

# POLICY BULLETIN 84

## ENTERTAINING A FURTHER APPLICATION FOR SUPPORT

### 1. SCOPE OF THE DOCUMENT

1.1 This instruction provides guidance to UK Border Agency caseworkers on whether to entertain further applications for support under section 95 of the Immigration and Asylum Act ("the 1999 Act") from an asylum seeker (as defined by section 94 of the 1999 Act) after support has been formally suspended or discontinued under the Asylum Support Regulations 2000 as amended ("the 2000 Regulations"). This supersedes guidance on entertaining further applications for support contained within Policy Bulletin 17 Failure to Travel (version 2.1 dated 18/07/01). This instruction comes into force on 5 February 2005.

### 2. APPLICATION OF THIS INSTRUCTION IN RESPECT OF CHILDREN AND THOSE WITH CHILDREN

2.1 Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

### 3. OVERVIEW

3.1 When dealing with cases where support been suspended or discontinued under the 2000 Regulations, UK Border Agency caseworkers should initially determine whether or not the applicant has appealed against the decision to suspend or discontinue and if so, whether the appeal has been dismissed or is outstanding.

3.2 If the applicant has not appealed against the decision to suspend or discontinue support, or has an outstanding appeal against that decision, the caseworker should follow the guidance at section 4.

3.3 If the applicant has appealed to the Tribunal Service – Asylum Support (Tribunal) and that appeal has been dismissed, the caseworker should follow the guidance in section 4.

3.4 A flow chart can be found at Annex A.

Policy Bulletin

## **4. NO APPEAL OR APPEAL OUTSTANDING**

4.1 This section (section 4) applies where an applicant has had his support suspended or discontinued and either he has not appealed against that decision or, if he has, that appeal is outstanding.

### **4.2 Entertaining a further application for support following a suspension or discontinuation of support for:**

- **abandoning the authorised address without permission**
- **failing to comply with a reporting requirement**

4.3 Where support has been suspended or discontinued under either:

- (i) regulation 20(1)(d) of the 2000 Regulations (abandoning the authorised address without permission); or
- (ii) regulation 20(1)(i) of the 2000 Regulations (failing to comply with a reporting requirement)

regulation 20(5) of the 2000 Regulations applies. This regulation provides:

“Where asylum support for a supported person or his dependant is suspended or discontinued under paragraph (1)(d) or (i) [see *above*] and the supported person or his dependant are traced or voluntarily report to the police, the Secretary of State or an immigration officer, a duly motivated decision based on the reasons for the disappearance shall be taken as to the reinstatement of some or all of the supported person’s or his dependant’s or both of their asylum support.”

4.4 Therefore if an applicant has had his or her support suspended or discontinued under the 2000 Regulations for either:

- (a) abandoning his accommodation without permission; or
- (b) failing to comply with a reporting requirement

if s/he is traced or reports voluntarily and either he has not appealed or has appealed but that appeal is outstanding, caseworkers must make a decision, based on the reasons for the disappearance, as to whether some or all of the applicant’s (and/or his dependants’) support should be reinstated.

### **4.5 Entertaining a further application for support following a suspension or discontinuation of support (all other circumstances)**

4.6 In all other cases where support has been suspended or discontinued under regulation 20, regulation 21 of the 2000 Regulations will apply. This regulation provides:

“Subject to regulation 20(5) where-

- (a) an application for asylum support is made,
- (b) the applicant or any person to whom the application relates has previously had his asylum support suspended or discontinued under regulation 20, and
- (c) there has been no material change of circumstances since the suspension or discontinuation,

the application need not be entertained unless the Secretary of State considers that there are exceptional circumstances which justify its being entertained."

4.7 A material change of circumstances is one which, if the applicant were a supported person, would have to be notified to the UK Border Agency under regulation 15 of the 2000 Regulations.

4.8 Therefore if an applicant has had his support suspended or discontinued (except under regulation 20(1)(d) or (i) as above), and either he has not appealed, or if he has appealed, that appeal is outstanding, a further application for support need not be entertained unless:

- there has been a material change of circumstance since the suspension or discontinuation of support; or
- the Secretary of State otherwise considers that there are exceptional circumstances which justify the application being entertained.

4.9 Caseworkers should note that entertaining a further application following discontinuation should be rare and only when there are exceptional circumstances or material change of circumstances. An example of an acceptable material change of circumstances would be when a single person has been joined by a spouse and dependent minor children.

## **5. APPEAL DISMISSED**

5.1 This section (section 5) applies if an applicant has had his support suspended or discontinued, he has appealed to the Tribunal and that appeal has been dismissed.

5.2 Section 103(6) of the 1999 Act provides:

"If an appeal is dismissed, no further application by the appellant for support under section 95 is to be entertained unless the Secretary of State is satisfied that there has been a material change in the circumstances."

5.3 Therefore, an application for asylum support from a person whose appeal against a decision to suspend or discontinue support has been dismissed may not be entertained unless there has been a material change in the circumstances.

## **6. EUROPEAN CONVENTION ON HUMAN RIGHTS**

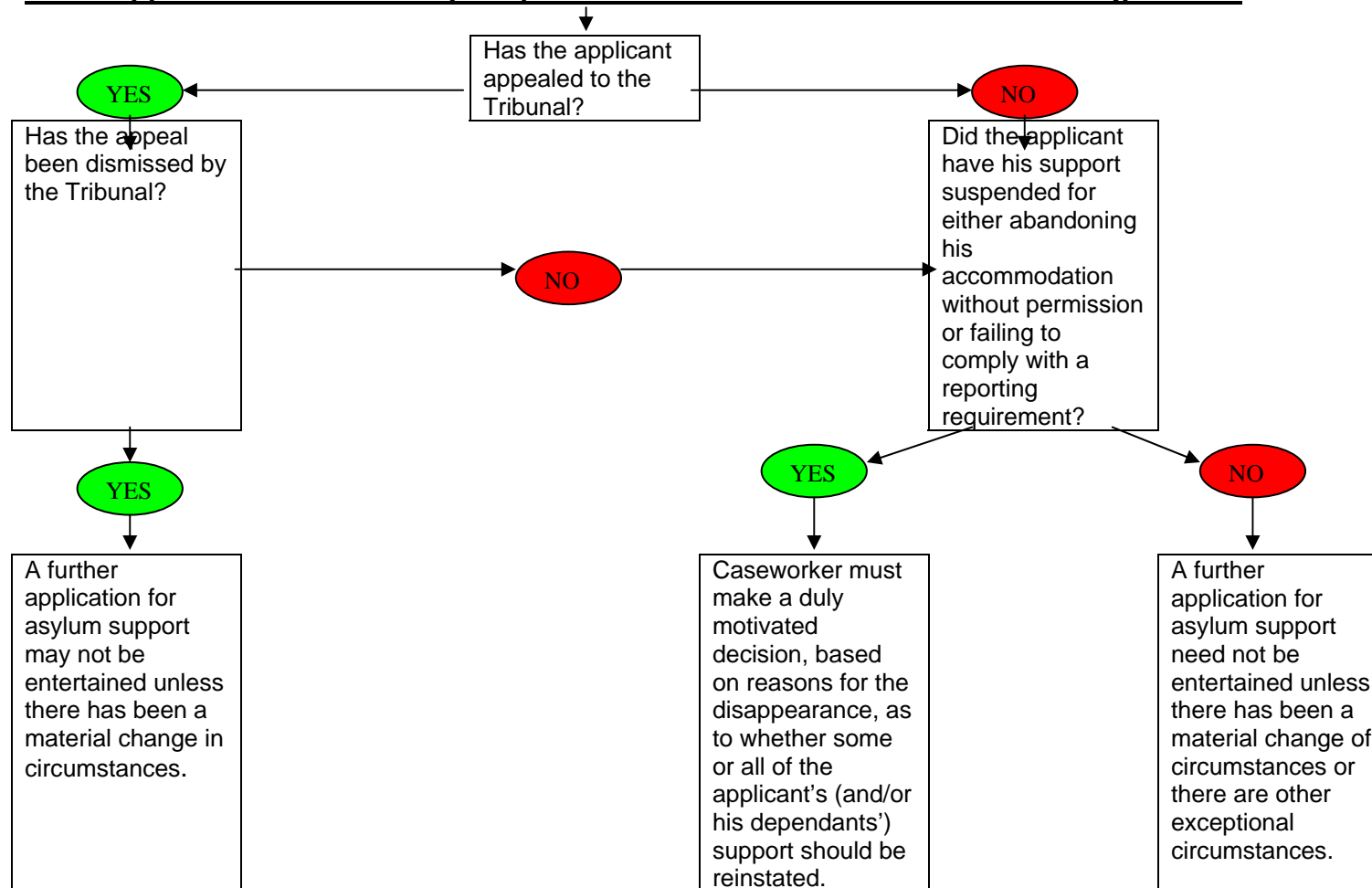
6.1 Nothing in this document prevents the UK Border Agency from exercising a power or duty to offer support, where it is necessary to do so to avoid a breach of a person's rights under the European Convention on Human Rights.

6.2 When considering whether to entertain a further application for support in the circumstances outlined in this instruction, UK Border Agency caseworkers must consider whether support is necessary to avoid such a breach. However, caseworkers should note that support can only be provided if there is a power or a duty to do so. For example, if an appeal has been dismissed, the UK Border Agency can only entertain a further application for support if there has been a material change in the circumstances of the applicant.



## ANNEX A

### Process for dealing with further applications for support under section 95 of the 1999 Act after support has been formally suspended or discontinued under the 2000 Regulations



## DOCUMENT CONTROL

### Change Record

Version	Authors	Date	Change Reference
2.0	BF	14/11/08	Update branding only
3.0	SM	05/10/09	Children's Duty paragraph added