



In the Upper Tribunal (Immigration and Asylum Chamber)

Heard at Field House
On 28 January 2020

JR/666/2019

Handed down
On 2 March 2020

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

THE QUEEN ON THE APPLICATION OF

BUSHRA TALLAT

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Application for judicial review: substantive decision

Having considered all documents lodged and having heard the parties' respective representatives, Mr Z Jafferji, of Counsel, instructed by Abbott Solicitors, on behalf of the Applicant and Mr T Tabori, of Counsel, instructed by the Government Legal Department, on behalf of the Respondent, at a hearing at Field House, London on 28 January 2020.

Decision: the application for judicial review is refused

JUDGMENT

1. This application for judicial review, filed on 5 February 2019, is a challenge by the applicant to the respondent's decision on 17 December 2018 to reject her application for a fee waiver and the subsequent decision on 2 January 2019 which rejected her

application for leave to remain on the basis that it was invalid due to her failure to pay the required fee.

2. The initial basis of the challenge is that the respondent: (1) failed to adhere to her own guidance in not giving the applicant ten days to adduce further evidence before rejecting the application; (2) failed to consider the applicant's representations of 27 December 2018, and (3) acted unlawfully in breaching the applicant's human rights as her right to work was curtailed. The applicant was, therefore, unable to provide for her children and this breached the respondent's obligations under s.55 of the Borders, Citizenship and Immigration Act 2009. The grounds for renewal set out the first two grounds but seek to incorporate the third argument within the second ground.
3. On 14 May 2019, Upper Tribunal Judge Reeds refused the first application on papers, but the renewed application was granted by John Kimbell QC, sitting as a Judge of the Upper Tribunal, on 18 July 2019 following an oral hearing. It was considered that the respondent had arguably failed to apply her own policy and that this was a procedural irregularity which led to the further evidence supplied by the applicant on 27 December 2018 not being properly considered. The third ground, either as a separate argument, or as part of the second, was not pursued.

Background

4. The applicant is a Pakistani national born on 18 October 1989. She entered the UK as a student, but her leave expired in April 2013, an application for further leave was refused and her appeal against the decision was dismissed. The applicant then made a private/family life application. This was refused. Further representations were then made on the basis that her daughter had a right of residence as she was born before her parents divorced and her father was an EEA national. On 9 May 2016 the applicant was granted leave outside the rules until 8 November 2018. It would appear, however, that the applicant never married her partner.
5. On 3 November 2018 the applicant sought further leave and applied for a fee waiver. She maintained that she resided for free with a friend, she had not been asked to leave, she did not receive any local authority support, that she would not be homeless any time soon, that she received support from her ex-partner (the father of her children), although this had recently decreased, that she had one bank account with Lloyds and that her total monthly income was £250 which was £15 more than her outgoings.
6. The respondent did not consider she had sufficient evidence or information to make a decision on the fee waiver application and a credit check had revealed that the applicant had two other bank accounts which she had failed to disclose. The applicant was, therefore, asked by email on 27 November 2018 to provide further evidence in the form of statements for the two accounts, and explanations for all her major outgoing and incoming payments. She was also given the opportunity to provide any further evidence which might assist her application.

7. The applicant responded on 10 December 2018 by email, providing the bank statements and explaining that she had forgotten about those accounts as she had not used them in a long time (although they contained recent transactions). A letter from her former partner was also adduced.
8. On 17 December 2018, on the basis of the application and the additional evidence and information, the respondent concluded that the appellant did not qualify for a fee waiver as she had not shown that she was destitute or would be rendered destitute by the payment of the fee, and that there were no exceptional circumstances which would make a fee waiver appropriate. She was given time to make the fee payment.
9. On 27 December 2018, the applicant emailed the respondent with further information as to her incoming and outgoing payments, but this letter was not considered as a decision on the fee waiver had already been made. The respondent's view was that she had already provided the applicant with an opportunity to adduce further evidence and even if the further representations had been considered, they would not have affected the outcome of the application as the applicant had still failed to show that she was destitute.
10. On 2 January 2019, the respondent decided to invalidate the applicant's application on the basis that no fee had been paid.
11. On 5 February 2019, the applicant filed a judicial review claim. This was refused on the papers by Upper Tribunal Judge Reeds on 14 May 2019 but granted following an oral hearing on 9 July 2019.

The Hearing

12. The matter came before me on 28 January 2020. The applicant arrived late but was present for most of the hearing.
13. On behalf of the applicant, Mr Jafferji submitted that this was not a challenge to the rationality of the respondent's decisions but a challenge on procedural irregularity on the basis that the correct procedure was not followed. I was referred to the policy guidance on Fee Waiver applications in Human Rights-Based applications, Version 2, 30 August 2017, at (internal) p.23 which stated that applicants with in-time applications who do not qualify for a fee waiver should normally be advised to pay the fee or produce further documentary evidence to demonstrate that they do qualify. He accepted that there would be cases where this was not done but he argued that no reasons had been given for why this approach was not followed here. He submitted that it was unclear as to whether the caseworker was exercising his/her discretion under the policy and deciding that the further opportunity

afforded under that policy should not be provided to the applicant or whether the caseworker overlooked this option. He argued that a request for further information and evidence was different to the opportunity in the policy offered to an applicant to provide a response to the reasons for the refusal of the fee waiver application. He pointed to p.14 of the policy and argued that the request for further evidence was made on the basis envisaged in this part of the policy. At the point the caseworker sought further information/evidence, he/she was anticipating that the application might be granted. The application could simply have been refused on the basis of insufficient evidence but that was not the approach taken. The normal course of events was that an applicant was made aware of the reasons for the refusal and given a chance to provide further evidence or to pay the fee before becoming an overstayer. He further relied on the current guidance of January 2019 and submitted that it was clear that if the further evidence, to be provided within 10 working days, did not demonstrate an applicant qualified, then the application should be rejected as invalid. He submitted there had been no substantial changes to the newer version of the policy and that it was fair to provide applicants with the opportunity to respond to shortcomings in their applications. It would not be fair to refuse her application as had been done without providing her with such an opportunity. The applicant had two young children and the decision had to be proportionate and in their best interests.

14. Mr Jafferji submitted that when the applicant received the decision letter, she notified the respondent that she had not been given ten working days to provide further information. She then provided further documentary evidence including a further signed letter from her former partner. Such a document was of the type of documents the respondent had listed in the policy as appropriate. The decision letter did not reject the application as incredible. It went through the bank statements and queried the transactions and the use of her account by her former partner before the conclusions on destitution were reached. The applicant was refused on the basis that matters had not been addressed. Her further submissions had not been considered even though the decision could have been reviewed at that stage. The decisions should be quashed as they contained public law errors and the refusal letter should be re-served in accordance with the policy and giving the applicant ten days to provide further evidence or to pay the fee.
15. Mr Tabori responded. He maintained that despite the detailed submissions that had been made, the issue was a very narrow one. He took me to the respondent's email to the applicant of 27 November 2018 pointing out that the applicant had been given until 11 December 2018 (ten working days) to provide further information and evidence. This was fully in compliance with the policy as set out at p.23. He pointed out that the challenge was not one made against the fairness of the policy but to the respondent's alleged non-compliance with it. He submitted that the evidence demonstrated that the respondent had complied. He submitted that the applicant appeared to be arguing that she should be given two opportunities by caseworkers to provide evidence. That was not what her grounds had argued, and it was not what the policy provided. The policy made plain the types of documents required, it incorporated the principles set out in Omar [2012] EWHC 3448 (Admin)

and Carter [2014] EWHC 2603 (Admin) and it struck a balance between administrative expediency and procedural fairness. The policy gave an applicant a single opportunity. The respondent had been found to be entitled to take a rigorous approach to fees in Carter. The onus was on an applicant to provide information and that was made clear in the policy.

16. Mr Tabori submitted that the email from the respondent directed the applicant as to what further information and evidence she was required to produce. There was no requirement for the respondent to then give her a further opportunity. The decision letter of 17 December 2018 was in response to the further information and evidence she had provided. It gave adequate reasons. It did not generate another opportunity for the applicant to respond to deficiencies in her application and the concerns raised therein could not have been put to the applicant earlier as they arose from her subsequent evidence.
17. Mr Jafferji replied. He submitted that the respondent's case rested on an acceptance that the email of 27 November 2018 triggered the approach at p.23 of the policy. If that was accepted, then the applicant had no case. However, if it was accepted that the email was in response to the approach suggested at p.14 of the policy, then the applicant had not been given an opportunity to provide further information as envisaged in the later part of the policy (at p.23). In his submission, the email was not a decision but simply a request for further information. The caseworker had not said that he/she was not satisfied that the applicant did not qualify for a fee waiver, the applicant was not told to pay the fee or submit further evidence. When the email and the policy contents were compared, it was clear that the email followed the policy at p. 14. It was not a decision and only a request for information. The respondent's case was fundamentally flawed. The claim should be allowed.
18. Mr Tabori sought to clarify a point. He submitted that the applicant had changed her argument from complaining that the email did not refer to ten working days to now saying that it did not say her application had been rejected. He pointed out that the policy (at 23) was a route to rejection. It was plain at the time the email was sent that the applicant's evidence had been insufficient to qualify her for a fee waiver and that was why more evidence was requested. The applicant was just picking on the wording of the correspondence. It would be bizarre for the respondent to state that she was refusing the application yet ask for more documents. There had been manifest compliance with the policy. The request for information did not fall within the ambit of the missing documents scenario at p.14 because the request was not for missing documents but those which the applicant had not disclosed. It would be illogical to treat applicants who had omitted to include a document or part of a sequence of documents in the same way as those who had sought to conceal evidence.
19. Mr Jafferji repeated his submission that the respondent's email did not reject the application. He submitted that the case worker had made an error. He submitted that the shortcomings of the application were not relevant to the operation of the policy.

20. That completed submissions and concluded the hearing. I reserved my decision which I now give.

Analysis and conclusions

21. I have taken full account of the evidence and the submissions made. Having done so, I conclude that the Secretary of State's decisions were both reasonable, rational and disclose no public law error. I now set out my reasons which are in no order of priority.

22. The applicant relies on the respondent's policy of 30 August 2017 on fee waivers made in human rights-based applications. Mr Jafferji made reference to the more recent version of 4 January 2019 but that was not the policy in place when the decisions were made. In any case, there are no substantial differences between them, and I have focused on the earlier guidance as that was operative at the relevant time. The added emphases are mine. The relevant sections state:

"In assessing the fee waiver application the caseworker must have regard to the duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of any affected child, and therefore to the best interests of any such child as a primary consideration" (at p.5).

*"When applying for a fee waiver **the applicant will be asked to provide full details of their financial circumstances, including statements covering the 6 months period prior to the date of application for any bank or building society accounts they hold. They must also provide a full breakdown of their monthly income and expenditure at the time of application**" (at p.5).*

"Checks may be undertaken with agencies such as HM Revenue & Customs, the Department for Work and Pensions and Equifax to verify information provided by the applicant with regard to their income and finances (see Document Verification guidance). ...Applicants who fail to disclose their financial circumstances in full, or who provide false information in their fee waiver request, may have current or future applications for leave to enter or remain refused because of their conduct (see General grounds for refusal guidance). They may also be referred for enforcement action, resulting in possible arrest and removal" (at p.6).

The qualifying criteria are:

- *"Where the applicant has demonstrated by way of evidence that they are destitute*
- *Where the applicant has demonstrated by way of evidence that they would be rendered destitute by payment of the fee because whilst they have adequate accommodation and can meet their other essential living needs:*
 - *They have no disposable income, such that without compromising their ability to accommodate themselves adequately or meet their other essential living needs, they could now either pay the fee or save the required amount within a reasonable period (and it would be reasonable in all the circumstances to expect the applicant to delay the application for this length of time, taking into account*

in particular the potential impact of such a delay on their immigration status and access to work and benefits)

- *They are unable to borrow the required amount from family or friends*
- *There is no basis for believing that the applicant's financial circumstances are likely to change within a reasonable period (and it would be reasonable in all the circumstances to expect the applicant to delay their application for this length of time)*
- *Where the applicant has demonstrated by way of evidence that notwithstanding the fact that neither of the above criteria apply, there are exceptional circumstances in their case such that a fee waiver should be granted" (at p.12).*

23. A destitute person is defined in the following way:

- *"they do not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met)*
- *they have adequate accommodation or the means of obtaining it but cannot meet their other essential living needs" (at p.12).*

24. The policy also gives guidance on the assessment of the application. It makes it clear that: *"the fee waiver application must be assessed on the basis of the information provided in the completed Appendix 1 and the accompanying documentary evidence. If the applicant does not complete every section of Appendix 1, their application for a fee waiver should be rejected on that basis alone. In every case where an applicant submits an Appendix 1 and makes an application for a fee waiver, the caseworker should assess the information provided to see whether they qualify. It is the responsibility of the applicant to fully evidence their claimed financial circumstances. Caseworkers should not normally make additional enquiries to try and establish whether an applicant qualifies for a fee waiver. The applicant may be requested to provide a missing document (or part of one) to which the fee waiver application refers where the caseworker anticipates that its provision will lead to a grant of a fee waiver. Caseworkers should otherwise base the decision on a fee waiver on the information and evidence provided and any verification checks" (p. 14).*

"...caseworkers must make reasonable efforts to decide such applications promptly" (at p.15).

25. On the consideration of documentary evidence, the policy provides:

"The assessment of whether an individual qualifies for a fee waiver will be made on the basis of their own individual circumstances and those of any dependent family members. The onus is on the applicant to demonstrate that they qualify for a fee waiver. The applicant must provide relevant documentation to evidence their fee waiver application, including detailed evidence as to their financial circumstances. For example, caseworkers should normally expect to see information and evidence relating to the applicant's income, their accommodation, the type and adequacy of this, and the amount of their rent/ mortgage or of their contribution towards this, and their outgoings in terms of spending on things like food, utility bills. This information should be supported by independent evidence, such as their pay slips, bank statements, tenancy agreement, utility

bills. The nature of the evidence provided will vary depending on the individual circumstances of the applicant, but the caseworker should expect to see evidence appropriate to the circumstances that are being claimed. If the applicant is being supported by family or friends, a local authority or a registered charity, the caseworker should expect to see corroborating documentary evidence confirming provision of support and detailing the nature and amount of the support provided. In all cases evidence must be up-to-date. Documents dating back more than a few months will be useful in establishing how the person's finances have changed over time but should be given reduced weight in establishing whether the applicant meets the fee waiver policy now" (at p.15).

"An applicant claiming to be destitute will need to provide evidence that they are destitute. In all cases the onus is on the applicant to provide evidence that they are destitute...If a person has been without any formal or obvious means of support (such as income from employment or local authority support) for a prolonged period, it may be reasonable for the caseworker to assume that the person has had, any may continue to have, access to an alternative form of support (for example, income from overseas or from a relative or friend), unless the applicant provides evidence that this is not the case or that their circumstances have changed and they are now without any means of support" (at p. 17).

"The applicant will need to provide relevant evidence of their income and expenditure so that their disposable income can be calculated. Caseworkers will need to use their judgement in assessing the applicant's spending habits to decide whether or not they are considered to have disposable income and the amount of this"(at p.18).

Regard should be had to circumstances where an applicant *"buys a personal possession that is clearly not essential to their living needs..." (at p.18).*

26. The issue of exceptional circumstances is also considered:

*"An example of exceptional circumstances may be where the applicant is not destitute and would not be rendered destitute by paying the fee but cannot afford to pay it because they need to spend the money on essential child welfare needs, because of a child's illness or disability. A decision on whether there are exceptional circumstances should be made on a case-by-case basis, taking into account the applicant's individual circumstances and those of any dependent family member and all the information and evidence the applicant provides in support of their fee waiver request. **The applicant will need to demonstrate that there is something exceptional about their financial circumstances and ability to pay the fee such that a fee waiver should be granted, despite the fact that they have not provided evidence of destitution or that they would be rendered destitute by payment of the fee" (at p. 18).***

"The caseworker must take into account the applicant's household income and assets, including income and assets belonging to the applicant's spouse or partner, (as well as any other adult with whom the applicant lives and from whom they receive financial support) and to their children and any other dependants. Provision of financial information relating to parents will be required only where the applicant is financially dependent on their parents. The following must be taken into account:

- income:

- from employment or self-employment
- from non-employment sources
- of the applicant's spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support) or parents from employment or other sources
- from welfare benefits or tax credits received by the applicant or their spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support) or parents
- from other family or friends
- assets:
 - cash
 - money held in bank and building society accounts (including non-UK based accounts), including accounts belonging to the applicant's spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support), parents or children
 - investments, including any investments belonging to the applicant's spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support), parents or children
 - land or property
 - cars or other vehicles
 - goods held for the purpose of a trade or other business
 - jewellery (except for wedding jewellery such as the applicant's engagement and wedding rings)
 - other personal possessions, such as mobile phones, computers" (at p.19)

"Support provided to the applicant or a dependent family member by family or friends must be considered in assessing their income and outgoings. Such support could be financial or in terms of providing accommodation or meeting other essential living needs, such as providing food or paying bills. If this support is of a limited duration or is about to end, the applicant must provide a full explanation of why this is so, along with relevant documentary evidence. An example of the sort of documentary evidence which could be provided might include a signed statement from the person who has been providing them with support or accommodation explaining why they are no longer able to do so. Documentary evidence of that person's financial situation showing the support provided, such as regular payments to the applicant's bank account, and demonstrating that the person's financial circumstances have changed such that they cannot continue to support or accommodate the applicant should also be provided" (at p. 20).

"If the caseworker is not satisfied the applicant qualifies for a fee waiver then: If the applicant made their application in time (for example they had valid leave on the date their application was submitted), they should normally be advised that they do not qualify for a fee waiver and that if they wish to validate their application, they must, within 10 working days either pay the specified fee or submit additional evidence that demonstrates they qualify for a fee waiver. If the fee is paid within that period or additional evidence is provided within that period that demonstrates the applicant qualifies for a fee waiver and the application meets the other validation criteria, it should be forwarded to the relevant caseworking section for consideration. If the applicant provides further evidence within 10 working days but this does not demonstrate that they qualify for a fee waiver, the application should be rejected as

invalid. If no further evidence is provided and the fee is not paid within 10 working days, the application should be rejected as invalid (at p. 23).

27. I note at the outset that permission was granted on the two grounds in the renewal application and that the third ground put forward by the applicant, that her human rights were breached by the respondent refusing to allow her to work, was not pursued either in the written grounds for renewal or by Mr Jafferji. It was also not argued at any stage that there were any exceptional circumstances which warranted the grant of a fee waiver as per p. 18 of the policy (cited above at paragraph 26), although the respondent did look to consider whether there were any such circumstances when reaching her decision of 17 December 2018 (AB:21).
28. I agree with Mr Tabori's submission that the applicant did not make a challenge to the fairness of the policy itself, nor would she have been able to do so in proceedings before the Upper Tribunal. In those circumstances, Mr Jafferji's submission that it was only fair that an applicant should be able to provide a response to shortcomings in their application, is inappropriate. The policy does not envisage all applicants being able to remedy deficiencies in their applications nor does it require the respondent to make the nature of her concerns known to an applicant.
29. It is plain from the policy that it is wholly the applicant's responsibility to adduce the necessary evidence and information to show that he/she qualifies for a fee waiver. This is repeated throughout the 23 pages of guidance. Full details are also given as to the nature of the evidence sought and the means by which an applicant's circumstances may be demonstrated.
30. The burden on an applicant is further emphasised in the application form which states: *"The decision on whether you qualify for a fee waiver will be made on the basis of **the information you provide in this form and the evidence submitted with it.** It is **your responsibility** to provide sufficient information and evidence to demonstrate that you qualify for a fee waiver"* (added emphasis). Examples are then given of the kind of documentary evidence required.
31. The applicant provided two documents; bank statements for a Lloyds account and a letter from Mr Ayaz, the father of her children. She was the only applicant and **the application was made on the basis that she was destitute, not that she would be rendered destitute by payment of the fee** (AB:26). She did not, however, give reasons why she believed she was destitute. She stated she was single and gave details of two children born in the UK in November 2012 and November 2014, both British citizens. Her address was given as 74 Victoria Avenue, East Ham, where she said she had lived since December 2017. The Tribunal was, however, informed on 27 March 2019 that she had moved to 65A Grangewood Street, East Ham and then on 26 July 2019 to an address in Luton. The Grangewood address is also where Mr Ayaz resides (AB: 62 and 68).
32. On her application form, the applicant claimed to be living in accommodation provided by a friend. Section 4.11 which requested details of each person, including

children, who lived with her, was left blank (AB:32-3). It has not been clarified whether the children live with her or somewhere else. At s.5.1 and 5.2 she stated that her children's father had been supporting her but that this had decreased from £400 per month to £250, although at 5.5 she maintained that she received £200 (AB:35). She failed to tick the section on holding bank or building society accounts (at 5.7) although at 5.11 she referred to having an account with Lloyds Bank. At s.9 she confirmed she received £250 per month (in a letter dated 26 July 2019, sent to the Tribunal with the applicant's application for renewal and for a fee remission, Mr Ayaz states that he provides the applicant with £200 a month and is responsible for her food shopping). There was no mention of any receipt of child benefit which she would be entitled to for her British children. Her outgoings were said to amount to £235 including £40 for a mobile phone.

33. On 27 November 2018 the applicant received email correspondence from the respondent. As this is a crucial document for the purposes of this claim, I reproduce it below.

Dear Ms Tallat

Re. Bushra Tallat. Pakistan 18 October 1989 24542193

Please note a reply is required by 11 December 2018

We have received your request for a fee waiver but we require further information or evidence to assess your claim. Please provide the documentation below by scanning it in and sending it to this email address by 11 December 2018.

Alternatively, you can send it by post to:

.....

Evidence required:

Six months annotated bank statements for all bank accounts

*Information from the Equifax credit agency shows that you have Halifax account *361 and Santander account *714 which you have not provided statements for as part of your application. Please provide at least six months of statements for accounts *361 and *714, running up to present. These need to be sent by the bank on letter headed paper or stamped as genuine by the bank in-branch. Alongside your statements please provide an explanation for all major incoming and outgoing payments and how they relate to your essential living needs, accommodation or to your claimed exceptional circumstances.*

Please also provide any further information or evidence you have that you feel may assist the assessment including any financial, accommodation or other issues that may be occurring due to your current circumstances.

34. On 10 December 2018 the applicant replied. She offered apologies for having forgotten about the other two accounts. One was said to be inactive; the other was being used by Mr Ayaz for receipt of a loan and subsequent withdrawals. Letters from him and from the person who made the loan were provided.

35. On 17 December 2018, the respondent wrote to the appellant to notify her that her application for a fee waiver had been refused. She was given ten working days to pay the fee and informed that her human rights application would otherwise be rejected as invalid.
36. On 27 December 2018 the applicant emailed the respondent. She cited the policy and complained that the decision was contrary to the policy and that the respondent "*never set out what documents I need to provide in relation to my fee remission (sic) application*". She maintained that she should be given ten working days to supply further evidence. She then proceeded to provide further information. She stated that she had been unable to obtain any evidence as to the suitability of her accommodation, that she had provided a letter from her "lodger" confirming her circumstances (this letter is not included in the bundle and the reference to lodger is unclear) and she maintained that even if her accommodation was sufficient, she could not provide for her essential needs without her friend's support (but no details of the nature of the support given were provided). She repeated the earlier information about the loan to Mr Ayaz and attached a further (unsigned) letter from him. The fee was not paid.
37. On 2 January 2019 the respondent rejected her application as invalid due to the non- payment of the fee.
38. I have considered the policy carefully and as the crux of the case is whether the correspondence of 27 November 2018 follows the scenario set out at p. 14 of the policy or that at p. 23, I have also carefully considered that document.
39. The first part of the policy is set out at paragraph 24 above. After emphasising that the responsibility lies with an applicant to provide the evidence that they qualify for a fee waiver, it suggests that "*caseworkers should not normally make additional enquiries to try and establish whether an applicant qualifies for a fee waiver*". It provides, however, for certain circumstances in which an applicant "*may be requested to provide a missing document (or part of one) to which the fee waiver application refers*". This is the scenario Mr Jafferji argued applied in the present case and which led to the correspondence of 27 November. I am unable to agree with that submission. The respondent's checks revealed two bank accounts to which the applicant had made no reference in her application. She, therefore, gave the applicant an opportunity to explain this and to provide specified further evidence as well as any other evidence the applicant considered might assist. She was given ten working days to do so. This was not a request for "*a missing document (or part of one) to which the fee waiver application refers*". I agree with Mr Tabori's submission that it would be illogical for the respondent to treat an applicant who genuinely omitted to include a document or part of a sequence of documents referred to in the application in the same way as one who concealed or failed to disclose matters. I also note that although a specific request was made for annotated bank statements, the statements submitted bore no annotations and

many of the transactions therein were unexplained by Mr Ayaz's letter. There was also no explanation for the transactions which occurred before the alleged loan to Mr Ayaz was paid into the applicant's Halifax account (AB:57-58).

40. Alternatively, if it was the case that the respondent was only seeking further information given what her checks revealed, there is still no impropriety in her decision to proceed to refuse the application forthwith because the policy does not make it mandatory for her to give the applicant an opportunity to respond to any concerns raised by the evidence.
41. It seems to me, however, that the scenario set out at p.23 of the policy is more likely to be the case. The applicant made her application in time, the caseworker was plainly dissatisfied with the information and evidence she had provided and gave her ten working days to rectify the shortcomings. The applicant was put on notice that her application could not succeed on the basis of the information she had provided, and she was given the opportunity not only to provide evidence the respondent specifically considered to be necessary, but also anything else she might want to adduce. This was her opportunity to remedy the deficiencies in her application and she failed to do so. The policy does not require the respondent to give her yet another chance; indeed, she was fortunate to have even been given one opportunity as it is not mandatory for the respondent to seek any further information. That is made abundantly clear many times over in the policy. Nor is there any requirement for the respondent to give reasons for why she chooses to exercise discretion in some cases and not in others. Despite the contention in the renewed grounds that it is not accepted that the policy is in discretionary terms (at 22), Mr Jafferji, in his submissions, accepted that it was and that is clearly the case. I consider that the applicant is being particularly pedantic in her criticism of the working of the 27 November correspondence.
42. Once the first complaint falls away, the second, which is reliant on the first argument, cannot succeed. There was no requirement for the respondent to seek any further evidence or to offer the applicant an opportunity to respond to any concerns or to consider the further information and evidence offered.
43. Whilst Mr Jafferji submitted that the deficiencies of the application were not a matter for this court, it has to be said that the evidence the applicant has provided throughout these proceedings, including that which was not considered by the respondent, in no way shows destitution. The applicant has always had free accommodation, has not been at risk of being homeless, has had sufficient funds to meet her daily needs and those of her children, including being able to afford a mobile phone and has funds left over at the end of the month.
44. The respondent complied with the policy and the decisions disclose no public law errors. There is no requirement for repeated opportunities for explanation and submission of documents. The expectation is that applicants should provide all relevant information at the time the application is made. The offer of a 'second chance' is not mandatory.

45. The respondent considered the best interests of the children in her decision (AB:21).
46. For all these reasons, I therefore conclude that the applicant's challenge cannot succeed.

Costs

47. I have considered paragraph 10(7)(b) of the Upper Tribunal Procedure Rules 2008 and the applicant's submissions on costs. I note her claim of a lack of financial ability to pay the costs, but she has had legal representation and there is no suggestion in the submissions that the services of Counsel were pro bono. Moreover, the applicant would have been aware when pursuing the challenge that she could be liable for costs if she lost. Having considered all the circumstances, and noting that the applicant has been granted fee remissions in these proceedings, I order that the applicant shall pay £2000 towards the respondent's costs of £4689.

Permission to appeal

48. The applicant seeks permission to appeal to the Court of Appeal on the basis that the Upper Tribunal arguably erred in concluding that the respondent had acted in accordance with her policy and finding, therefore, that there was no public law error in her failure to consider the applicant's representations of 27 December 2018 prior to making her decision to invalidate the application.
49. These matters, being the core of the applicant's challenge, have already been considered at length in the Tribunal's judgment. For the reasons given therein, no arguable error has been identified.

Signed:



Dr R Kekić
Upper Tribunal Judge

Date:
2 March 2020