ASAP ASYLUM SUPPORT APPEALS PROJECT

Section 95 Support

April 2014

Factsheet 1

In this Factsheet:

- Background to Section 95 support
- Who is eligible for section 95 support?
- What is an ongoing asylum claim?
- What is the destitution test?
- What form does section 95 support take?
- What happens when the asylum claim is determined?
- Other reasons for terminating support
- Appealing decisions to refuse or terminate support

This Factsheet deals with the support available to people whose claims for asylum are ongoing – section 95 support.

Background to section 95 support

People seeking asylum are excluded from claiming mainstream welfare benefits and in most cases from working. They can access support in the form of housing and/or basic living expenses while in the UK through a scheme administered by the Home Office. This support scheme was set up by Part VI of the Immigration and Asylum Act 1999 and provides two support packages – support for those whose asylum claims are ongoing and support for refused asylum seekers. Section 95 support is aimed at asylum seekers whose claims are ongoing, who are destitute or about to become destitute, and their dependents.

Who is eligible for section 95 support?

An "asylum seeker", for support purposes, is a person over 18 years old who has made an asylum claim or a claim under Article 3 of the European Convention on Human Rights (ECHR). A person who has only made a claim for leave to remain on private or family life grounds (that is under Article 8 of the ECHR) will not be eligible for section 95 support, unless they have also made an asylum or Article 3 claim.

A "dependant" can be a husband/ wife/ civil partner, an unmarried couple (if living together for more than 2 of the last 3 years), a child under 18, or a member of the household who is over 18 and is in need of care and attention due to disability. The dependent of an asylum seeker will be entitled to support regardless of their own immigration status. Asylum seekers who are under the age of 18 and arrive in the UK alone are not eligible for asylum support and should instead apply for support from Social Services.

What is an ongoing asylum claim?

The claim must have been "recorded". This means the Home Office have recorded receipt of the asylum or human rights claim. If the claim is a first claim that is made at a point of entry to the UK (the airport or sea port for example) or at the Asylum Screening Unit in Croydon, then the claim will usually be recorded by the Home Office immediately. If a person has made a previous claim which was refused and is making a fresh asylum claim they will not usually be entitled to

section 95 support, but may be eligible for section 4 support.

The claim must not have been "determined". So, when the asylum seeker applies for section 95 support, they must still be waiting for a final decision on their asylum claim either from the Home Office or the Immigration Tribunals (if they have appealed). If their claim has been refused and any appeal has been fully determined, they will not be eligible for section 95 asylum support, but they may be eligible for section 4 support (see ASAP Factsheet 2).

The Home Office must refuse support if the applicant did not claim asylum as soon as reasonably practical after their entry into the UK (usually 3 days). This is known as a "Section 55" decision. However, support must still be granted if it is needed to avoid a human rights breach. This will usually be the case if the asylum seeker would be made destitute and street homeless without asylum support.

What is the destitution test?

Asylum seekers are entitled to section 95 support if they meet the destitution test. A person is "destitute" if they do not have adequate accommodation or enough money to meet living expenses for themselves and any dependants now or within the next 14 days. See Factsheet 5 – Proving Destitution.

What form does support take?

Section 95 support can take the form of subsistence only (i.e cash only support) or if the asylum seeker does not already have access to adequate accommodation, accommodation and subsistence support. The level of cash support granted is a fixed rate which is significantly lower than income support levels. Asylum seekers are accommodated outside of London and the South East under the Home Office's dispersal policy. Accommodation can be provided in London in exceptional circumstanes.

What happens when the claim is determined?

An asylum seeker will only be eligible for support while they remain an asylum seeker. This means that if an asylum seeker's asylum claim is fully determined with no outstanding appeal; their asylum support may come to an end. If their claim is refused and the asylum seeker has no dependants (or their child was born after their claim was decided), their support will end after 21 days. They then may be eligible for section 4 support. If their claim is refused and the asylum seeker has a dependant child at the time their claim is fully determined, they will continue to receive asylum support. This support is the same as the support that they would have received whilst their claim was being processed. This support can be ended however if the family is certified by the Home Secretary as having failed to leave the country voluntarily.

The information contained in this Factsheet is intended for guidance only. While every effort is made to ensure it is correct a time of publication, it should not be used as a substitute for legal advice. For client specific advice please contact ASAP

If the asylum seeker has been granted leave to stay in the UK, section 95 support will end after 28 days. This is because that person will usually become entitled to work and to claim mainstream benefits administered by the Department of Work and Pensions (DWP).

Other reasons why support can be terminated

Support can be terminated while the asylum seeker is waiting for a decision on their asylum claim for a variety of reasons. This could be that the asylum seeker ceases to be destitute due to a new source of income or a change in circumstances which means that they no longer require support. More commonly, support is withdrawn because an asylum seeker breaches conditions of support. Support conditions are given to an asylum seeker when they move into their accommodation. Each accommodation provider will have their own conditions or "house rules". If the asylum seeker breaches the conditions the Home Office will withdraw support. It is the asylum seeker's responsibility to get the conditions translated if necessary and ensure that they understand them. The Home Office may also withdraw support for failing to provide information, being absent from accommodation without permission or concealing financial resources.

Appealing decisions to refuse or terminate support

If an asylum seeker is refused asylum support they can appeal to the First Tier Tribunal (Asylum Support). If support is removed, the asylum seeker can also appeal. If an asylum seeker does not wish to take up the offer of accommodation in a dispersal area, there is no right of appeal to the Tribunal and the asylum seeker should seek advice about a judicial review. But if support is discontinued and the person has a reasonable excuse for not travelling to their dispersal accommodation on the day of travel, they can appeal to the Tribunal.