

## Changes to Section 4 support process

August 2012

### Changes to assessment procedures of applications for Section 4 support

This information paper covers the changes recently made in instructions to UKBA Case Owners on the procedures for assessing applications for support under Section 4(2) and 4(3) of the Immigration and Asylum Act 1999.

The Act specifies that support may be provided to a failed asylum seeker who appears to be destitute and satisfies one or more of a number of conditions. These are that the person is taking all reasonable steps to leave the UK, that the person is unable to leave the UK because of a physical impediment to travel or some other medical reason, that in the opinion of the Secretary of State there is currently no viable route of return, that an application has been made in Scotland for a judicial review of their asylum claim, or permission has been granted for leave to proceed on a judicial review in England and Wales or Northern Ireland, or that provision of accommodation is necessary for the purpose of avoiding a breach of a person's convention rights, within the meaning of the Human Rights Act 1998.

It is the last of these conditions which has been subject to recent changes.

### Background

UKBA policy had been that in a case where a failed asylum seeker made a further submission in respect of their asylum claim no decision would be made on an application for Section 4 support until after a decision had been made as to whether the further submission constituted a fresh asylum claim, unless there was a 'justifiable delay' in serving a decision on the further submission.

Although not specifically stated in the published instructions to Case Owners, the policy which became standard practice was that up to 15 working days would be allowed for the further submission to be considered.

In July 2012 the High Court heard a case brought by two claimants against the Home Office that the policy was unlawful and had led to a breach of their rights under the European Convention on Human Rights (ECHR). Refugee Action were permitted to intervene in the case and make written submissions via the Migrant's Law Project, and witness statements were submitted by the Refugee Council and the British Red Cross. In one of the cases, 27 days had elapsed before a decision was made on the Section 4 application, and in the other case 36 days.

In evidence to the court UKBA claimed that the average time to make decisions on Section 4 applications which involved further submissions was 13 working days in about 90 per cent of cases. The remaining 10 per cent were often considerably longer timescales because of requests for further information or administrative errors. The witness statements from Refugee Action and the Refugee Council both stated that delays beyond the 15 working day timescale were commonplace.

The judge in delivering his decision pointed out that 15 working days could amount to 21 calendar days and that it could be up to a further 9 days before accommodation was actually provided.

He made the further point that no clear policy existed on the prioritisation of cases. While voluntary sector organisations assisting applicants could, and usually did, classify an application as Priority A or B that would not apply when an applicant did not have assistance. He went on to say that there appeared to be no internal guidance in UKBA on which cases should be prioritised, and that there was no reference to the status of street homelessness.

The judge concluded that the blanket instruction that Section 4 decisions should not be made until after the decision on further submissions, and that up to 15 days could be allowed for the further submission decision, did involve a significant risk of a breach of the rights of a significant number of applicants under Article 3 of the European Convention on Human Rights. He therefore decided that the instruction was unlawful.

## UKBA Response

The UKBA instructions to Case Owners have been revised as a result of the judgement.

The new instructions clarify that Case Owners must consider whether support under Section 4 is necessary to avoid a breach of ECHR right. The most common case types which are mentioned as likely to qualify for support include those where the applicant has made further submissions which are outstanding.

The instruction that the Case Owner must assess the further submissions before the application for Section 4 support is considered has been removed, as has the reference to 'justifiable delay' in making the decision on further submissions.

The new instructions say that the Case Owner should make every effort to consider the further submissions at the same time as consideration is given to the Section 4 application, and should check that the further submissions are not abusive, clearly unfounded, or repetitious. If those factors apply the Section 4 application will be refused, in practice at the same time as the further submissions are rejected.

Case Owners are told to be aware of the need to consider Section 4 applications speedily and that decision making should not be delayed because of administrative or other problems in assessing the merits of further submissions. It is clear that Section 4 decisions can be made in advance of the decision related to further submissions. The instructions state that as a general rule no decision on a Section 4 application should be made later than 5 working days.

The new instructions also deal with the points made by the judge about the prioritisation of cases. A list is provided of examples of cases which should be given high priority, and in these cases Case Owners must make every reasonable effort to decide the application within 2 working days.

The examples given of high priority cases are:

- People who are street homeless
- Families with minors
- Disabled people
- Elderly people
- Pregnant women
- Persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence
- Potential victims of trafficking

## Further Changes

Some further minor changes have been made to the instructions.

If the further submissions are accepted as a fresh asylum or an ECHR Article 3 application Case Owners then have to refuse the Section 4 application and advise the applicant that they may be eligible for Section 95 support, but they are no longer specifically told to provide the applicant with an asylum support application form for that purpose.

In addition when a further submission is either rejected, or accepted as a fresh asylum or ECHR Article 3 application but certified under Section 96 of the 2002 Act, the Case Owner is no longer required in the refusal letter to notify the applicant of the opportunity to reapply for Section 4 on another basis if they think they may be eligible.

## References

UKBA Instructions to Case Owners on Section 4 Support:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/section-4-support-inst.pdf?view=Binary>

Judgment in the case of MK and AH v. Secretary of State for the Home Department:

<http://www.judiciary.gov.uk/media/judgments/2012/mk-ah-judgment-10072012>

Legal submissions and witness statements on the case of MK and AH;

<http://www.refugee-action.org.uk/campaigns/previousprojects/influencingpolicy/default.aspx>