



Sent a pre-action protocol for a Judicial Review, but refused section 4?

This is not a legal advice but a sharing and learning from the experiences of other people in similar circumstances for self help and empowerment. The case is real, but anonymous.

Background:

Destitute asylum seeker, Alice had her application for support under Section 4 refused by the UKVI in December 2015. Alice was destitute and had a pending Pre Action Protocol letter, for Judicial Review, lodged by her solicitor. Shelley had been given support termination in December 2014, as her case was refused but also lodged a PAP, this is Shelley's case:

Grounds of Appeal

SECTION 6: GROUNDS OF APPEAL

You must complete this section.

1. What are the grounds of your appeal?
2. What matters in the Home Office decision letter do you disagree with? (Please use a continuation sheet if required).
3. If your appeal is late, please explain the reason and why you should be allowed to appeal out of time.

PRE-ACTION PROTOCOL SENT TO HOME OFFICE AGAINST
REFUSAL OF SUBMISSIONS ON 9.12.14
SUPPORT SHOULD BE PROVIDED UNDER REGULATION
3(2)(e) permission to bring a JR.

AS IN THE CASE OF R(NS) v FIRST TIER TRIBUNAL and SSHD
CO/5561/2009; THAT THERE IS A PENDING APPLICATION FOR
JUDICIAL REVIEW. D → A

Home Office Summary

the decision of the Secretary of State who, on 3 December 2014, decided to discontinue her application for support under Section 4 of the Immigration and Asylum Act 1999 ("the 1999 Act") on the grounds that she did not satisfy one or more of the conditions set out in Regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 ("the 2005 Regulations").

The basis of the refusal was that it was not accepted that the appellant satisfied the further criteria for support under Regulation 3(2). In particular, it was not accepted that the pre-action protocol letter sent to the Home Office on 9 December 2014 had been received. Also, even if it had been received it was not accepted that such a letter would trigger entitlement to Section 4 support under Regulation 3(2)(e). The appellant's destitution was not disputed.

They went on to state that in any event a pre-action protocol letter did not trigger support under Regulation 3(2)(e) because it did not meet the criteria for support and specifically did not meet the test for support as set out in R (on the application of NS) (1) First Tier Tribunal (Social Entitlement Chamber) (2) SSHD [2009] QBD (Admin).

Judges Decision

Conclusion

17. I find that the appellant does satisfy Regulation 3(2)(e) because her representatives have properly lodged a pre-action protocol letter with the Home Office after sending the Home Office their client's signed form of authority.
18. I find that the pre-action protocol letter does satisfy the requirements of a pre-action protocol letter in that it identifies the decision being challenged, it identifies the arguments to be raised in the proposed judicial review and it raises a realistic prospect of success.
20. The argument raised by the Home Office in reply to directions that the pre-action protocol letter can not satisfy Regulation 3(2)(e) is not an argument I agree with. The pre-action protocol letter is a necessary part of the process of applying for judicial review (except in exceptional cases) and the appellant's solicitors (both that process. Solicitors) are obliged to comply with
22. I am satisfied that the appellant meets the criteria for support because she has complied with a necessary step to applying for judicial review and it can not therefore be regarded as merely as a way of delaying her removal from the UK.
23. I allow the appeal and substitute my own decision for that appealed against.