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Factsheet 7

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This Factsheet looks at what can be done to help asylum-seekers and refused asylum-seekers when an appeal to the First-tier Tribunal (Asylum Support) (AST) is unsuccessful.

Could a further application for support be submitted?

The judge hearing the appeal tells the asylum-seeker (the appellant) at the end of the hearing whether the appeal is allowed, dismissed or remitted and gives them a Decision Notice. The judge must then give full reasons for any decision and these are published in a Statement of Reasons (SoR) which is sent to the appellant or their representative within 3 working days of the hearing. It is important to examine the SoR very carefully so that the reasons for losing the appeal are fully understood. The law states that the Home Office (HO) has to be satisfied that there has been a 'material change of circumstances' before it will entertain a further application after a dismissed appeal.¹ However, and especially when the issue was destitution, in many cases, it will be appropriate to re-apply for support.

For example, the funds a client did have at the time of the appeal may have run out. Or they have lost their accommodation or charitable support. Or they have obtained an important piece of evidence, which will help to address the reason why they lost the appeal. See ASAP Factsheet 5 on proving destitution.

Alternatively, if the issue in the appeal was not destitution, a client may have made a fresh claim for asylum or have new circumstances which render them unfit to travel. Make clear in the application form how this application contains additional evidence or information which was not available (or did not exist) at the time the appeal was dismissed.

Reasonable Steps to Leave the UK

If the client is an individual or part of a family and their asylum claim and any subsequent appeal rights have been exhausted, they can apply for s4 support if they are taking reasonable steps to leave the UK voluntarily (see Factsheet 2). Reasonable steps would usually include applying for assistance with voluntary return to their country of origin and/or contacting the relevant Embassy. Support can be discontinued if the client stops taking reasonable steps to leave the UK. The client should consider carefully any decision to return voluntarily and ideally obtain immigration advice.

¹ Immigration and Asylum Act 1999 s103(6)

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After a Negative Appeal Decision

Further submissions

If, since their dismissed appeal to the AST, your client has lodged further submissions which have not yet been looked at by HO they will become eligible (again) for s4 support. See Factsheets 2 and 12.

Local Authority Assistance

There is the potential for local authorities to support two distinct groups, under different legislation, disabled individuals and families, and they will be dealt with in turn.

Disabled asylum-seekers may be eligible for support (including accommodation and essential living needs) from social services under the Care Act 2014. As this form of support takes precedence over asylum support (should a person qualify for it) then it is possible that someone whose appeal has been dismissed will not qualify for Care Act support. This is because they should already have been on Care Act support, not asylum support. The relationship between Care Act support and HO support is complicated and advice from ASAP and a specialist community care solicitor should be obtained.

Families, when the parents become refused asylum-seekers, usually remain on s95 support whilst there is a child under 18 in the household. This is because under s94(5) they continue to be treated as asylum-seekers for support purposes. However, if their support is discontinued (for example for breach of conditions) and they lose their AST appeal on that issue, then they should apply to social services for support for Children Act 1989 s17 support. This is because the child (or children) in the household would be a child 'in need' under s17, if the family is destitute.

Judicial Review

As there is no asylum support Upper Tribunal, if you consider that the AST's decision to dismiss your client's appeal may be unlawful, then a potential remedy is judicial review. A more common and effective solution will often be for your client to obtain further evidence and re-apply for support, as set out above.

Judicial review is a legal challenge of an unlawful decision of a public body (including the AST). It is much more limited than a right of appeal, and can only be used where there is no right of appeal or the appeal process has been exhausted.

The AST's decision may be challengeable by way of judicial review if, for example, it has given too much weight to irrelevant considerations (or insufficient consideration to relevant considerations) or has failed to follow correct or fair procedures or has drawn conclusions that no 'reasonable Tribunal' could have

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come to.

An application for judicial review should be made promptly and within 3 months of the AST decision so it is important that advisers seek advice from a specialist solicitor as soon as possible. ASAP can assist. See ASAP Factsheet 13, Introduction to Judicial Review.