



Neutral Citation Number: [2019] EWHC 2948 (Admin)

Case No: CO/511/2019

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 5 November 2019

**Before :**

**HHJ BLACKETT**

**SITTING AS A JUDGE OF THE HIGH COURT**

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**Between :**

**The Queen**

**Claimant**

**on the application of**

**Yassine Ben Messaoud**

**- and -**

**Secretary of State for the Home Department**

**Defendant**

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**Ms Sandra Akinbolu** (instructed by **Duncan Lewis**) for the **Claimant**  
**Mr Eric Metcalfe** (instructed by the **Government Legal Department**) for the **Defendant**

Hearing date: 23 October 2019  
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**Approved Judgment**

## **HHJ J Blackett sitting as a Judge of the High Court:**

1. This application concerns the responsibility of the Secretary of State for the Home Department to provide, or arrange for the provision of, support for asylum seekers and their dependants. Specifically whether the Immigration and Asylum Act 1999 section 95 confers upon her an obligation to provide a bail address for a person applying for immigration bail.
2. The Claimant is a 31-year old national of Morocco. He first arrived in the UK as an illegal immigrant on or about 20 November 2007 claiming to be an Algerian national called El Alawi. He absconded but re-entered the UK from Belgium on 16 April 2008 and then left again sometime between then and 23 June 2010 when he returned. Between that date and 22 December 2016 he was convicted on 9 separate occasions for a total of 16 criminal offences, culminating in a sentence of 3 years imprisonment for theft. During that period he claimed asylum, absconded, left the country, returned as an illegal immigrant and spent some time in custody.
3. On 18 October 2017 he was served with a decision to deport and responded by claiming asylum on the basis of his homosexuality. He was transferred from Maidstone prison to Colnbrook Immigration Centre on 26 February 2018 and released on bail on 8 May 2019. His renewed asylum claim is due to be heard on 14 January 2020. The Claimant accepts that his detention was lawful until 4 January 2019 when he was granted bail at the First-tier Tribunal (“FTT”) subject to a bail address being provided. He submits that the Defendant failed to provide a bail address and he was detained further until released on bail. He submits that the detention between 4 January and 8 May 2019 was unlawful and he claims damages.
4. S95 of the Immigration and Asylum Act 1999 is entitled ‘Persons for whom support may be provided.’ It provides as follows:

“(1) The Secretary of State may provide, or arrange for the provision of, support for (a) asylum seekers, or (b) dependents of asylum seekers, who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.”
5. The section goes on to describe a person who is destitute, the adequacy of accommodation and the criteria to which the Secretary of State must have regard. There is nothing which mandates the Secretary of State to provide accommodation. Normal practice is for an asylum seeker who is deemed destitute to make a s95 application on form ASF1.

### **The Claim**

6. The Claimant made a s95 application in October 2018 whilst in custody and contemplating a bail application. The s95 application was refused on 13 November 2018 on the basis that he was currently detained and his essential living needs, including accommodation, were being met in full. He declined the opportunity to appeal against that decision. The Claimant applied for Immigration Bail on 4 January 2019. FTT Judge Scott-Baker, who considered the application, stated: “The appellant is unable to provide a bail address, bail is granted however subject to an address being

provided within 7 days and the address being approved by the applicant's probation officer. This grant expires at 16.30 on Friday 11 January 2019. If an accommodation address is obtained by that date the tribunal will entertain the remainder of the application as to reporting and electronic monitoring."

7. The Claimant submits that this amounted to a direction from the judge to the Defendant to find suitable accommodation. The Claimant prayed in aid the President of the First-tier Tribunal (Immigration and Asylum Chamber) Presidential Guidance Note No 1, paragraph 58 which states:

"When a person cannot offer a bail address, a judge may consider whether they may be eligible for support under schedule 11 of the 2016 Act. If the applicant is so entitled, the judge can grant bail subject to such an address being provided within 14 days (or such other suitable period) and the applicant being released immediately the address is available. The period can be extended on application, and by consent, if necessary. If the likelihood of a bail address becoming available within a reasonable period is low, then it will be appropriate to consider whether other conditions such as more frequent reporting can be applied in the meantime rather than refusing bail."

8. The Claimant also referred to *R(on the application of Suthakar Sathanantham v SSHD* [2016] EWHC 1781 (Admin) in which a challenge to the lawfulness of the Defendant's policy for the provision of accommodation under s 4(1)(c) of the Immigration and Asylum Act 1999 was considered. Edis J said (at paragraph 69):

"I do nevertheless conclude that the statutory power in s4(1)(c) is a power coupled with a duty. It is unnecessary to decide whether the duty extends to the existence of a policy of the kind I have been describing because there is one. The policy itself is not challenged as being unlawful. In my judgment, as Mr Tam was inclined to accept, there is a duty to operate that policy fairly and rationally. That involves a duty to determine applications fairly and rationally and to apply the relevant policy. Unusually for an application for assistance, the task of assembling all relevant material falls not on the applicant but on the UKVI under the UKVI s4 Policy. If there is a duty to deal with applications fairly and rationally, this must extend to all the parts of the process for which the SSHD is responsible. The duty to deal fairly and rationally with an application in these circumstances is not merely confined to adjudicating on material supplied by the applicant. This is not, in practice, a materially different duty from a duty to make reasonable efforts to provide accommodation. I prefer the formulation of the duty as a duty to act fairly and rationally in accordance with the policy when confronted with an application because it seems to me to arise from very clear public law principles which regulate exercise of powers."

9. The Claimant submits that the Defendant was obliged to find bail accommodation because there is duty to act fairly and rationally and in any event the FTT judge gave an implicit instruction at the bail hearing on 4 January 2019 to find accommodation.

### **The Defence**

10. The Defendant referred to The Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014. Rule 38 (Bail applications) states:

“(1) A bail application must be made by sending or delivering to the Tribunal an application notice containing the information specified below.

(3) Subject to paragraph (4), a bail application must contain the following details.

(a) the bail party’s (personal details)

(b) the address of any place where the bail party is detained;

(c) the address where the bail party will reside if the bail application is granted, or, if unable to give such an address, the reason why an address is not given.”

11. The Defendant submits that there is nothing which mandates the Secretary of State to provide a bail address. There is a power so to do but that is only exercised when the applicant makes a s95 application on the appropriate form. In the instant case there was no application. The FTT judge in provisionally granting bail on 4 January did not direct the Defendant to find or provide an address. He made bail conditional on the applicant providing an address. The proper course then would have been for the Claimant to make a s95 application but he did not.

### **Decision**

12. When applying for bail there is an obligation on the applicant to provide a bail address or give reasons why none is provided. There is no statutory or other obligation on the Secretary of State to provide accommodation but she must consider any s95 application made on the appropriate form. The Claimant did not make a s95 application. The FTT judge made no order or gave no direction to the Defendant to provide accommodation.
13. This is a specious claim which has absolutely no merit. It is clear that the detention in this case was lawful until the Claimant was released on bail on 8 May 2019.
14. The Claimant’s application for judicial review is refused.