

The Right to Work for failed asylum seekers Revisiting Tekle v Secretary of State for the Home Department [2008] EWHC 3064 (Admin)

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In the Tekle judgement, Mr Justice Blake made a finding that the UK's current rules which prevented the asylum seeker from taking employment are incompatible with the European Convention on Human Rights. He further said that any policy to refuse permission to work should be proportionate.

He concluded at paragraph 47 that. "...denying a claimant an ability to seek employment for some prolonged and indefinite period is capable of being a detriment in circumstances where it can be said to be an interference with the right to respect for private life." He went on to add that he expected the policy to be reviewed and reformulated in the light of this judgement within approximately three months.(This judgement was on the 11th December 2008)

Work can be defined as, the physical or mental effort or activity directed toward the production or accomplishment of something. It is purposeful application of mental or physical effort. In this regard the engagement in work brings human dignity as an individual is able to rely on himself for survival as work is paid for by corresponding wages. However, currently in the UK, asylum seekers are not allowed to work, unless a decision in their claim is not made within twelve months and also the delay was not of their making.

The most worrying factor is that when someone has had their asylum application refused, and having exhausted all appeal rights, but still un-removed from the UK, one is still not allowed to work. In respect of Zimbabwean nationals, there have not been any forced removals since November 2004 and the policy of no removals to Zimbabwe remains.

The question which bothers many Zimbabwean failed asylum seekers is why they are not allowed to work in the meantime whilst their removal to Zimbabwe has been put on hold. The UK Border Agency maintains that a distinction must be drawn between entering the country for economic reasons and seeking asylum so that those whose applications to stay in the UK as refugees has been refused should not be seen to benefit economically through engagement in paid work.

However it is arguable that those whose applications for asylum have failed and are not subject to imminent removals to their countries of origin should not unnecessarily overburden the tax payer by claiming asylum support benefits when they are capable of earning a living from their own labour.

A case can be made for allowing failed asylum seekers to work pending their removal from the UK. It is argued that this can be an incentive for those who have remained under ground to come out in the open. Can the UK Border Agency's continued denial of failed asylum seekers' right to work be brought under review in the High Court?

Article 3 European Convention on Human Rights

Provides that, "no one shall be subjected to torture or to inhuman or degrading treatment or punishment"

Article 8 European Convention on Human Rights

Provides that, "Everyone has the right to respect for his private and family life, his home and his correspondence"

What I want to argue is that denial of right to work by the UK authorities, apart from engaging the UK's obligations under the right to private life Article 8 of the European Convention on Human Rights (as recognised in the Tekle case), may also arguably amount to inhuman or degrading treatment as reliance on hand outs may amount to deprivation of human dignity. (Accommodation and vouchers from the Home Office)

It may be appropriate to make an assessment of a number of applications for permission to work from failed asylum seekers including those who have filed fresh applications for asylum. The current process involves faxing your application to the UK Border Agency and waiting for a response. Following this assessment process an application for judicial review can then be made to the High Court with a view of determining whether it is now an opportune time to revise this policy framework.

It is also pertinent in this regard to remember the following observations made by the UK Prime Minister: "I can confirm also that we are actively looking at what we can do to support in this country Zimbabweans who are failed asylum seekers, who cannot work and prevented from leaving the UK through no fault of their own. They are provided with accommodation and vouchers to ensure that they are not destitute, but we are looking at what we can do to support Zimbabweans in that situation and we will report back to the House in due course. However I repeat to the right hon. Gentleman that no one is being forced to return to Zimbabwe at the present time."

This was in response to Mr Nick Clegg (LD)'s questioning that: "nearly three weeks ago I asked the Prime Minister to allow Zimbabwean asylum seekers to have the right to stay in the UK and to work to support themselves before they return home. He said he would think about it. What has he actually decided? What is he actually going to do?"

It would appear that whilst there has been a recognition that something needs to be done about the right to work for failed asylum seekers, the evidence on the ground suggests that the UK Border Agency continues to deny them the right of work. In view of the period of review set by the High Court and also the Prime Minister's observations in the House of Commons this should be an opportune time to seek a judicial pronouncement in respect of the right to work for failed asylum seekers.

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