

The Court of Appeal gave judgment this morning in *R (AR) (Afghanistan) -v- SSHD* dismissing the Home Office appeal against the decision of Collins J in the High Court in November 2005. The Court of Appeal confirmed the High Court decision and clarified the legal position on what should count as a fresh application for asylum.

If a "failed asylum-seeker" presents new evidence to the Home Office which would lead to a reasonable prospect of succeeding in an appeal before an immigration judge, the Home Office must "record a fresh claim for asylum".

A "fresh claim" means that the applicant can receive welfare support while it is being dealt with, and also may appeal to an immigration judge if the Home Secretary goes on to refuse the fresh claim after fully considering it.

AR, a young man from Afghanistan, was sent to the UK as a teenager to claim asylum after his father had been killed by the Taliban. He lost his asylum appeal in April 2005. He was taken into detention, prior to removal. In June 2005 Ibi Johnson and other law students working under the supervision of solicitor Catherine Carpenter in the Kent Law Clinic, based in the University of Kent, presented new evidence to the Home Office (mainly a recent article from a Kabul newspaper) showing that AR was known and 'wanted' in Afghanistan, and they made a fresh application for asylum for AR. This secured the release of AT from detention pending consideration of the new material.

The Home Secretary, however, refused to accept that this new evidence amounted to a fresh claim for asylum, and indicated that AR would have to leave the country forthwith. The Law Clinic, with the pro bono assistance of barrister Shivani Jegarajah, issued urgent judicial review proceedings. The High Court granted leave to apply for judicial review, and the Law Clinic referred the case to Hammersmith Law Centre so that legal aid could be granted for AR to be represented at a full hearing in the High Court in November 2005. In the event, Collins J. found for AR. His judgment gave hope to many "failed asylum-seekers" whose new evidence had been dismissed or simply not responded to by the Home Office.

Today, 9th November 2006, the Court of Appeal upheld the decision of the High Court. Sheona York, the solicitor at Hammersmith Law Centre handling the case, says:

"As the recently-published research by Amnesty International and Refugee Action "*The Destitution Trap*" shows, many thousands of "failed asylum-seekers" languish in destitution, which in turn places an unacceptable burden on the hard-pressed communities who are supporting them. This judgment says that where fresh evidence gives a realistic prospect of success in court, the Home Office must "record" a fresh claim and provide accommodation and support to that asylum-seeker while that claim is properly considered and any appeal is heard.

"This is important both for the many "failed asylum-seekers" who have not been removed or are not removable after long delays following the dismissal of their claim, and for whom valid and credible fresh evidence needs to be considered before taking steps to remove them. And for the growing numbers whose applications are processed so quickly that they are unable to locate

important witnesses or obtain vital medical or psychiatric evidence in time to be properly considered by the Home Office and immigration courts first time round."

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