section 4 application form. By the time he re-submitted his application the new policy on Iraq was in operation. The ASAP advised the organisation assisting him to contact NASS and argue that the decision was both unreasonable and unfair. NASS agreed to provide support in line with other Iraqi asylum seekers who applied before 1st August.

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



The ASAP is hosting a three day training course on how to represent the appellants at the Asylum Support Appeals Tribunal in December. One of the days will be spent visiting the court and observing 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!

The training will take place on 9, 12 and 13 Dec in London and Croydon. You need to be able to attend all 3 days. It is only available for the ASAP members - membership for Refugee Community Organisations is free.

If you would like more information, please contact the ASAP on 020 8684 5873.

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:

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