

LEGAL AID: CASE STUDIES

Fresh claims

Linda

Linda is a Zimbabwean national. Her parents live in the UK and she originally arrived in the UK as a visitor and was later granted a student visa. Her studies finished, but because of the violence being perpetrated by Zanu-PF in Zimbabwe in 2008 she claimed asylum as she was fearful for her safety. In the UK, Linda had been involved with Restitution of Human Rights Zimbabwe and had written articles about Zimbabwe. Her asylum application was refused, as was her appeal, the immigration judge finding that she had only got involved in opposition groups to 'manufacture' an asylum claim and also not to be at risk because of her low profile, citing *RN (Returnees) Zimbabwe CG* [2008] UKAIT 00083.

Because she was still fearful for her life in Zimbabwe, Linda didn't return voluntarily to Zimbabwe. The Home Office was also not forcibly removing failed asylum applicants to Zimbabwe because it recognised that Zimbabwe was too dangerous for most people. Linda remained involved in politics, joining the MDC and the Labour Party.

In mid-2012, the Supreme Court gave judgment in *RT (Zimbabwe)* [2012] UKSC 38 which looked at the meaning of the 'freedom to hold and express political and found that asylum applicants returned to Zimbabwe would be asked to demonstrate their loyalty to Zanu-PF; on pain of torture and death.

In 2012 Linda obtained advice funded by legal aid as to the strength of a fresh asylum claim and was represented to make such a claim. It was accepted as a fresh claim. In 2012 Linda was recognised as a refugee. She now has a place at university to study social work and is still involved in all the political activities she was involved in before.

Mehdi

Mehdi claimed asylum in the UK in 2009. He had demonstrated against the Iranian government after elections in Iran in 2009 and been involved in a fight with some Iranian secret policemen at one of the demonstrations. He feared arrest and disappearance.

Neither the Home Office nor an Immigration Judge believed Mehdi's account. However, because he had no passport, because the Iranian government does not accept returnees without documentation and because there is no Iranian embassy in the UK, he could not be removed from the UK nor could he leave voluntarily. He was stuck.

Mehdi converted to Christianity while in the UK. He approached legal aid lawyers about a fresh claim. They were able to book an interpreter (he did not speak English very well) and explain the evidential burden on him to show that his conversion was genuine as part of evidencing a fresh claim. They were able to help him gather more evidence from his church about his faith and commitment and to take statements from his pastor and others in the church to explain how the church made sure that they were convinced that someone was genuinely Christian before they were baptised. They were able to get an official translation of his Farsi language blog Mehdi writes. They were able to get evidence of his charitable work. Mehdi was recognised as a refugee.

Sorishi

Sorishi (not his real name) is an Iranian Kurd. He is a member of a local Kurdish religion called 'Ahl-e Haqq', members of which are persecuted in Iran. At his asylum screening interview, Sorishi said that he was Ahl-e Haqq. At Sorishi's substantive interview, no questions were asked about his faith. When asked

at the end whether there were any other reasons he was claiming asylum not previously mentioned, he stated that he was from a persecuted minority. However, no further questions were asked of him. The Home Office refused his asylum application. Sorishi was unrepresented at his asylum appeal and the immigration judge ignored Sorishi's being from a persecuted religious minority; most people outside of Kurdistan are unaware of the existence of this religion at all.

Sorishi made two fresh claims on the basis of his Ahl-e Haqq faith, both of which were refused by the Home Office who (incorrectly) stated that this was the first time he had mentioned his faith. He was also refused as he had not laid out proof that the Ahl-e Haqq are persecuted. Solicitors found where Sorishi had previously mentioned his faith. We found evidence of the persecution of the Ahl-e Haqq. The fresh claim is pending. When he was unrepresented his fresh claims were returned within two to three weeks. The Home Office has been considering the current case for some months.

Fikre

Fikre left Eritrea illegally because he did not want to be conscripted into the army. Fikre claimed asylum in the UK whilst still a teenager. His claim was refused by the Home Office and by an immigration judge, both of whom did not believe how he managed to leave Eritrea.

Fikre did not have an Eritrean passport which would show that there were no exit stamps). However, unexpectedly, about nine months after his asylum appeal, Fikre's aunt sent him a letter and copies of receipts for large sums paid by Fikre's mother. The reason given on the receipt was "*Because of her son crossing the border illegally*".

Because Fikre was able to access Legal Aid for a fresh claim he was able to present this evidence in the way prescribed by the Home Office and with supporting evidence:

- Translated by a 'recognised translation agency' at a cost of £82
- With the envelope in which they were sent to him
- A statement regarding how the evidence was come by
- Pointing out how the evidence of fines matched information known about Eritrea

Other than the translation of documents these prescriptions cannot be found in Home Office literature, but lawyers know that they are necessary from experience and from case law. Lack of transparency as to the extra requirements placed upon asylum applicants is one reason for the need for legal representation. Fikre was recognised as a refugee.

Cases relevant to the residence test

The cases below are cases the Ministry of Justice has already seen. They were among those annexed to ILPA's response to the consultation on legal aid changes that preceded the Legal Aid, Sentencing and Punishment of Offenders Bill. But they illustrate some of the dangers of these new changes.

To understand some of the asylum support cases below, bear in mind that asylum-seekers (including those whose fresh claims have been accepted as such) receive support under section 95 of the Immigration and Asylum Act 1999, while those whose claims for asylum have failed and whose fresh claims, if any, have not been accepted, receive support (if at all) under section 4 of that Act.

N (Domestic violence)

N was 16 when her British husband made arrangements to marry her with her parent's consent in N's country of residence. He completed all the relevant visa forms, and claimed that N was over 18. During the period spent waiting for the application to be determined, and prior to entry to the UK,

N was sexually and physically abused by her husband. N tried to leave her but after finding herself destitute and having no-one to turn to, she returned to him on two separate occasions. N's husband

kept all immigration status documents and refused to take N to see a doctor. He refused to allow N to speak to her family, and refused to allow her to attend English classes. At the third attempt in leaving her husband, N fled to a different city. N was then referred to a legal aid immigration solicitor for advice and assistance. Given that N had no documents, no proof of living with her husband and that he was violent, her representatives had to spend many hours in getting evidence of N's circumstances, including getting a copy of her visa application from the UK Border Agency files and an expert's assessment on N's experience of domestic abuse. N was granted Indefinite Leave to Remain.

D (Domestic violence)

D was granted a probationary spouse visa to join her husband in the UK. D was abused by her husband and her mother in law. D's mother-in-law threw boiling water on her and D's husband would rape her almost every night. D did not have any other family or friends in the UK and was not permitted to leave the house. D escaped from the bathroom window and reported her husband and mother-in-law to the police. D was granted Indefinite Leave to Remain under the domestic violence rule.

D (Judicial review)

D instructed legal aid solicitors when he was detained facing removal from the UK. He had previously paid a private solicitor. He and his family had exhausted their funds. His private solicitor had represented him in a claim for asylum which was not only false as to the risk of persecution but also was false insofar as it made no mention of D's two dependent children and a long term partner, all of whom are British nationals. This claim was refused and certified as clearly unfounded. The same solicitor then assisted him in making an application to remain on the basis of his life with his British family. The evidence submitted was of limited value. This was refused and the claim certified. He applied for judicial review but was refused.

Detained, without funds and facing deportation, D instructed legal aid solicitors who assisted him to renew the application for judicial review. That application was refused and his solicitors advised him that his only immediate option was an out of country appeal right. When his departure was delayed, apparently by the failure of the Home Office to produce his passport, the solicitors submitted a new application. This included representations from his solicitor, detailed statements from the family, translated documents and a social worker report. This report, which commented on the dependency of the British members of the family on D and the potential risks to the welfare of the children if their father were removed, was the keystone of the evidence. Nine months after the representations were made, D was granted discretionary leave to remain with his family.

K

K entered the UK over 10 years ago after a war torn country in West Africa. After her application for asylum was refused and appeals failed, K found herself destitute and with two young children to support and accommodate. One of K's children was a British citizen. After years of hopeless attempts to find paid work and financial assistance from social services, she turned to prostitution to make ends meet. From her small earnings, K paid an immigration consultant to advise and assist her with an application to the UK Border Agency under its legacy (case resolution) work. This consultant did very little in K's immigration matter and asked her for more money, which K did not have. In view of K's work in prostitution, the children were taken away from her by Social Services. This led to a mental breakdown and K was sectioned into a mental health unit.

Legal aid lawyers made an urgent application to the Case Resolution Directorate and asked for this to be expedited under the UK Border Agency's policy, and for a decision to be made by a specified period of time. After not receiving a response from the UK Border Agency, K's representatives issued judicial review proceedings challenging the delay. The UK Border Agency settled the proceedings and granted K and her youngest child Indefinite Leave to Remain.

AK (Sri Lanka) Court of Appeal [2009] EWCA Civ 447 (Residence)

AK entered the UK in 1992. Her appeal against her unsuccessful claim for asylum was dismissed in 1996 and she was refused leave to bring a further appeal to the (then) Immigration Appeal Tribunal

In 2002, she made a claim to remain in the UK under Article 8 (right to family and private life) of the European Convention on Human Rights. This was refused by the Secretary of State in 2003 and her appeal refused that year. In 2004 she was refused leave to appeal to the (then) Asylum and Immigration Tribunal. She was not removed from the UK and in 2005 applied to be given indefinite leave to remain. Subsequent correspondence followed, which included evidence about her mental health. In 2008 a Home Office letter was drafted which provided for her to be removed from the UK by way of the same day removal procedure and which gave no consideration to whether any of the correspondence since 2005 amounted to a fresh claim within rule 353 of the Immigration Rules. The decision letter was not delivered and the claimant attended a routine interview on 18 February 2008. She raised again her mental health and a suicide attempt. The letter drafted but not sent was found, and she was removed the same day.

The case turned on whether “further submissions” had been made to the Secretary of State since the adjudicator’s determination of 23 December 2003, requiring the Secretary of State to consider whether these amounted to a fresh claim within the meaning of rule 353; and whether a reasonable Secretary of State would have concluded that she had indeed advanced a fresh claim, i.e. that she had submitted material “significantly different” from that advanced in her unsuccessful case. It was held that a reasonable Secretary of State would so have concluded and would have concluded that the material in her further submissions “realistic prospect of success” (rule 353 of the immigration rules) on the grounds of Article 8. The removal was found to have been unlawful. In total the AK spent 18 months out of the UK subsequent to her unlawful removal before the Home Office finally agreed to return her and to give her indefinite leave to remain.

A (residence – family law. Since 6 April 2013, Now outside the scope of legal aid).

A was 12 years old. Her mother was from Africa. No father was named on her birth certificate and while it was thought that her father was a British citizen, because her parents were unmarried and given her date of birth (the law on this point changed in July 2006), she was not a British citizen in any event. By the time her mother died of cancer her father’s whereabouts were unknown. She was in the care of an aunt. Legal aid lawyers made an application for a residence order, as well as an immigration application under Article 8 of the European Convention on Human Rights. Following detailed representations, A was granted indefinite leave to remain.

C (Residence – asylum support)

C is a single mother. Her 17 year-old son suffers from epilepsy and has regular seizures. They are both failed asylum seekers. They applied for section 4 support on the grounds that he would be unable to leave the UK because of his medical condition. She provided letters from her son’s doctors in support of their application. The UK Border Agency refused them support because the medical evidence had not been submitted in the form of the UK Border Agency’s own medical declaration. They sought advice from a firm of solicitors, who advised them to appeal the decision. Their solicitors assisted in preparing additional medical evidence and legal submissions to the effect that there is no formal requirement that evidence be submitted in the form of a medical declaration.

They also referred his case to the Asylum Support Appeals Project for representation on the day of the hearing (there is no legal aid for representation at asylum support appeals. They won their appeal.

A

A was a failed asylum seeker with physical and mental health problems. His eye sight was very poor as a result of having been tortured. He was destitute and living on the streets. The Law Centre advised him to submit further representations regarding his asylum claim by post as he was unable to

travel by person to the Further Submission Unit in Liverpool. They also helped him apply for support. The UK Border Agency refused him support on the grounds that he had not attended the Liverpool Further Submissions Unit in person, as required by their policy. They made no mention of his postal submissions nor did they address his request to submit them by post for medical reasons. They also failed to abide by their own policy of returning all postal submissions to the sender. Funded by Legal Aid, a Law Centre, was able to advise A about his options for challenging the refusal of support. This included appealing to the Asylum Support Tribunal or judicially reviewing the decision not to accept his submissions by post. Without the Law Centre's advice, it would have been very difficult for Mr A to consider his next steps and he may have been left destitute, even though he was clearly eligible for and in desperate need of support.

K (residence – judicial review)

K's support was terminated in August 2004. His appeal was heard in his absence in October 2004; because his support had been terminated he did not receive notice of the appeal hearing. The appeal was heard in his absence and, in the absence of evidence from him, dismissed. He did not know that this had happened. He applied for and was granted 'section 4' support on the grounds that there was no route of return to his country of origin. In 2009 the Secretary of State indicated an intention to cease support, on the grounds that there was now a viable route of return. K's legal representatives, a law centre, prepared submissions to demonstrate that C continued to be entitled to support on other grounds, citing the applicable case law. Meanwhile the procedure for lodging such submissions had been changed, so that people were required to secure an appointment and then to go in person to Liverpool to make the submissions, unless their representatives could demonstrate that they fell within one of the exceptions to this requirement set out in policy guidance. The Secretary of State indicated that support would be terminated before the date on which K could lodge these further submissions. This would have left K street homeless. The representatives applied for an emergency judicial review to require the Secretary of State to accommodate K until he was able to make his application. As a result of this, and within just a few days, the Secretary of State indicated that K would be granted indefinite leave to remain in the UK.

N (Residence – judicial review, asylum support)

N was seven months pregnant and had been street homeless and sleeping inside a church and on a park bench for two months. She was waiting for the UK Border Agency's decision on whether it would accept her fresh claim for asylum as such. She had become street homeless after the person with whom she had been living had asked her to leave. A voluntary sector organisation had assisted her to apply for section 4 support. At the time when she saw legal aid lawyers, the application had been outstanding for 14 days, during which time N continued to be sleeping in the church and outside. The UK Border Agency refused to say when a decision would be made and therefore the voluntary sector organisation referred her to legal aid lawyers. The lawyers assisted N under the Legal Help Scheme and sent the UK Border Agency a letter before claim threatening judicial review due to the delay in making a decision on N's section 4 application. She was provided with section 4 accommodation that day. The lawyers also ensured she was provided with accommodation in London in accordance with the asylum support policy bulletin on dispersal and pregnancy, a matter which the voluntary sector organisation had not identified in the original application. This work was carried out under the Legal Help Scheme.

B (Residence – asylum support, judicial review)

B was informed that his support should have ended two years previously as it was alleged that B had breached the conditions of his support at that time. This was not something that had previously been put to B and he denied the allegation of a breach in any event. A voluntary sector organisation assisted B to make a new application for section 4 support, and asked that this be treated as urgent due to his imminent homelessness and because he has a disability; his leg has been amputated and he wears a prosthetic limb. However, the UK Border Agency refused to give B's application any priority or provide him with accommodation before his current accommodation was due to end. The voluntary sector organisation referred B to the legal aid lawyers as they considered that B would be street homeless

unless legal action was taken. B instructed lawyers under the Legal Help Scheme two days before his accommodation was going to end. The lawyers sent the UK Border Agency a letter before claim threatening judicial review and he was provided with accommodation the following day.

D

D, with the help of a voluntary sector organisation, had applied for section 4 support as he, his wife and his children (aged three, four, and seven) had been told to leave their relative's accommodation and they had nowhere else to go. The UK Border Agency refused this application as D was not treated as having made a fresh claim for asylum as he had not submitted this in person at the Liverpool, as the Agency's policy now requires people to do. D had not done so because he could not afford to pay for himself and his family (who are required to attend) to travel to Liverpool. A duty barrister from the Asylum Support Appeals Project, acting pro bono, represented D at his appeal to the First-tier Tribunal (Asylum Support), but the appeal was refused, although it was accepted that D was destitute. D was referred to legal aid lawyers for advice about challenging those decisions (there is no appeal from the First Tier Tribunal (Asylum Support) to the Upper Tribunal) and they assisted him under the Legal Help Scheme. D's immigration background was unusual and complicated, and we advised that rather than challenge the section 4 decisions, under which support is provided to persons whose claims for asylum have failed, he should instead apply for section 95 support, which is paid to persons who have an outstanding, unresolved claim for asylum. D was provided with emergency accommodation (available in these circumstances but not in cases of section 4 support) within two days and subsequently went on to receive section 95 support.

B (Residence – asylum support, judicial review)

B was homeless and had spent several nights sleeping on the street. He also suffered from mental health problems and attended the Medical Foundation for the Care of Victims of Torture for specialist counselling. A voluntary sector organisation assisted him to apply for section 4 support. That organisation, and the Medical Foundation, made repeated requests to the UK Border Agency that B's application to be treated as urgent because of their concerns about his health. However, he had been waiting for over six weeks for the application to be processed and the UK Border Agency refused to say when this would happen. Legal aid lawyers were instructed under the Legal Help Scheme. They got in touch with the UK Border Agency and explained that they were instructed to commence judicial review proceedings. They started to draft a letter before claim that day but before the day was out the UK Border Agency got in touch with the lawyers to advise that they had now granted B section 4 support.