

## November 2021: Summary of Judge Lewis Statement of Reasons (SoR), oral appeal heard 17/5/18

For use in further subs cases where submissions are being prepared but not yet submitted [AS/18/05/38069](#).

This was a s4(2) refusal appeal. The appellant was a refused asylum seeker from Trinidad and Tobago who appealed against a decision to refuse him s4(2) support. He was refused on the grounds that he did not satisfy reg 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005.

His destitution was not disputed therefore this did not form part of this appeal.

The Appellant applied for s4(2) support on 10/4/18. In support of his application it was claimed that he satisfied the condition of reg 3(2)(e) because he was in the process of preparing further representations in respect of his asylum claim.

He evidenced this by showing that on 4/4/18 he had booked an appointment to attend the Further Submissions Unit (FSU) in Liverpool on 14/6/18. In addition to this he had a solicitor assisting him with his further submissions. Beyond confirmation of the FSU appointment, nothing was provided explaining or evidencing the substance of the submissions.

In its refusal letter, the Home Office stated that *“merely having an appointment to lodge further submissions does not constitute eligibility under this criteria. Further submissions must be lodged and accepted by the Home Office to be eligible under this criteria”* (see para 14 of the SoR).

Judge Lewis in paragraph 14 found that the second sentence (*“Further submissions must be lodged and accepted by the Home Office to be eligible under this criteria”*) was legally incorrect. He continued and explained that the Principal Judge in appeal [AS/14/11/32141](#) found that *“the mere assertion that further submissions are in the process of being lodged will [not] be sufficient to satisfy an asylum support judge that eligibility under Regulation 3(2)(e) is established”* (paras 14-16 of the Lewis SoR).

Furthermore, Judge Lewis explains to satisfy the above and reg 3(2)(e), it will be necessary to demonstrate genuine concrete steps are being taken to lodge further submissions that are not hopeless or abusive. In order to establish an eligibility for s4, an appellant should articulate the nature of their further submissions and show how they differ from those previously considered in the initial asylum claim. This second part **will usually require** production of the initial asylum decision and subsequent appeals (para 29). He also advises that if further submissions have been drafted, they should be submitted to the AST, failing that it will be necessary to provide evidence explaining what the contents of the submissions will be.

In this context, it will be necessary to show that the further submissions will be new, real, and relevant. It will be deemed insufficient if an appellant generally states that new evidence is being sought, as it could be considered speculative. To overcome this, Judge Lewis explains that it will be

reasonably expected for appellants to indicate the contents of their evidence, and what stage the evidence gathering is at (paragraph 29X).

In cases where the above is **not** followed, it will be likely that the appeal is **dismissed** as the AST will be unable to undertake the relevant analysis required to determine eligibility under reg 3(2)(e) (para 29, point vi).

For the appellant in this case, the ASAP representative contacted the solicitor and obtained details of the basis of the further representations and the supporting evidence being gathered. This led Judge Lewis to determine that *“I accept that it is more likely than not that the Appellant will present further representations in respect of his asylum claim to the Secretary of State at the FSU on 14 June 2018”* (paragraph 31). As such the appeal was allowed under reg3(2)(e).

#### **Comments:**

Whilst the findings in this case are not binding on other judges, it nonetheless provides invaluable practical guidance to appellants, representatives and the wider refugee sector on what is likely to be expected in order show eligibility under reg 3(2)(e) where further submissions have not yet been lodged. At a minimum, an appellant should aim to show the specific nature of further submissions whilst indicating what stage the evidence gathering is at.

It is important to note that having an appointment at the FSU is the bare minimum and unlikely to be enough its own. Judge Lewis expresses the reasons why in para 35. To ensure the best chance of success at the AST, it is necessary to present specific details of the nature of the further subs, as well as confirmation of an appointment at the FSU.

In addition to this summary it is recommended that **paras 29 and 35-38** be given specific attention in order to understand the expectations in further submissions cases.

The full statement of reasons can be found on our [website](#).