

benefit officer stated that paragraph 9A of Schedule 2 to the Supplementary Benefit (Requirements) Regulations 1980 [SI 1980 No 1299] provided that, where a person had stayed beyond his permitted leave, his requirements were "nil", unless he was one of a married or unmarried couple living together, the other of whom was not subject to immigration control, and that regulation 21 of the Supplementary Benefit (Urgent Cases) Regulations 1981 [SI 1981 No 1529] provided that a supplementary pension or allowance should only be payable to persons with limited leave in the circumstances there specified. He decided that, in accordance with the regulations, supplementary pension or allowance was not payable, as the claimant had remained beyond his permitted leave, and the application pending at the Home Office was not made by virtue of section 3 of the ~~Immigration Act~~ 1971, as it was made during a period when he was present in the United Kingdom without leave.

6. The claimant's appeal against the supplementary benefit officer's decision of 30 June 1982 was on the ground that he had applied for political asylum in the United Kingdom because he could not return to Uganda; that the Home Office was considering his application, that he had been informed that the decision might take some time to reach, and that until he received news of the outcome, he was unable to take up employment to support himself, as he did not have a work permit and had no means of paying for his daily subsistence.

7. After two adjournments of the SBAT hearing, in order that consideration should be given to the claimant's status for the purposes of the supplementary benefit legislation, the SBAT gave their decision on 8 November 1982.

8. The Chairman's note of evidence recorded that the SBAT had raised queries of the presenting officer and were told that -

"(A) On 18 October the presenting officer had at the behest of an earlier Tribunal contacted the Home Office in an effort to determine the status of the appellant and had spoken to an officer (whom he named) to learn that:

(i) in April 1982 the appellant applied for political asylum;

(ii) that application is still under consideration;

(iii) the Home Office allows the appellant to remain in the United Kingdom pending the decision.

(B) The Tribunal observed a remark in form LT205 that the condition imposed by the Immigration Authorities when app. was in the U.K. with leave was that he "did not have recourse to public funds". The app. produced the last permit or intimation relating to the last permit dated 9 January 1980 and there was no such condition apparent.

(C) The Presenting Officer acknowledged that the Benefit Officer had always based his decision first on the ground that the app. had failed to comply with the provisions of the Immigration Act and secondly on the ground that the permission given when valid and current included a condition against recourse to Public funds. The Presenting Officer agreed that on information presently available the appellant is residing in Great Britain with the knowledge and agreement of the responsible authority, and that no such condition as that stated is apparent on the last form of leave."

9. The "last form of leave", which was produced to the SBAT and a copy of which is included in the case-papers, is set out in two letters, both on Home Office notepaper and dated 9 January 1980. The first letter states -

"Dear [claimant]

I am writing in reply to your application to say that your leave to remain in the United Kingdom has been varied so as to expire on 31 August 1980.

The Home Office form has been endorsed accordingly and is enclosed.

Your stay in the United Kingdom as a student will give you no claim to remain in this country. When your studies are completed you are expected to return home."

The second letter states -

"The Secretary of State hereby gives notice that he grants the above-named leave to remain in the United Kingdom until 31 August 1980 on the conditions endorsed below.

This notice should be kept as evidence that leave to remain has been granted and on leaving the United Kingdom should be shown to the Immigration Officer at the port of embarkation."

The endorsements are in these terms -

"Leave to remain in the United Kingdom, on condition that the holder does not engage in or change employment paid or unpaid without the consent of the Secretary of State for Employment, and does not engage in any business or profession without the consent of the Secretary of State for the Home Department is hereby given. This will apply unless superseded, to any subsequent leave the holder may obtain after an absence from the United Kingdom in the period limited as above."

10. The record of the SBAT decision sets out their findings and reasons for decision at unusual, but not unnecessary, length, and in view of their importance it is desirable that they should be reproduced verbatim. They are accordingly set out in the Appendix to this decision. The SBAT's unanimous decision was that supplementary benefit should be paid to the claimant from the date on which he applied for benefit or from the first date after the application for political asylum, if later. The SBAT stated that they could not be more specific, as no date appeared in the papers as the date on which the claimant asked for benefit.

11. The supplementary benefit officer applied for leave to appeal against the SBAT decision on the grounds that the SBAT had erred in point of law, in that no tribunal acting judicially and properly instructed as to the law could have decided as they decided on the facts as they found them; and their decision was in breach of section 15(3)(c) of the Supplementary Benefits Act 1976 in that no benefit officer could have determined as they did. On leave being granted by the Commissioner, the benefit officer repeated the above as his grounds of appeal.

12. The relevant provisions of the Supplementary Benefit Act 1976, as amended by the Social Security Act 1980 provide as follows -

"1. (1) Subject to the provisions of this Act, every person in Great Britain of or over the age of 16 whose resources are insufficient to meet his requirements shall be entitled to benefit.....

4. (1) In urgent cases supplementary benefit shall be payable in accordance with this Act as modified by virtue of this section; and regulations may -

(a) prescribe the cases which are urgent cases for the purposes of this section;

(b) provide that in relation to such cases any of the provisions of Schedule 1 to this Act shall have effect with prescribed modifications.

.....

15. (1)

(2)

(3) On an appeal under this section the Appeal Tribunal may -

(a); or

.....

(c) substitute for any determination appealed against any determination which a benefit officer could have made

SCHEDULE 1

PROVISIONS FOR DETERMINING RIGHT TO BENEFIT AND AMOUNT TO BENEFIT

Requirements

2 (1)

(2)

(3)

(4)

(5) Notwithstanding anything in the preceding provisions of this paragraph, regulations may provide for a person to be treated as having no normal requirement in prescribed cases.

13. The Supplementary Benefit (Requirements) Regulations 1980 as amended by S I No.1774 which, as so amended, we shall call "the 1980 Requirements Regulations" provide as follows -

"Modification of normal requirements to meet special cases

10.

(4A) For the purposes of paragraph 9A of Schedule 2 a person shall be treated as present with limited leave, or without leave, to enter or remain in the United Kingdom if -

- (a) he is a personwho has a limited leave (as defined in Section 33(1) of the Immigration Act 1971) to enter or remain in the United Kingdom which was given in accordance with any provision of immigration rules (as defined in Section 33(1) of that Act) which refers to there being, or to there needing to be, no recourse to public funds, or to there being no charge on public funds, during that limited leave; or
- (b) having only a limited leave to enter or remain in the United Kingdom he has remained beyond the time limited by the leave; or
- (c) he is the subject of a deportation order, that is to say an order within section 5(1) of the Immigration Act 1971 requiring him to leave and prohibiting him from entering the United Kingdom; or
- (d) he is an illegal entrant (as defined in Section 33(1) of the Immigration Act 1971) who is not given leave under that Act to enter or remain in the United Kingdom."

Schedule 2 to the 1980 Requirements Regulations sets out the modification of normal requirements in special cases under regulation 10 relative to various categories of persons defined in column (1) of the Schedule. Column (2) of the Schedule is headed "Provisions modified" and column (3) of the Schedule is headed "Modified amount". Paragraph 9A of the Schedule which is headed "Persons from Abroad" contains the following provisions:

"9A. Person (further defined in regulation 10(4A)) who is present with limited leave, or without leave, to enter or remain in the United Kingdom -

9A. (a) Paragraphs 1 and 2 of the table; 9A. (a)

- (a) if one of a married or unmarried couple the other of whom is not also so present (with limited leave or without leave);

- | | | |
|------------------------|--|-----------|
| (b) in any other case. | (b) paragraphs 1 to 4 of the table and 1 to 3 of Schedule 1. | (b) nil." |
|------------------------|--|-----------|

14. The Supplementary Benefit (Urgent Cases) Regulations 1981, regulation 21 provides -

"Persons from abroad

21. (1) This regulation shall apply to a claimant to whom regulation 10(4A) of the Requirements Regulations (persons from abroad) applies to whom one of the following applies:-

(a) sub-paragraph (a) of that regulation 10(4A) applies to him and

(b) he is awaiting the determination of an application made by virtue of section 3 of the Immigration Act 1971.....for leave to remain in the United Kingdom to be varied; or

(c) he is awaiting the determination of an appeal made by virtue of Part II of the 1971 Act (appeals).

(2) In a case to which this regulation applies there shall be payable an amount of pension or allowance determined in accordance with regulation 5 -

....."

15. We are much indebted to the careful and far-ranging arguments of Mr d'Eca and Mr Allfrey, but at the end of the day the really crucial statutory provision is regulation 10(4A) of the 1980 Requirements Regulations. This treats a person as present with limited leave, or without leave, to enter in or remain in the United Kingdom if one of the four paragraphs there set out and lettered (a) to (d) inclusive is satisfied. If a claimant does not fall in any of those paragraphs, then regulation 10(4A) has no application, and if he is present in the United Kingdom, he will not be disentitled to benefit by virtue of his requirements being treated as "nil" in accordance with the statutory restriction imposed.

16. Now, a claimant who has obtained leave under the Immigration Rules, unless he falls within the European Convention, comes within paragraph (a) of regulation 10(4A), and it matters not whether he is a student or a visitor, since those rules require the immigration officer to satisfy himself, before leave is given, that there will be no recourse to public funds: see rules 7 and 21, which were cited to us by Mr d'Eca. A claimant who is the subject of a deportation order falls within paragraph (c), and a claimant who is an illegal entrant falls within paragraph (d). There is no question of either of these paragraphs applying in the present instance. The issue in this case is simply whether the claimant is to be treated as present with limited leave, or without leave, to enter or remain in the United Kingdom because "having only a limited leave to enter or remain in the United Kingdom he has remained beyond the time limited by the leave.....".

17. It is, in our unanimous judgment, obvious that the intention of paragraph (b) is to treat a person who was not an illegal entrant, because he originally had a limited leave (ie one limited as to duration, which is the meaning of "limited leave" in the Immigration Act 1971) as falling within regulation 10(4A), so as to deny him supplementary benefit, if that permitted leave has expired and he has obtained no further leave. If he has obtained a further leave, it is necessary to look at the terms of that further leave to see whether it falls within the ambit of paragraph (a) ie to see whether it was granted in accordance with the Immigration Rules, in which case there will be an express or implied condition that he is to have no recourse to public funds, and leave of this nature will preclude him from being awarded supplementary benefit. If, however, it is not a condition of such further leave that he shall not have recourse to public funds, then the claimant will not fall within paragraph (a), but at the same time he will not be caught by paragraph (b). This was accepted by the relevant authorities as regards the claimant, when he obtained a further leave of this description in January 1983 and he obtained supplementary benefit accordingly. In our judgment, the position is the same where, as in the present case, the claimant has applied for asylum and had the permission of the Home Office to remain pending the determination of his application. That permission amounts to leave to remain. It was, of course, extra-statutory and was not given under the Immigration Rules. This has never been disputed. Accordingly, the permission does not fall within paragraph (a). But it does not fall within paragraph (b) either, because the claimant was not, while his application was being considered, a person without leave. He had permission ie leave, to remain. This construction of paragraph (b) involves reading in the word "without any further leave" after "remained" in that paragraph. In our judgment, a purposive construction is permissible in this case, because to apply the literal meaning of the legislative language would lead to absurd results. It would clearly defeat the object of the provision by denying benefit to persons who were lawfully in the United Kingdom with leave or permission given outside the Immigration Rules and without the condition expressed in those rules that there should be no recourse to public funds. All the conditions set out by Lord Diplock in Jones v Wrotham Park Estates [1980] A C 93 at page 105 are, in our judgment, satisfied. The purpose of the paragraph is clear; there is an obvious failure to deal with the case of a person with a current leave or permission and it can be said with certainty what additional words should be inserted.

18. It follows that, in our judgment, the decision of the SBAT was not erroneous in law. The SBAT were correct in stating that the application for asylum was extra-statutory. The application which was ultimately granted was not granted under the Immigration Rules at all nor did it in fact amount to asylum. The SBAT were also correct in making a reference to the Convention, though such Convention is not in itself a part of the law of the United Kingdom. For the Convention requires persons applying for asylum or refugee status to be permitted to remain in this country and the Immigration Rules require regard to be had to such Convention and such Rules are themselves approved by Parliament and expressly referred to in the Immigration Act 1971. The claimant, as the SBAT found, was in the country with permission from the date of his application for asylum, and did not fall within regulation 10(4A) at all.

19. Our decision is set out in paragraph 1. Commissioner's Decision CSB 19/1983 was incorrect, in so far as it purported to decide that a person, who has made an application for asylum after his limited leave to remain in the country has expired, is not lawfully in this country. If he has, as in the present case, permission from the Home Office to remain here pending the determination of his application, he is lawfully in this country, and does not fall within paragraph (b) of regulation 10(4A) or, since such leave is not given under the Immigration Rules, within paragraph (a). Paragraphs (c) and (d) are clearly inapplicable. That decision should accordingly not be followed.

20. For the reasons given above the supplementary benefit officer's appeal fails.

(Signed) I O Griffiths
Chief Commissioner

(Signed) V G H Hallett
Commissioner

(Signed) D G Rice
Commissioner

(Date) 28 February 1984

Commissioner's File: CSB/180/1983
CSBO File: SBO/162/83
Region: North Eastern

APPENDIX

FINDINGS OF SBAT ON QUESTION OF FACT MATERIAL TO DECISION

1. The appellant entered the Country lawfully and remained in the Country by lawful permission until the 31st August 1980: a lacuna ensued in which the appellant assumed a measure of anonymity. In April 1982 he applied for political asylum in the honest belief that he would be in jeopardy if he were to return to his native Uganda.

2. The Benefits Officer appears to have taken account of

- A) The existence of permission under the Immigration Act 1971 but to have ignored the application for political asylum and the permission evidently granted by the Home Office to the Appellant to reside in the United Kingdom pending determination of his application.
- B) To have assumed that a condition attached to the last permit granted to the appellant to the effect that he the appellant should not have recourse to public funds. The consideration of the condition appeared anomalous in as much as the officer rejected any suggestion of leave under the Immigration Act as relevant to the appellant's claim and in any event the condition does not appear as expressed on the form of permission shown to us.

3. The appellant is in grave and obvious need of financial assistance: the Captain of the Church Army Hostel made clear the position as to the appellant's future as regards the Hostel and without funds of any sort the appellant faces destitution poverty and homelessness.

4. The appellant has to all intents and purposes made his home in the United Kingdom since 1974 is presently known to the Home Office having even a reference number in respect of his application for asylum and is undisturbed in his residence here.

REASONS FOR DECISION OF SBAT

(1) Section 1 of the Supplementary Benefits Act 1976 provides inter alia that "subject to the provisions of this Act every person in Great Britain of or over the age of 16 whose resources are insufficient to meet his requirements shall be entitled to benefit as follows....."

(a) a supplementary pension....."

(2) That the Appellant is a person in Great Britain is obvious: we knew of no provision of the Act or of any other regulation thereunder which precludes the Appellant from the right to benefit. The presenting officer agreed that save for his remarks relating to regulation 10(4A) of the Resources Regulations he could conceive of no such provision.

(3) The Application for political asylum seems to us to be a prerogative and extra-statutory matter: it follows that we found ourselves in difficulty in being involved in consideration of a benefit so closely regulated by statute. That said we felt that to allow a man to remain in the United Kingdom whilst an application is under consideration and when other Action could easily have been taken must imply the acknowledgement of the need to have enough on which to live pending the determination of a lawful and validly made application.

(4) The directive described by the Presenting Officer relating to Iranian refugees seemed to confirm that responsible authorities recognise the equity of giving financial assistance whilst the consideration of an application for political asylum is in hand.

(5) In Halsburys Laws of England Fourth Edition we noted in Volume 18 under Article: Foreign Relations Law reference is to the Convention relating to the Status of Refugees (Geneva, 28th July 1951; TS 39 (1954); Cmnd 9171), Art.31 Para. No.1 and the observation that "a refugee may not be penalised on account of illegal entry or presence if he comes directly from a territory where his life or freedom was threatened provided he presents himself without any undue delay to the Authorities and shows good cause for his illegal entry or presence. In the same Volume at paragraph 1719 under the same title we noticed observations relating to "Status Obligations and Rights of Refugees and Stateless Persons". We noted reference to another convention and obligations on contracting states including that a refugee or stateless person be granted the same protection as nationals with respect to artistic and scientific works, rationing elementary education, public relief and assistance" etc. We accept that the conventions may not be exactly applicable to the Appellant but think that the obligations owed by the State to the Appellant are analogous to those anticipated by the Convention and referred to them as persuasive authorities and guides.

(6) Finally we were satisfied that had the Appellant applied for renewal or variation of leave he would have been entitled to some form of benefit pending determination of an application (regulation 21(1)(b) Urgent Cases Regulations) and again thought the provision of assistance as being fairly analogous to the facts before us.

ESB 180/1983

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SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL
ON A QUESTION OF LAW

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Name: Francis Kawaii-Bulwa

Supplementary Benefit Appeal Tribunal: Cleveland

Case No: 25/346

[ORAL HEARING]

1. This appeal fails. Our decision is that the decision of the supplementary benefit appeal tribunal (SBAT) dated 8 November 1982 is not erroneous in point of law.

2. We held an oral hearing of this appeal brought by the supplementary benefit officer. The latter was represented by Mr C A M E d'Eca of the Solicitor's Office of the Department of Health and Social Security whilst the claimant was represented by Mr Richard Allfrey of Counsel, instructed by the Middlesborough Law Centre.

3. The question at issue in this appeal is whether a person who has overstayed a limited leave to enter and remain in the United Kingdom and, after the expiry of such leave, applies for political asylum, can obtain supplementary benefit pending the determination of that application.

4. The Chief Commissioner directed that the appeal, which involves a point of law of special difficulty, should be heard by a Tribunal of Commissioners consisting of himself, Mr V G H Hallett and Mr D G Rice.

5. On 30 June 1982 a supplementary benefit officer decided that the claimant was not entitled to supplementary benefit. According to that officer's submission on form LT205 the claimant was a single man from Uganda, who first entered the United Kingdom on 4 August 1974 and was given leave by the immigration authorities to remain for 6 months as a visitor, subject to the condition that he did not work and did not have recourse to public funds. The immigration authorities then allowed yearly extensions of leave until 31 August 1980, subject again to the condition that he undertook no employment without the prior permission of the Secretary of State and had no recourse to public funds. On 8 April 1982 the claimant applied to the Home Office for asylum in the United Kingdom. The claimant applied for supplementary benefit on 13 April 1982 but this was refused, and the present appeal is against that decision. We would observe in passing that according to the written submission of the benefit officer now concerned the appeal is against a further claim for supplementary benefit made on the 30 June 1982, but there is no trace of such claim anywhere in the casepapers. In explaining the reasons for his decision, the supplementary

Benefit officer stated that paragraph 9A of Schedule 2 to the Supplementary Benefit (Requirements) Regulations 1980 [SI 1980 No 1299] provided that, where a person had stayed beyond his permitted leave, his requirements were "nil", unless he was one of a married or unmarried couple living together, the other of whom was not subject to immigration control, and that regulation 21 of the Supplementary Benefit (Urgent Cases) Regulations 1981 [SI 1981 No 1529] provided that a supplementary pension or allowance should only be payable to persons with limited leave in the circumstances there specified. He decided that, in accordance with the regulations, supplementary pension or allowance was not payable, as the claimant had remained beyond his permitted leave, and the application pending at the Home Office was not made by virtue of section 3 of the Immigration Act 1971, as it was made during a period when he was present in the United Kingdom without leave.

6. The claimant's appeal against the supplementary benefit officer's decision of 30 June 1982 was on the ground that he had applied for political asylum in the United Kingdom because he could not return to Uganda, that the Home Office was considering his application, that he had been informed that the decision might take some time to reach, and that until he received news of the outcome, he was unable to take up employment to support himself, as he did not have a work permit and had no means of paying for his daily subsistence.

7. After two adjournments of the SBAT hearing, in order that consideration should be given to the claimant's status for the purposes of the supplementary benefit legislation, the SBAT gave their decision on 8 November 1982.

8. The Chairman's note of evidence recorded that the SBAT had raised queries of the presenting officer and were told that -

"(A) On 18 October the presenting officer had at the behest of an earlier Tribunal contacted the Home Office in an effort to determine the status of the appellant and had spoken to an officer (whom he named) to learn that:

(i) in April 1982 the appellant applied for political asylum;

(ii) that application is still under consideration;

(iii) the Home Office allows the appellant to remain in the United Kingdom pending the decision.

(B) The Tribunal observed a remark in form LT205 that the condition imposed by the Immigration Authorities when app. was in the U.K. with leave was that he "did not have recourse to public funds". The app. produced the last permit or intimation relating to the last permit dated 9 January 1980 and there was no such condition apparent.

(C) The Presenting Officer acknowledged that the Benefit Officer had always based his decision first on the ground that the app. had failed to comply with the provisions of the Immigration Act and secondly on the ground that the permission given when valid and current included a condition against recourse to Public Funds. The Presenting Officer agreed that on information presently available the appellant is residing in Great Britain with the knowledge and agreement of the responsible authority, and that no such condition as that stated is apparent on the last form of leave."

9. The "last form of leave", which was produced to the SBAT and a copy of which is included in the case-papers, is set out in two letters, both on Home Office notepaper and dated 9 January 1980. The first letter states -

"Dear [claimant]

I am writing in reply to your application to say that your leave to remain in the United Kingdom has been varied so as to expire on 31 August 1980.

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The second letter states -

"The Secretary of State hereby gives notice that he grants the above-named leave to remain in the United Kingdom until 31 August 1980 on the conditions endorsed below.

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The endorsements are in these terms -

"Leave to remain in the United Kingdom, on condition that the holder does not engage in or change employment paid or unpaid without the consent of the Secretary of State for Employment, and does not engage in any business or profession without the consent of the Secretary of State for the Home Department is hereby given. This will apply unless superseded, to any subsequent leave the holder may obtain after an absence from the United Kingdom in the period limited as above."

10. The record of the SBAT decision sets out their findings and reasons for decision at unusual, but not unnecessary, length, and in view of their importance it is desirable that they should be reproduced verbatim. They are accordingly set out in the Appendix to this decision. The SBAT's unanimous decision was that supplementary benefit should be paid to the claimant from the date on which he applied for benefit or from the first date after the application for political asylum, if later. The SBAT stated that they could not be more specific, as no date appeared in the papers as the date on which the claimant asked for benefit.

11. The supplementary benefit officer applied for leave to appeal against the SBAT decision on the grounds that the SBAT had erred in point of law, in that no tribunal acting judicially and properly instructed as to the law could have decided as they decided on the facts as they found them; and their decision was in breach of section 15(3)(c) of the Supplementary Benefits Act 1975 in that the benefit officer could have determined as they did. On leave being granted by the Commissioner, the benefit officer repeated the above as his grounds of appeal.

12. The relevant provisions of the Supplementary Benefit Act 1976, as amended by the Social Security Act 1980 provide as follows -

"1. (1) Subject to the provisions of this Act, every person in Great Britain of or over the age of 16 whose resources are insufficient to meet his requirements shall be entitled to benefit.....

4. (1) In urgent cases supplementary benefit shall be payable in accordance with this Act as modified by virtue of this section; and regulations may -

(a) prescribe the cases which are urgent cases for the purposes of this section;

(b) provide that in relation to such cases any of the provisions of Schedule 1 to this Act shall have effect with prescribed modifications.

15. (1)

(2)

(3) On an appeal under this section the Appeal Tribunal may -

(a); or

(c) substitute for any determination appealed against any determination which a benefit officer could have made

SCHEDULE 1

PROVISIONS FOR DETERMINING RIGHT TO BENEFIT AND AMOUNT TO BENEFIT

Requirements

2 (1)

(2)

(3)

(4)

(5) Notwithstanding anything in the preceding provisions of this paragraph, regulations may provide for a person to be treated as having no normal requirement in prescribed cases.

13. The Immigration, Passport (Requirements) Regulations 1980 as amended by S I No. 1774 which, as so amended, we shall call "the 1980 Requirements Regulations" provide as follows -

"Modification of normal requirements to meet special cases

10.

(4A) For the purposes of paragraph 9A of Schedule 2 a person shall be treated as present with limited leave, or without leave, to enter or remain in the United Kingdom if -

- (a) he is a personwho has a limited leave (as defined in Section 33(1) of the Immigration Act 1971) to enter or remain in the United Kingdom which was given in accordance with any provision of immigration rules (as defined in Section 33(1) of that Act) which refers to there being, or to there needing to be, no recourse to public funds, or to there being no charge on public funds, during that limited leave; or
- (b) having only a limited leave to enter or remain in the United Kingdom he has remained beyond the time limited by the leave; or
- (c) he is the subject of a deportation order, that is to say an order within section 5(1) of the Immigration Act 1971 requiring him to leave and prohibiting him from entering the United Kingdom; or
- (d) he is an illegal entrant (as defined in Section 33(1) of the Immigration Act 1971) who is not given leave under that Act to enter or remain in the United Kingdom."

Schedule 2 of the 1980 Requirements Regulations sets out the modification of normal requirements in special cases under regulation 10 relative to various categories of persons defined in column (1) of the Schedule. Column (2) of the Schedule is headed "Provisions modified" and column (3) of the Schedule is headed "Modified amount". Paragraph 9A of the Schedule which is headed "Persons from Abroad" contains the following provisions:

"9A. Person (further defined in regulation 10(4A)) who is present with limited leave, or without leave, to enter or remain in the United Kingdom -

9A. (a) Paragraphs 1 and 2 of the table; 9A. (a)

"(b) one of a married or unmarried couple the other of whom is not also so present with limited leave or without leave;

- | | | |
|------------------------|--|-----------|
| (b) in any other case. | (b) paragraphs 1 to 4 of the table and 1 to 3 of Schedule 1. | (b) nil." |
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14. The Supplementary Benefit (Urgent Cases) Regulations 1981, regulation 21 provides -

"Persons from abroad

21. (1) This regulation shall apply to a claimant to whom regulation 10(4A) of the Requirements Regulations (persons from abroad) applies to whom one of the following applies:-

- (a) sub-paragraph (a) of that regulation 10(4A) applies to him and
- (b) he is awaiting the determination of an application made by virtue of section 3 of the Immigration Act 1971.....for leave to remain in the United Kingdom to be varied; or
- (c) he is awaiting the determination of an appeal made by virtue of Part II of the 1971 Act (appeals).

(2) In a case to which this regulation applies there shall be payable an amount of pension or allowance determined in accordance with regulation 5 -

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15. We are much indebted to the careful and far-ranging arguments of Mr d'Eca and Mr Allfrey, but at the end of the day the really crucial statutory provision is regulation 10(4A) of the 1980 Requirements Regulations. This treats a person as present with limited leave, or without leave, to enter in or remain in the United Kingdom if one of the four paragraphs there set out and lettered (a) to (d) inclusive is satisfied. If a claimant does not fall in any of those paragraphs, then regulation 10(4A) has no application, and if he is present in the United Kingdom, he will not be disentitled to benefit by virtue of his requirements being treated as "nil" in accordance with the statutory restriction imposed.

16. Now, a claimant who has obtained leave under the Immigration Rules, unless he falls within the European Convention, comes within paragraph (a) of regulation 10(4A), and it matters not whether he is a student or a visitor, since those rules require the immigration officer to satisfy himself, before leave is given, that there will be no recourse to public funds: see rules 7 and 21, which were cited to us by Mr d'Eca. A claimant who is the subject of a deportation order falls within paragraph (c), and a claimant who is an illegal entrant falls within paragraph (d). There is no question of either of these paragraphs applying in the present instance. The issue in this case is simply whether the claimant is to be treated as present with limited leave, or without leave, to enter or remain in the United Kingdom because "having only a limited leave to enter or remain in the United Kingdom he has remained beyond the time limited by the leave.....".

17. It is, in our unanimous judgment, obvious that the intention of paragraph (b) is to treat a person who was not an illegal entrant, because he originally had a limited leave (ie one limited as to duration, which is the meaning of "limited leave" in the Immigration Act 1971) as falling within regulation 10(4A), so as to deny him supplementary benefit, if that permitted leave has expired and he has obtained no further leave. If he has obtained a further leave, it is necessary to look at the terms of that further leave to see whether it falls within the ambit of paragraph (a) ie to see whether it was granted in accordance with the Immigration Rules, in which case there will be an express or implied condition that he is to have no recourse to public funds, and leave of this nature will preclude him from being awarded supplementary benefit. If, however, it is not a condition of such further leave that he shall not have recourse to public funds, then the claimant will not fall within paragraph (a), but at the same time he will not be caught by paragraph (b). This was accepted by the relevant authorities as regards the claimant, when he obtained a further leave of this description in January 1983 and he obtained supplementary benefit accordingly. In our judgment, the position is the same where, as in the present case, the claimant has applied for asylum and had the permission of the Home Office to remain pending the determination of his application. That permission amounts to leave to remain. It was, of course, extra-statutory and was not given under the Immigration Rules. This has never been disputed. Accordingly, the permission does not fall within paragraph (a). But it does not fall within paragraph (b) either, because the claimant was not, while his application was being considered, a person without leave. He had permission ie leave, to remain. This construction of paragraph (b) involves reading in the word "without any further leave" after "remained" in that paragraph. In our judgment, a purposive construction is permissible in this case, because to apply the literal meaning of the legislative language would lead to absurd results. It would clearly defeat the object of the provision by denying benefit to persons who were lawfully in the United Kingdom with leave or permission given outside the Immigration Rules and without the condition expressed in those rules that there should be no recourse to public funds. All the conditions set out by Lord Diplock in Jones v Wrotham Park Estates [1980] A C 93 at page 105 are, in our judgment, satisfied. The purpose of the paragraph is clear; there is an obvious failure to deal with the case of a person with a current leave or permission and it can be said with certainty what additional words should be inserted.

It follows that, in our judgment, the decision of the SBAT was not erroneous in law. The SBAT were correct in stating that the application for asylum was extra-statutory. The application which was ultimately granted was not granted under the Immigration Rules at all nor did it in fact amount to asylum. The SBAT were also correct in making a reference to the Convention, though such Convention is not in itself a part of the law of the United Kingdom. For the Convention requires persons applying for asylum or refugee status to be permitted to remain in this country and the Immigration Rules require regard to be had to such Convention and such Rules are themselves approved by Parliament and expressly referred to in the Immigration Act 1971. The claimant, as the SBAT found, was in the country with permission from the date of his application for asylum, and did not fall within regulation 10(4A) at all.

19. Our decision is set out in paragraph 1. Commissioner's Decision CSB 19/1983 was incorrect, in so far as it purported to decide that a person, who has made an application for asylum after his limited leave to remain in the country has expired, is not lawfully in this country. If he has, as in the present case, permission from the Home Office to remain here pending the determination of his application, he is lawfully in this country, and does not fall within paragraph (b) of regulation 10(4A) or, since such leave is not given under the Immigration Rules, within paragraph (a). Paragraphs (c) and (d) are clearly inapplicable. That decision should accordingly not be followed.

20. For the reasons given above the supplementary benefit officer's appeal fails.

(Signed) I O Griffiths
Chief Commissioner

(Signed) V G H Hallett
Commissioner

(Signed) D G Rice
Commissioner

(Date) 28 February 1984

Commissioner's File: CSB/180/1983
CSBO File: SBO/162/83
Region: North Eastern

APPENDIX

FINDINGS OF SBAT ON QUESTION OF FACT MATERIAL TO DECISION

1. The appellant entered the Country lawfully and remained in the Country by lawful permission until the 31st August 1980: a lacuna ensued in which the appellant assumed a measure of anonymity. In April 1982 he applied for political asylum in the honest belief that he would be in jeopardy if he were to return to his native Uganda.
2. The Benefits Officer appears to have taken account of
 - A) The existence of permission under the Immigration Act 1971 but to have ignored the application for political asylum and the permission evidently granted by the Home Office to the Appellant to reside in the United Kingdom pending determination of his application.
 - B) To have assumed that a condition attached to the last permit granted to the appellant to the effect that he the appellant should not have recourse to public funds. The consideration of the condition appeared anomalous in as much as the officer rejected any suggestion of leave under the Immigration Act as relevant to the appellant's claim and in any event the condition does not appear as expressed on the form of permission shown to us.
3. The appellant is in grave and obvious need of financial assistance: the Captain of the Church Army Hostel made clear the position as to the appellant's future as regards the Hostel and without funds of any sort the appellant faces destitution poverty and homelessness.
4. The appellant has to all intents and purposes made his home in the United Kingdom since 1974 is presently known to the Home Office having even a reference number in respect of his application for asylum and is undisturbed in his residence here.

REASONS FOR DECISION OF SBAT

1) Section 1 of the Supplementary Benefits Act 1976 provides inter alia that "subject to the provisions of this Act every person in Great Britain of or over the age of 16 whose resources are insufficient to meet his requirements shall be entitled to benefit as follows....."

(a) a supplementary pension....."

(2) That the Appellant is a person in Great Britain is obvious: we knew of no provision of the Act or of any other regulation thereunder which precludes the Appellant from the right to benefit. The presenting officer agreed that save for his remarks relating to regulation 10(4A) of the Resources Regulations he could conceive of no such provision.

(3) The Application for political asylum seems to us to be a prerogative and extra-statutory matter: it follows that we found ourselves in difficulty in being involved in consideration of a benefit so closely regulated by statute. That said we felt that to allow a man to remain in the United Kingdom whilst an application is under consideration and when other Action could easily have been taken must imply the acknowledgement of the need to have enough on which to live pending the determination of a lawful and validly made application.

(4) The directive described by the Presenting Officer relating to Iranian refugees seemed to confirm that responsible authorities recognise the equity of giving financial assistance whilst the consideration of an application for political asylum is in hand.

(5) In Halsburys Laws of England Fourth Edition we noted in Volume 18 under Article: Foreign Relations Law reference is to the Convention relating to the Status of Refugees (Geneva, 28th July 1951; TS 39 (1954); Cmdd 9171), Art.31 Para. No.1 and the observation that "a refugee may not be penalised on account of illegal entry or presence if he comes directly from a territory where his life or freedom was threatened provided he presents himself without any undue delay to the Authorities and shows good cause for his illegal entry or presence. In the same Volume at paragraph 1719 under the same title we noticed observations relating to "Status Obligations and Rights of Refugees and Stateless Persons". We noted reference to another convention and obligations on contracting states including that a refugee or stateless person be granted the same protection as nationals with respect to artistic and scientific works, rationing elementary education, public relief and assistance" etc. We accept that the conventions may not be exactly applicable to the Appellant but think that the obligations owed by the State to the Appellant are analogous to those anticipated by the Convention and referred to them as persuasive authorities and guides.

(6) Finally we were satisfied that had the Appellant applied for renewal or variation of leave he would have been entitled to some form of benefit pending determination of an application (regulation 21(1)(b) Urgent Cases Regulations) and again thought the provision of assistance as being fairly analogous to the facts before us.