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Section 4 Support for Refused Somali Asylum Seekers

This advice sheet provides advice on Section 4 support for Somali nationals who have been refused asylum in the UK and who are destitute. Over the past year the security situation in Somalia has worsened, particularly in the south and central parts of the country. This deterioration in security has meant that Somali nationals who have been refused asylum may be unable to leave the UK due to serious difficulties with travel routes into Somalia. The advice sheet gives an overview of Section 4 support and provides information on the circumstance under which Somali nationals can get support. The advice sheet also contains a list of organisations that can provide further information on each of the areas covered.

June 2009

©Asylum Support Appeals Project

Section 4 Support for Refused Somali Asylum Seekers in the UK

FOREWARD

Asylum Support Appeals Project (ASAP) is an advocacy organisation working to end destitution amongst asylum seekers in the UK by defending their legal rights to food and shelter. ASAP provides free legal advice and representation to asylum seekers in their asylum support appeals when their housing and financial support has been refused or terminated, as well as second-tier legal advice and training on asylum support law for voluntary sector advice agencies. ASAP's policy work and strategic litigation work aims to change inhumane asylum policies which are forcing many asylum seekers into long-term destitution.

ASAP specialises in providing advice about the support available to asylum seekers and refused asylum seekers in the UK. We do not provide advice on asylum and immigration law. Any information on immigration or asylum issues contained in this advice sheet should be treated as a guide only and should always be checked with a registered immigration adviser. At the time of writing (June 2009) the information contained in this advice sheet was correct to the best of our knowledge. However, this information is guidance only. It is not legal advice and independent advice should be sought about specific situations.

For more details on the issues this report covers contact Gerry Hickey at ASAP.

Please note that ASAP is not able to offer appointments to individuals at our office.

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SUPPORT OPTIONS FOR REFUSED SOMALIS ASYLUM SEEKERS

Section 4 Support

It may be possible for refused Somali nationals who are without support to apply for Section 4 support. Section 4 support is given to some groups of refused asylum seekers who meet a narrow set of criteria. The support given to individuals under Section 4 consists of £35 a week in supermarket vouchers plus housing.

In general, to qualify for support an individual needs to fall into one of the three categories below

- **They are taking all reasonable steps to leave the UK**
- **There is a physical impediment to travel**
- **There is some other reason preventing them from leaving the UK**

The full regulations governing Section 4 support as set out in *Immigration & Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005*¹.

1) 'Taking All Reasonable Steps to Leave the UK': What does it mean?

Individuals who are considered as taking all reasonable steps to leave the UK can get Section 4 support. In order to qualify under this criterion the person normally needs to either

- a) make an application to return voluntarily, or
- b) show they are making other arrangements to leave the UK.

*As of June 2009,
IOM is unable to assist
Somali nationals to
return to any part of
Somalia*

Voluntary Returns to Somalia

The International Organisation for Migration (IOM) is the main organisation in the UK providing assistance to individuals wanting to return voluntarily to their country of origin. This assistance includes one way travel tickets and, in some cases, assistance to help the person resettle in their country of origin.

We understand that IOM is currently unable to assist Somali nationals to return to any part of Somalia, including Puntland and Somaliland. In a letter written by IOM to a Somali national in February 2009, IOM stated that it was unable to return individuals to due to 'political issues between IOM and the local authorities in Somalia'. **The letter also said that they did not know when they would be able to assist individuals to return to Somalia in the future.**

¹*Immigration & Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005*
<http://www.opsi.gov.uk/si/si2005/20050930.htm>

Based on this information and talking to various stakeholders, it appears that the main reasons IOM is unable to assist people to return to Somalia are difficulties with both travel documents and security. Somali nationals wishing to return voluntarily are normally provided with an EU letter in which to travel on. An EU letter is a temporary, one way travel document provided by the Home Office to individuals who do not hold passports from their own country. Only some countries will accept these temporary travel documents and in the past the Somali authorities were willing to do so. However it seems that at the moment Somali nationals trying to return using an EU letter are experiencing serious difficulties entering the country. The deteriorating security situation, particularly in the south and central parts of the country, is also limiting air travel to certain parts of the country.

However, although IOM is unable to assist Somali nationals to return at the moment, and may not be able to do so for some time, it has stated that they will still accept applications and keep them on file until the situation changes. This means that Somalis who make an application to return will qualify for Section 4 until IOM is able to assist them to return.

This is an important change for Somali nationals in relation to Home Office policy on Section 4 support. Normally individuals who sign up to return with IOM are only guaranteed support for three months. This is because the Home Office considers three months to be enough time for an individual to make arrangements to leave the UK. Individuals who do not leave within that time are at risk of having their support stop stopped on the grounds that not doing enough to leave the UK.

Somali nationals need to be advised that making an application to voluntarily return with IOM could have an impact on any fresh asylum claims they make in the future. For this reason, they should seek independent advice before making an application to return voluntarily. Independent advice can be obtained from the Choices Project, which is run by Refugee Action. Refugee Action has offices throughout the UK.

The contact details for the Choices Project and IOM can be found in the 'Information and Advice on Voluntary Returns' section of this advice sheet.

2) 'Other Reasons that Prevent a Person from Leaving the UK': What does this mean?

If a refused asylum seeker has made fresh claim for asylum which is being looked at by the Home Office they should not be expected to leave the UK. In these circumstances they can apply for Section 4 support.

However, to qualify for Section 4 support under this criterion the person needs to show that their fresh claim contains some new information that has not been looked at by the Home Office or an immigration judge before.

Somalis and Fresh Claims

In October 2008 the Asylum and Immigration Tribunal (AIT) made an important decision about the security situation in Somalia. Because of this decision it may now be possible for some refused Somali asylum seekers to make a fresh claim for asylum and to claim Section 4 support. The court stated that

'there is now an internal armed conflict...throughout central and southern Somalia, not just in and around Mogadishu...Mogadishu is no longer safe as a place to live in for the great majority of returnees whose home area is Mogadishu.' AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091²

However the court also said that their decision did not mean all asylum seekers from this part of Somalia should automatically be given refugee status in the UK. It will still be necessary for the Home Office to look at each individual asylum claim and decide whether that person would be in danger if they were returned to Somalia. The Home Office now needs to follow the advice given by the AIT when making decision about asylum claims (including fresh claims) from Somalis in the UK.

Somali nationals who are not covered by this court decision, but who can show that they would be at risk if they were to be returned should also seek legal advice about making a fresh claim. To qualify for Section 4 support, any fresh claim would need to contain information not previously considered by the Home Office or the immigration court.

The following is an example of a Somali national who was given Section 4 on the grounds that his fresh claim contained new information.

Mr F, a Somali national, made a fresh claim on the basis of a report he had recently received from a Somalia expert. The report confirmed he was a member of a minority clan in Somalia that experienced persecution. His original claim for asylum was refused as it had not been accepted that he was a member of this minority clan. The report he received enabled him to make a fresh claim for asylum and also meant he could get Section 4 support as the Home Office had not seen this information before.

Note 1: Those applying for Section 4 on these grounds will need to provide a copy of the fresh claim and proof the application has been sent to the Home Office. It is only necessary to prove that the fresh claim has been sent to the Home Office and not that they Home Office have received it. Having a recorded delivery number is proof that something has been sent.

It is also possible to get Section 4 support under this criterion if a person has made an out of time appeal to the Asylum and Immigration Tribunal or have made an application for Judicial Review to the High Court. Again, the person will need to provide a copy of their applications when they apply for Section 4 support.

² AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091, <http://www.bailii.org/uk/cases/UKIAT/2008/00091.html>

Note 2: In relation to Judicial Review applications, individuals living in England and Wales will only qualify for support after they have received permission to proceed with their application from the court.

Information on finding a solicitor can be found in the 'Finding an Immigration Solicitor' section of this advice sheet.

3) 'Physical Impediment to Travel': What does this mean?

A person will qualify for Section 4 support if they can show that they are unable to travel due to either a physical or mental health problem.

Women in the late stages of pregnancy (around 8 weeks before their expected due date), or those with a baby under six weeks old, are automatically accepted as being unable to travel. This is because airlines will not allow very young babies or women who are heavily pregnant to travel on their planes.

For other individuals to qualify under this criterion they would need to show that they have an illness that prevents them from travelling (flying on a plane) or that travelling would cause a serious risk to their health. They would need to provide evidence, in writing, from a doctor or a consultant explaining their medical condition and why this prevents them from travelling.

The following is an example of individual who was accepted as being unable to travel and given Section 4 support.

Ms B was diagnosed with a serious heart condition which had steadily got worse during her time in UK. She was unable to walk more than a few feet without assistance and was advised not to go out alone. In a letter to the Home Office her doctor wrote that Ms B was unable to travel on a plane as the changes in air pressure during the flight were likely to result in her having a heart attack.

Information on organisations that provide advice on Section 4 support can be found in the 'Advice and Assistance with Applications for Section 4' part of this advice sheet.

SOMALI NATIONALS IN DETENTION AND SECTION 4 SUPPORT FOR DETAINEES

Somalis in Detention

We understand from immigration advisers that it is currently very difficult for the Home Office to forcibly remove individuals back to Somalia. This is likely to be for the same reason that voluntary returns cannot take place at the moment (see above).

However, despite these difficulties the Home Office has not stated publicly that it has stopped trying to forcibly remove individuals back to Somalia. This means that

Somali nationals whose asylum claims have been refused may still be given **removal directions** from the Home Office and may also be put into detention whilst the Home Office tries to remove them.

To get s4 support, detainees do not need to have made a fresh claim or an application for voluntary return. They just need to show they would have no place to live if released from detention

The Home Office's own guidelines state that detention should only be used in limited circumstances and for the shortest time necessary. It also says that a person should have their detention reviewed regularly to ensure that it continues to be justified.

Somali nationals in detention should now seek advice about applying to be released on the grounds that it is currently very difficult for the Home Office to remove people back to Somali and so to continue to detain them is neither reasonable nor justifiable.

Bail for Immigration Detainees (BID) have produced book called 'How to Get Out of Detention'³. This explains rights of individuals who have been detained and how to make an application to be released from detention. It also advises individuals on how to represent themselves if they do not have an immigration adviser.

The contact details for BID can be found in 'Advice for those in detention' section of this advice sheet.

Section 4 Support for Detainees

Refused asylum seekers in detention who do not have a place to live and need an address to apply for bail are automatically entitled to Section 4 accommodation. The policy to provide support to detainees is based on Section 4(1) of the Immigration and Asylum Act 1999.

Unlike support applicants who are not detained, detainees will not have to show that they meet the normal Section 4 requirements. This means that they will not need to have made a fresh claim or to have made an

³ Bail for Immigration Detainees 'Bail Notebook for Detainees: How to Get Out of Detention', <http://www.biduk.org/obtaining/notebook.htm>

application to voluntarily return to Somalia. All they need to show is that they would not have a place to live if they were released from detention. If they are released from detention they should continue to get Section 4 support for as long as their bail conditions apply.

Bail for Immigration Detainees (BID) provides advice to individuals in detention including information on how to apply for Section 4 support. They can also send individuals a copy of the forms they will need to fill in to get support.

The contact details for BID can be found in 'Advice for those in detention' section of this advice sheet.

INFORMATION AND ADVICE ON VOLUNTARY RETURNS – THE CHOICES PROJECT

The Choices Project, which is run by Refugee Action, offers confidential and independent advice to individuals considering voluntary return to their country of origin. They have offices in four areas in the UK and also offer advice over the phone.

London

3rd Floor, The Old Fire Station,
150 Waterloo Road,
London SE1 6ED
Tel: 020 7654 7713
Fax: 020 7401 3699
Please telephone for an appointment

Manchester

4th Floor, 35 Dale Street,
Manchester M1 2HF
Tel: 0161 233 1216/1219
Fax: 0161 236 4285
Free client phone number: 0800 917 2719
Please telephone for an appointment

Leeds

Suite 7, Floor C,
Josephs Well, Hanover Walk
Leeds LS3 1AB
Tel: 0113 244 5345
Fax: 0113 243 5448
Please telephone for an appointment

Leicester

Chancery House
7 Millstone Lane
Leicester LE1 5JN
Tel: 0116 261 6200
Fax: 0116 262 6226
Please telephone for an appointment

Website : <http://www.refugee-action.org.uk/ourwork/choices/contactus.aspx>

International Organisation for Migration (IOM) provides travel assisted to individuals wishing to return voluntarily to their country of origin. For more information telephone 020 7233 0001. Website: www.iomlondon.org

ADVICE AND ASSISTANCE WITH APPLICATIONS FOR SECTION 4 – ONE STOP SERVICES

One stop services around the UK are able to give advice and help to individuals wanting to make applications for Section 4 support. The Asylum Support Partnership has compiled a list of one-stop services around the country. This list can be downloaded from <http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/howwehelp/OSS%20Map%20Jan%202009.pdf>

If you do not have internet access and would like us to send you a paper copy please contact ASAP

ADVICE FOR THOSE IN DETENTION – BAIL FOR IMMIGRATION DETAINEES

Bail for Immigration Detainees provides advice to individuals in detention including how to apply for Section 4 support and advice on how to apply to be released from detention.

BID London for all general queries and detainees (except those held at the centres listed below)
Tel: 020 7247 3590 (please call between 10 a.m.to 12 pm, Monday to Thursday - outside of these times leave a message)
Fax: 020 7247 3550

BID South office: for detainees at Colnbrook, Dover and Haslar
Tel: 023 9281 6633
Fax: 023 9282 1529

BID Oxford office: for detainees at Campsfield House and Lindhome
Tel: 0845 3304 536 (phones are open on Tuesday, Thursday and Friday - please call between 1.30 and 4.30 p.m.)
Fax: 0845 3304 537

Website www.biduk.org

FINDING AND IMMIGRATION SOLICITOR

Community Legal Advice's website provides details of immigration solicitor throughout the UK
<http://www.communitylegaladvice.org.uk/gateway/immigration.jsp>

The Office of Immigration Service Commissioner's website provides details of immigration solicitors throughout the UK http://www.oisc.gov.uk/people_seeking_immigration_advice/adviser_finder/