Neutral Citation Number: [2023] EWCA Civ 1366

Case No: CA-2023-000072

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Upper Tribunal Judge Norton-Taylor
JR-2022-LON-000554

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 November 2023

Before :

SIR GEOFFREY VOS, MASTER OF THE ROLLS
LORD JUSTICE BAKER
and
LORD JUSTICE STUART-SMITH

- -

Between :

THE KING (on the application of YUSUF OZMEN)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

Emma Daykin (instructed by **Redstone Solicitors**) for the **Appellant**
William Irwin (instructed by **Government Legal Department**) for the **Respondent**

Hearing date : 31 October 2023

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Approved Judgment

This judgment was handed down by the judges remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on 23 November 2023.

LORD JUSTICE BAKER:

1. In December 2019, Mr Yusuf Ozmen, an 18-year-old man from Eastern Turkey, arrived in the United Kingdom having been granted leave to enter as a short-term student. On 21 May 2020, he applied for leave to remain here as a business person under the European Community Association Agreement with Turkey ("ECAA"). His plan was to work as a mobile barber in and around the town of Glossop in Derbyshire. He submitted a detailed proposal to the Home Office. But on 15 March 2021, a case worker at the Home Office refused his application, giving brief reasons for the decision. Mr Ozmen applied for an administrative review of the decision. On 7 February 2022, the Home Office informed him that his application for review had been unsuccessful and that he should leave the country. On 26 April 2022, after submitting a pre-action protocol, Mr Ozmen filed an application for judicial review contending that the Home Office's decisions were unfair, unlawful and irrational. Permission to apply for judicial review was initially refused on the papers, but granted after an oral hearing. After a hearing in the Upper Tribunal in November 2022, judgment was handed down dismissing the application. Mr Ozmen filed a notice of appeal to this Court. On 28 April 2023, permission to appeal was granted by Carr LJ on three grounds. At the conclusion of the hearing of the appeal, judgment was reserved.

2. For the reasons set out below, I have concluded that the appeal should be allowed and the Secretary of State directed to reconsider Mr Ozmen's application.

3. The legal background is set out in the judgment of Saini J in *R (Karagul) v SSHD* [2019] EWHC 3208 (Admin) to which the Upper Tribunal Judge in this case made extensive reference. The purpose of the ECAA between the European Economic Community ("EEC") and Turkey, which was signed in 1963 and to which the United Kingdom became a signatory on joining the EEC in 1973, was, as Saini J observed in *Karagul* (at paragraph 31):

> "…to promote the continuous and balanced strengthening of trade and economic relations between the contracting parties, which includes the progressive securing of free movement for workers, abolition of restrictions on freedom of establishment and on freedom to provide services with a view to improving the standard of living of the Turkish people and facilitating the accession of Turkey to the Community at a later stage…."

Under an additional Protocol signed in 1970, the Contracting Parties agreed to

> "refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services."

As Saini J explained (ibid, paragraph 35), the effect of this so called "Standstill Clause", as interpreted by CJEU case law,

> "was to require the United Kingdom to 'look back' in time to the domestic rules which applied to relevant Turkish nationals seeking to establish themselves in business as at 1 January 1973 (when the United Kingdom became a member of the EEC). The

> rules to be applied to current applications were 'frozen' in time as at that date."

4. For that reason, applications made by Turkish nationals throughout the period of the UK's membership of the EEC, subsequently the European Union, had to be considered under the Immigration Rules in force at the date of UK's accession. They were contained in HC510, "Statement of Immigration Rules for Control after Entry".

5. The provision in the rules of particular relevance to this appeal is paragraph 21 of HC510:

> "People admitted as visitors may apply for the consent of the Secretary of State to their establishing themselves here for the purpose of setting up in business, whether on their own account or as partners in a new or existing business. Any such application is to be considered on merits. Permission will depend on a number of factors, including evidence that the applicant will be devoting assets of his own to the business, proportional to his interest in it, that he will be able to bear his share of any liabilities the business may incur, and that his share of its profits will be sufficient to support him and any dependants. The applicant's part in the business must not amount to disguised employment, and it must be clear that he will not have to supplement his business activities by employment for which a work permit is required …. Where the application is granted the applicant's stay may be extended for a period of up to 12 months, on a condition restricting his freedom to take employment. A person admitted as a businessman in the first instance may be granted an appropriate extension of stay if the conditions set out above are still satisfied at the end of the period for which he was admitted initially."

6. The original statutory scheme provided for a right of appeal to an adjudicator against a decision refusing leave to remain. That right was abolished in 2014 and replaced by a process of internal administrative review under the Immigration Rules.

7. The rules are supplemented by guidance to Home Office staff published by the Home Office, "ECAA business guidance", version 10 (March 2020). The guidance observes, under the heading "Background" (page 10), that:

> "The Immigration Rules as they were in 1973 are far less stringent than the corresponding requirements in the current rules and must be applied in the context of the objectives of ECAA."

8. Of particular relevance to this appeal are the instructions to caseworkers in the guidance about the "credibility" of the business proposal. For example, under the heading "Evidence to assess the applicant has met the requirements of the Turkish ECAA (at page 57), staff are reminded:

> "While the 1973 rules do not specify the types of documents to be submitted in support of a business application, you must assess if failure to provide relevant and/or requested documents undermines the credibility of the applicant's business proposal."

There follows a long list of documentary evidence caseworkers may expect to see, followed by a sub-heading "Requests for further information":

> "You must decide on a case by case basis whether it is appropriate to request further information from the applicant. Where a refusal is based partly or wholly on the applicant failing to provide necessary documentation, you must make it clear in the decision letter why and how any missing documents led to a refusal."

In the same section, under the sub-heading "Interviewing applicants", staff are advised:

> "If you are unable to determine whether an application is genuine solely from the documents provided you must consider if it is necessary to interview the applicant in person.
>
> For example, you may have concerns about:
>
> - the authenticity of the documents provided
> - inconsistencies in the evidence provided
> - significant omissions in the documents required
> - the involvement of a third party in preparing the application
> - applications which appear to be identical with other applications previously submitted
> - the credibility of the application."

9. Under the heading "Evidence of experience and qualifications" and sub-heading "Insufficient evidence" (page 62), the guidance states:

> "In cases where the applicant does not provide sufficient evidence of their previous experience and/or qualifications relevant to the application, you should ask them to provide further written evidence. This may take the form of employer references and certificates."

10. In *Karagul* Saini J (at paragraph 106) set out detailed conclusions about applications under the ECAA, procedural requirements and the role of the court. The following points are relevant to this appeal:

> "(i) The assessment of an application under paragraph 21 of HC510 is a merits based evaluative assessment for the Secretary of State's judgment. Notably, it is an assessment involving a

> predictive analysis of the viability in the future of a proposed business, and such an assessment will be by its very nature difficult to challenge.
>
> (ii) As long as the Secretary of State has followed a fair procedure, directed herself according to relevant considerations (and not taken into account irrelevant considerations), and arrived at a rational conclusion with reasons (directed at the terms of HC510 and the Guidance), a public law court will not interfere with the decision.
>
> (iii) The context in which the evaluative assessments are to be undertaken by the Secretary of State gives her a wide margin of appreciation as to the merits and feasibility of proposed businesses and whether they meet the paragraph 21 requirements. Specifically, it would be in a rare and extreme case that a court on judicial review would second-guess an overall assessment by the Secretary of State that an application failed on the merits."

11. Saini J noted that a decision whether or not to seek further information from an applicant was within the caseworker's discretion and fact-specific so that, provided a court could identify a rational reason why a decision not to interview or seek additional material was made, it will not interfere. He added (paragraph 106 (ix) to (xi)):

> "However, in cases where there are concerns that the applicant has not shown he or she has a "genuine intention or wish" to run the proposed business, the Secretary of State is highly likely to be obliged to consider interviewing an applicant under the Guidance …. That is because the terms "genuine intention or wish" are in context referring to a potential conclusion that the application is made in bad faith. That is, in circumstances where the applicant has no true intention to start and run the claimed business but is using the application as false basis to obtain LTR …. Although there is no obligation to undertake an interview under the Guidance in such circumstances, it would be rare that it would be fair and lawful at common law not to interview an applicant if his or her application was to be rejected on the basis that the applicant had not shown a "genuine intention or wish" to run the proposed business."

12. Mr Ozmen's application for leave to remain under the ECAA was submitted on his behalf by his immigration adviser. Including appendices, the plan ran to 89 pages. It opened with an executive summary which started by summarising the proposal:

> "Mr Ozmen has a background in the barbering sector, both in an intern role and providing freelance services for local people. He has a journeyman and mastership certificate and strong customer service skills.

> He is going to launch a new company in Glossop, Ozbarber Ltd, providing hair and beard services for men, OAPs and children. Mr Ozmen has registered his new company at Companies House and has the certificate of incorporation and memorandum of articles in place.
>
> He plans on launching the company when he has the appropriate visa to trade in the UK and can launch immediately as he is already living in the area. He is going to provide services in people homes at times that suit them with pre-booked appointments available through an app. He is advertising his services early morning to the evening and at weekends so people that work can have cuts outside work and school hours.
>
> Mr Ozmen is going to focus on building regular hair and beard services with different rates for adults, OAPs and children. He plans on clustering appointments in the same area where possible to reduce travelling time. Mr Ozmen is using public transport to attend appointments and can fit his supplies in a case."

13. The plan continued with sections setting out Background, Management Summary, Objectives, Mission, Keys to Success, Market Analysis, Service and Pricing Summary, Marketing Strategy, SWOT Analysis, Competitive Advantage, Start-up Summary, and Financial Forecast. It included sixteen footnotes with links to various websites. Accompanying the plan were nine appendices including projected profit and loss, cashflow, and evidence of qualifications and experience, business research and marketing materials, start-up funds and resources, and four letters from potential clients.

14. On any view, this was a comprehensive and detailed plan of which the following elements are relevant to this appeal.

    (1) Under the heading "Market Analysis", it stated:

    > "The town is close to lots of towns and villages on the main route into Manchester. This gives Mr Ozmen more scope to expand his service location and cluster clients in different areas to reduce travelling time. The local bus service is fast, frequent and connects the towns reaching into Manchester suburbs."

    (2) This latter sentence was supported by a footnote with a link to a website run by a company providing bus services in the High Peak area, including timetables and fares.

    (3) The projected profit and loss account anticipated sales of £23,200 with expenses of £17,074 and a pre-tax profit of £6,193. The expenses included travel expenses of £1,200.

    (4) Three of the potential customers whose letters were appended lived in Glossop. The fourth lived in Marple, one of the surrounding villages situated some seven miles away.

15. Ten months after submitting the plan, Mr Ozmen's adviser received a letter from the Home Office saying that it had been refused. The reasons for the decision were set out in brief terms as follows:

> "There is insufficient evidence to demonstrate that your business proposal meets the requirements set out in the relevant guidance.
>
> A total of two reference letters have been submitted stating that you have been a hairstylist for one barber shop between February 2018 and July 2018 and for another one between July 2018 and December 2018 (a total of 10 months). The business plan states "Mr Ozmen is an excellent modern barber working freelance in the sector since 2018". No SGK has been provided therefore any work history claimed cannot be verified.
>
> The business plan states "…travel between each client using public transport". No information regarding public transport has been provided ie costings of daily/ weekly/monthly tickets or timetables to show that effective travel can be made within Glossop and close-by towns and villages which are the areas that will be covered as stated in the business plan. A letter from a potential client who lives in Marple has been provided. A simple check on Google Maps states that travelling on public transport to Marple from Glossop can take approximately 1 hour 15 minutes or longer.
>
> Each of the factors above have not been taken to account in isolation but considered collectively. I am not satisfied that the documents provided reflect a business proposal with a realistic chance of success, so this application is refused."

16. "SGK" is the governing authority of the Turkish social security system. It has a database which can be consulted to verify an applicant's employment history. It is maintained by the appellant that the records only cover salaried employment and do not extend to freelance or contract work. At the hearing before us, Mr William Irwin on behalf of the Secretary of State did not challenge this assertion.

17. In the application for administrative review, Mr Ozmen's immigration adviser raised a number of complaints. In particular she argued that the caseworker had disregarded, misinterpreted and failed to consider the full evidence; wrongly relied on the absence of SGK records and failed to consider other evidence of qualifications and experience; unfairly focused on the potential Marple client to the exclusion of the other customers, and based the decision on evidence of travel times which had been temporarily extended during the Covid-19 pandemic.

18. The Administrative Review Decision set out in detail the points raised by Mr Ozmen. In response to the complaint that his application had been determined without a thorough examination of the submitted evidence and with an incorrect application of the legislation, the reviewer said:

> "…we are satisfied that your application was wholly refused based on your failings to provide documentation or sufficient evidence that demonstrates the viability of your proposed business activity.
>
> It is not considered the documents provided reflect a business proposal with a realistic chance of success, and therefore your application was refused. The original caseworker would not be under any obligation to make further enquiries to allow you to demonstrate your credibility because your application was essentially refused for viability reasons, not on the basis of genuine intentions which was not mentioned in the refusal letter. We are satisfied that your application was correctly considered under the provision of the modernised guidance."

19. In response to a number of complaints made by Mr Ozmen that the decision-maker had erred in attaching weight to the fact that no SGK documents had been provided (because freelance and contract work of the sort undertaken by Mr Ozmen in Turkey are not recorded in the SGK records) and had failed to take into account evidence he had filed to demonstrate that he had the requisite experience, the reviewer said:

> "… it is not considered [sic] there has been any SGK provided in order to verify any of the work history you have claimed. When considering an applicant's application, it is noted that SGK evidence helps a caseworker assess the credibility of an application and it is not considered an error for the initial caseworker to highlight that this has not been provided.
>
> Whilst it is acknowledged that you may not have been able to provide SGK evidence in relation to your work history, it would be considered that you would have been able to provide further evidence to demonstrate the credibility of your business other than the two reference letters that you submitted. As a result, it is not considered the original caseworker was unreasonable in their assessment and we are satisfied that your application has been assessed correctly."

20. In response to complaints by Mr Ozmen that the decision-maker had unfairly assessed the evidence about the demand for his services in the Glossop area and, in particular had wrongly based his decision on information obtained from Google Maps about travel by public transport from Glossop to Marple, which had been adversely affected by the pandemic, the reviewer said:

> "We are unable to accept new information or evidence that was not available to the original caseworker at the time of decision. We are satisfied that within your application you submitted a business plan which confirmed that you would travel between each client using public transport. You did not provide any further information regarding the public transport you would be using to travel between clients, such as costings of tickets, timetables etc, as raised by the initial caseworker.

> We do not consider the original caseworker was unreasonable when acknowledging that there was a letter provided from a potential client who lives in Marple and that when they checked on Google Maps it was stated that travelling on public transport to Marple from Glossop can take approximately 1 hour 15 minutes or longer. The caseworker researched this based on the information and evidence that you had provided with your application and it is not considered to be an error for them to raise their concerns."

21. The application for judicial review put forward seven grounds of challenge. Having summarised the background, the original decision and administrative review, and the legal framework, the judge set out his analysis and conclusions on the seven grounds. It is only necessary to consider those matters which now form the grounds of appeal to this Court.

22. Under ground one of his judicial review claim, Mr Ozmen asserted that the original decision had been procedurally unfair because he had not been invited to an interview. The reference in the original decision to his work history not being verifiable, and the two references to "credibility" in the administrative review, demonstrated that the caseworker had concerns about the genuineness of the application. As a result, in accordance with the guidance and paragraph 106 of the judgment in *Karagul*, he should have been invited to interview before a decision was made. The judge accepted that the word "credibility" can potentially bear the meaning contended for by Mr Ozmen, but, focusing on the circumstances of this case, was satisfied that the basis for the original decision, and the outcome of the administrative review, related to the viability or feasibility of the business proposal, not to whether the applicant or his application was genuine.

23. Under grounds five and six, Mr Ozmen asserted that the Secretary of State had failed to take all relevant matters into account when reaching her decision. In particular, he claimed that he had put forward relevant evidence about his qualifications and training which had not even been mentioned in the original decision and was not dealt with adequately in the administrative review. The judge expressed some sympathy for these arguments, describing the original decision as "very brief" and observing that "to be blunt, an individual who has expended a good deal of time and effort on preparing an application might expect a more detailed response to it than that provided to the Applicant in this case." He concluded, however, that the decision-makers were aware of the evidence relating to qualifications and training which they took into account in reaching their conclusions. Overall, he was satisfied that the decisions were neither irrational nor unlawful for want of adequate reasons.

24. Under ground seven, Mr Ozmen asserted that the Secretary of State had proceeded on a factually incorrect basis when concluding that the potential journey time to a potential customer was such that it called into question the viability of the business plan. It was submitted that the travel issue was such a trivial matter that it should not have led to the refusal of the application. The judge held that the decision-maker had been rationally entitled to pick one of the four customers identified by the applicant "and interrogate it in the sense of conducting a simple search on Google maps". He acknowledged that the length of the journey may have been significantly extended by ongoing Covid-19 restrictions, but concluded:

> "I am concerned with the lawfulness of the original decision and then the administrative review decision at the time they were made. There is no evidence (and any new evidence would have been very unlikely to have been admitted in any event) that the journey time was in fact much shorter when one or both of those decisions were made …. In short, the travel issue was not 'so trivial' that it should have been left out of account. It concerned a relevant consideration and the Respondent was entitled to take it into account when assessing the application as a whole."

25. The appellant has permission to appeal to this Court on three grounds:

(1) The judge was wrong to conclude that the refusal of the appellant's application by the respondent involved no finding of dishonesty or lack of bona fides. As a matter of procedural fairness, therefore, the appellant should have been provided with an opportunity at interview to respond to concerns about the genuineness or credibility of his application.

(2) The judge's conclusion was irrational, particularly in the absence of any evidence to indicate that the appellant's qualifications and training had been taken into account by the respondent.

(3) The judge erred in law in rejecting the appellant's argument that the respondent acted irrationally in concluding, on the basis of its analysis of the travelling time to one potential client, that the business plan was not viable.

26. Under the first ground, Ms Emma Daykin on behalf of the appellant submitted that the emphasis of the respondent's substantive reasons for refusing the application, both in the initial decision and the administrative review, was on the 'credibility' of his application and an inability to 'verify' his 'claimed' work history. It was argued that the word "credibility" was used in the guidance, and the administrative review, to mean "genuineness" and that the UTJ erred in concluding that it referred to the viability of the business with no allusion to bad faith. It amounted to a conclusion that the application was not genuine or being made in good faith and that, following the guidance in *Karagul*, as a matter of procedural fairness the caseworker should have invited the applicant to interview to allow him an opportunity to respond to those concerns.

27. As the UTJ observed, the words "credible" and "credibility" have two meanings. Sometimes "credible" means "believable" in the sense of "genuine" or "honest". On other occasions, it is used to mean "plausible" in the sense of "viable" or "feasible". In the Home Office ECAA Business Guidance, the word "credibility" is used in both senses. When it appears in the phrase "credibility of evidence", it is being used in the first sense. When it appears in the phrase "credibility of the business proposal", it is being used in the second sense.

28. Plainly there is a risk that these dual meanings could lead decision-makers astray. But I am not persuaded that this has happened in this case. I do not accept the premise of the appellant's argument under this ground that the substantive reason for the refusal of his application was that the respondent did not accept that it was genuine. There is no reference to "credibility" in the original decision letter, nor any finding that the

appellant did not genuinely intend to establish the proposed business if given leave to remain. The caseworker's overall conclusion was that "I am not satisfied that the documents provided reflect a business proposal with a realistic prospect of success". The administrative review was therefore right to conclude that the application had been "essentially refused for viability reasons, not on the basis of genuine intentions which was not mentioned in the refusal letter".

29. It is true that the administrative review proceeded to refer to "credibility" at two further points. In my view, the UTJ was right to conclude that on both occasions it was again referring to the viability of the appellant's business plan, not to the genuineness of his intentions. I also agree with his observation (at paragraph 26 of the judgment) that the statement in the original decision that "no SGK has been provided therefore any work history claimed cannot be verified" did not by itself, or in conjunction with the use of the word "credibility" in the administrative review, indicate any concerns about the "genuineness" of the applicant or his application.

30. Under the second ground, Ms Daykin submitted that the Secretary of State, both in the original decision and in the administrative review, had irrationally failed to take into account the evidence adduced by Mr Ozmen in the business plan as to his qualifications, professional training and experience, other than the two reference letters which had been considered insufficient on the grounds that they could not be verified. In the absence of any evidence that the applicant's qualifications, training and experience had been taken into account by the decision-makers, the judge's conclusion had been irrational.

31. It is correct that the caseworker made no reference in the original decision to the evidence adduced by Mr Ozmen as to his qualifications and experience, beyond mentioning the two reference letters and observing that his work history could not be verified. But the decision makes no reference to many other aspects of the evidence in the application. The fact that there was no mention of qualifications and training does not mean that they were not taken into account. For my part, I am not persuaded that the UTJ was wrong to be satisfied that the decision-makers were aware of the evidence and took it into account.

32. The third ground of appeal, however, has considerably more substance. It was said by the appellant to have three elements. First, it was submitted that the original decision made a factual error in its initial decision as to the time it would take to travel from Glossop to Marple by bus. The decision-maker's Google search had revealed that the journey time was 75 minutes. In fact, this was elevated because of temporary changes to the timetable during the Covid pandemic. In normal times, the journey would only take 30 minutes. The administrative review decision-maker had wrongly declined to take the appellant's assertions about this into account on the grounds that he was "unable to accept new information or evidence that was not available to the original caseworker at the time of decision". The explanation provided was not new information, but rather a correction of a factual error made in the original decision requiring the respondent's reasoned consideration. Secondly, whilst it was open to the UTJ to conclude that the respondent had been entitled to regard the issue of travel as not being "trivial" in the broader sense, in the context of this application this discrete concern was such a trivial matter that it should not have led to a refusal. Thirdly, the fact that the respondent refused to take into account the temporary change to the length

of the journey despite having been brought to her attention at the administrative review stage amounted to procedural unfairness.

33. In response, Mr Irwin, submitted, first, that it was lawful for the respondent to consider whether it was viable for the appellant to travel by public transport between Marple and Glossop, since that formed an express part of his application; secondly, that it was rational and lawful for the respondent to look to a widely-used online resource to establish the journey time; and thirdly that the appellant's application was premised upon his business being established immediately or in the near future. In those circumstances, it was neither incumbent on the respondent to speculate as to when the Covid-related restrictions on public transport might be lifted, nor irrational to take into account evidence of the journey time at the date of the challenged decision.

34. On this issue, I find that the original decision-maker, the administrative review and the Upper Tribunal Judge all fell into error. The caseworker seemingly overlooked the evidence about public transport facilities available via a link to the High Peaks bus services website included in the business plan. Had he or she looked at it, they would surely have said so in the decision. Instead, they looked at evidence on a different website not cited in the plan. Given the detailed evidence available to the original decision-maker by clicking the link to the website identified in Mr Ozmen's application, it was irrational and wrong to evaluate the proposal on the basis of one superficial search on a different website. The administrative review was plainly wrong to state that Mr Ozmen had failed to provide any further information regarding the public transport he would be using to travel between clients, such as costings of tickets and timetables. That information was all available on the website to which Mr Ozmen had provided the link. It was also incorrect to say that caseworker researched this issue based on the information and evidence that Mr Ozmen had provided with his application. In fact, the caseworker had overlooked the information Mr Ozmen had provided when researching the issue. The administrative review further erred in dismissing the observations which Mr Ozmen's adviser had made about the unreliability of the Google Maps search on the grounds that this was "new information or evidence that was not available to the original caseworker at the time of decision". Mr Ozmen's adviser was seeking to challenge information about public transport which the caseworker had taken into account without reference to the applicant while disregarding information about that issue cited in the application. In turn the judge was wrong to say that there was no evidence that the journey time was in fact much shorter. The footnote with the link to the website provided plenty of evidence.

35. Given the view that the viability of the applicant's plans to travel by public transport was a substantial and not a trivial issue, these flaws undermined the decision-making at all levels. The original decision-maker failed to consider the applicant's evidence at all, and this omission was not picked up either in the administrative review or by the judge. It only came to light in the course of exchanges with counsel during the appeal hearing before this Court. Had the judge been aware of this unconsidered evidence in Mr Ozmen's application, I cannot conceive that he would have concluded that the decision-maker had been "rationally entitled" to "interrogate" the viability of the potential customer in Marple by "conducting a simple search on Google maps".

36. Furthermore it was irrational to reject the whole application on the basis of an analysis of evidence about the viability of one customer where the overall scheme of the evidence about the four potential customers was to show that there was broad demand.

That proposition was not in any event undermined by what was wrongly perceived to be a flaw in one of the four items of evidence.

37. The original decision identified just two reasons for refusing the application, one of which was plainly both wrong and unfair. In my view the original decision was a superficial and flawed analysis of Mr Ozmen's application which should have been recognised as such by the administrative review and the UTJ. For those reasons, I would allow the appeal and remit the application for a fresh decision.

LORD JUSTICE STUART-SMITH

38. I agree.

SIR GEOFFREY VOS, MASTER OF THE ROLLS

39. I also agree.