Case No JR-2021-LON-000861

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
FIELD HOUSE

BEFORE: THE HONOURABLE MRS JUSTICE ELLENBOGEN DBE

BETWEEN:

THE KING

on the application of

HASAN HUSEYIN ICLI

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

APPROVED ORDER

UPON the Respondent refusing the Applicant's application for leave to remain in the UK ('LTR') by way of a decision dated 26 February 2021 ('the February Decision'), which was maintained by the Respondent on Administrative Review by way of a decision dated 9 June 2021 ('the June Decision')

AND UPON the Applicant making an application for judicial review to challenge the the February Decision, and, if and in so far as necessary, the June Decision

AND UPON the Court hearing Mr Basharat Ali, Solicitor Advocate (All Proceedings) for the Applicant and Mr Rowan Pennington-Benton, Counsel for the Respondent

IT IS ORDERED THAT:

1. The Applicant's application for judicial review is granted.

2. The February Decision is quashed, such that the June Decision falls away and ceases to have any effect, and the Applicant's application for LTR is remitted to the Respondent for consideration afresh.

3. The Respondent is to determine the Applicant's application for LTR within 12 weeks of the date of this order, absent special circumstances which make it not reasonably practicable to determine it within that timeframe, in which case she shall determine it as soon as reasonably practicable thereafter.

Permission to appeal

4. The decision hearing of today's date is formally adjourned for the purpose of considering any application by the Respondent for permission to appeal, subject to the following directions:

    a. If so advised, the Respondent is to file and serve any application for permission to appeal by 4:00pm on 6 September 2024.

    b. Any submissions in response are to be filed and served by the Applicant within 14 days of service of the Respondent's application for permission to appeal.

    c. Unless it considers a hearing to be required, the tribunal will determine any such application on the papers.

    d. Time for the filing of any appellant's notice is extended until 14 days after the permission decision.

Costs

5. The Respondent is to pay the Applicant's reasonable costs in this claim, to be summarily assessed by the tribunal if not agreed.

6. The Applicant is to file and serve his schedule of costs by 4:00pm on 6 September 2024, alternatively, by the same date, to notify the tribunal that the costs payable by the Respondent have been agreed.

7. The Respondent is to file and serve any submissions in response within 14 days of service of the Applicant's schedule of costs, alternatively, by the same date, to notify the tribunal that, since service of the Applicant's schedule of costs, the costs payable by the Respondent have been agreed.

8. Unless it considers a hearing to be required, the tribunal will summarily assess the costs payable by the Respondent to the Applicant on the papers.

Dated this 23rd day of August 2024

Case No: JR/1352/2021

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

23 August 2024

Before:

THE HONOURABLE MRS JUSTICE ELLENBOGEN DBE

- -

Between:

THE KING

on the application of

HASAN HUSEYIN ICLI

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- -

Mr Basharat Ali, instructed by Aman Solicitor Advocates, for the applicant

Mr Rowan Pennington-Benton, instructed by the Government Legal Department, for the respondent

Hearing date: 17 March 2022

- -

J U D G M E N T

- -

Mrs Justice Ellenbogen:

1. Mr Icli is a Turkish national. With the permission of Upper Tribunal Judge Grubb, he applies for judicial review of two decisions by the Secretary of State for the Home Department ('the SSHD'), dated 26 February 2021 ('the February Decision') and 9 June 2021 ('the June Decision'), respectively refusing his application for leave to remain in the United Kingdom ('LTR') and upholding that refusal, following his application for administrative review ('AR'). Both decisions related to his right to apply for LTR under the 'Agreement establishing an association between the European Economic Community and Turkey', signed at Ankara on 12 September 1963 ('the Ankara Agreement'), and its Additional Protocol, signed in Brussels on 23 November 1970 ('the Additional Protocol') – together, 'the ECAA', to which the United Kingdom became a signatory upon becoming a member of the European Economic Community on 1 January 1973. The provisions of the ECAA ceased to apply at the end of the transitional period following the UK's termination of its membership of the European Union, on 31 December 2020, such that Mr Icli is not in a position to renew his application.

2. Mr Icli sought permission to remain in the UK as a businessperson, proposing to provide residential and commercial cleaning services. His application for LTR was prepared with the assistance of professional legal advisors and supported by a 28-page business plan said to have been prepared on the basis of information which he had provided; recording, in a number of places, that his investment in the business would be £5,000; his dedication to attending many courses and certificate programmes; and illustrating the cleaning tasks or services which he would provide. Mr Icli provided references relating to his work in Azerbaijan; a note of the training courses which he had attended in that country; and his Turkish social security record. The nature of the challenges raised on review makes it necessary to detail key aspects of the plan's content.

3. The plan contained an executive summary stating that it presented a summary of Mr Icli's business intentions in the UK, being to provide residential and commercial cleaning services to a range of customers such as private homes, residences and businesses. It noted that he would make a business investment of £5,000 and would be the sole director of the company, with full profit share. It was stated that the main aim of his proposed business would be to offer and provide cleaning services whereby he would keep his clients' premises clean and well organised. Those services would include cleaning, vacuuming, mopping, dusting, and other general household cleaning tasks. It was said that, in order to develop his business, Mr. Icli would endeavour to establish a wide network of potential clients, so that he would be able quickly to gain an excellent reputation and attract prospective clients 'from all types of people'. The executive summary continued that, in preparation for his proposed new business, Mr Icli had researched the cleaning industry and had seen the latest figures to the effect that that industry contributed over £54.5 billion to the UK economy and that turnover had increased by 28% since 2013, being higher than the turnover for the economy as a whole, which had increased by 14%. It was said that, with his combination of knowledge and research into the market, Mr. Icli was confident that he possessed the correct abilities and knew how to develop a thriving business service and a network of

regular and new clients in his area. Mr. Icli was said to be a highly intelligent and proven professional, with over 12 years' business experience in the food industry in Azerbaijan. He was said to have developed and shown outstanding entrepreneurial abilities in his approach, which had allowed him to develop the knowledge and skills to enable him to operate a business in the UK. That knowledge, and his personal drive, would be vital in growing the business and he was highly confident that it would become a successful enterprise within a short time owing to the high demand for the services on which he would concentrate. He was confident and ready to begin operating that business as soon as he had received his visa.

4. The business plan went on to identify his career background, said to constitute strong experience, of over 12 years, in catering. Mr Icli was said to have *'gained certification which is related with cooking education. He attended hot chef training between 1st of May 2017 and 20th of November 2017. Additionally, he has participated and completed courses at the Baku Kitchen Academy and Cooking Education Program in Azerbaijan.'* Details, it was said, could be found in his certificates, included with his application. Under the heading *'Keys to success'*, Mr Icli identified the following traits and advantages (amongst others): *'an excellent 12 years of business experience in Azerbaijan; a dedication to continually adding to education through attendance of many courses and certificate programs; experience in business which would allow for efficient and quality services; development of deep market knowledge; professionalism in all aspects of business practices and management, based on relevant previous experiences; and his being a proven agile, result-driven team player who could adapt to situations and tasks quickly'*.

5. Within his business summary, it was repeated that Mr Icli would make a business investment of £5,000 and would be the sole director of the company with full share profit. He would work with an accountant who would deal with the financial book-keeping aspects of the business. It was said that, as sole director, he would be responsible for all aspects of the business, including organising, marketing and financial operations. Later in the plan, it was said that Mr Icli would invest £5,000 capital when he established the business in the UK, to cover start-up expenses including the cost of insurance, equipment and advertising, as well as the operation of the business in its first months. The services which he would provide, on a project basis, were identified. As a professional cleaning service, it was said, Mr Icli would work both in residential and commercial settings where his clients would expect him to carry out thorough cleaning. His services would include the following: cleaning rooms, halls, lounges, and corridors in residential and commercial premises; dusting and polishing furniture and equipment; polishing silver accessories and metal work; sanitising and washing kitchen floors and counters; washing and sanitising bathrooms, fixtures and fittings; replenishing bathroom supplies and disinfecting bathroom floors; scrubbing stains and mould from surfaces; polishing wood surfaces, such as bed heads and tables; cleaning upholstered furniture by wiping it down; mopping floors; vacuuming carpets; polishing and waxing floors; replacing lightbulbs; washing and stocking towels; changing bedsheets, using fresh linen; 'putting' and refreshing flower baskets and vases; emptying and washing waste paper baskets and ash trays; arranging dishes

in cupboards; hanging draperies and dusting and washing windows; washing dishes and placing them in the dryer; sorting clothes for washing and placing them in the washing machine; organising washed and ironed clothes in wardrobes; washing and organising linen; and recording expenditures by performing light book-keeping activities.

6. The plan went on to set out the research which Mr Icli had conducted into the UK marketplace, his analysis of the data gathered and his associated pricing strategy. Under the heading 'competition', it was said that there were some competitors operating in the UK market, which could be larger or similar sized businesses. He would take any possible competition seriously, *'but as a seasoned professional with several years of experience, he is assured that he can give his clients a reasonable value for money and superior services. He feels assured that he will rapidly take a strong place in the UK mark[et] due to his unique abilities, expertise, awareness and experience.'* In a section headed 'S.W.O.T. analysis', Mr. Icli identified his strengths as being his *'excellent skills, knowledge and skills in marketing and of the English and Turkish languages'*. It was said that he was an accomplished and confident professional who had achieved excellent success in his career. The cleaning sector was said to be growing, such that a potentially profitable enterprise with a strong customer base was achievable. With the business abilities which he offered, it was said, there was the potential *'to greatly maximise the business'*. He predicted annual sales in the first year of £25,074, with overheads of £23,906, yielding a projected net profit of £946 in that first year, drawing a salary of £18,000. Mr Icli projected his total start-up spend to be £1,234, a breakdown of which was provided. He set out an anticipated fee and sales summary over a four-year period, predicting combined residential and commercial services revenue of £31,206 by year four. He also set out his budgeted operating costs over the same period, rising to £27,865 in that year, leaving him with a net profit of £2,706. Mr Icli set out his personal expenditure, said to indicate that he would have sufficient source of funds to meet the living expenses which he had identified. He also set out a cashflow forecast.

7. The business plan was submitted under cover of a letter dated 22 December 2020, from Paxmen Ltd, a provider of legal services. That letter first noted that Mr Icli would make a business investment of £5,000 and would be the sole director of the company with full share profit. A later paragraph stated, *'Please note that Mr Icli has £14,160 available to him to set up in business and bear his liabilities and expenses in the process of setting up in business. He will invest £12,000 to the business. This money has been gifted to the applicant by his spouse Mrs Ulduz Incli as £8,358 ($11,000) to the sale of her motor vehicle and £6,335 ($8,250) from gold sale. Please see gift letter from the spouse, vehicle sale agreement and all relevant bank account. Our client will be able to pay his share of the liabilities….'* (sic)

8. In the February Decision, the following reasons were given for the refusal of Mr Icli's application:

> 'On 06 July 2020, you applied for leave to remain in order to establish yourself in your business under the Turkey – European community association agreement. This contains a "standstill

> clause" which means that the UK may not impose conditions for business applicants less favourable than were in force when the agreement came into force for the UK in 1973. I have therefore assessed your application in accordance with the after entry business provisions in force in 1973.
>
> Your application is refused under paragraph 21 of HC510 which outlines the business requirements under the immigration rules in force in 1973.
>
> **There is insufficient evidence to demonstrate that your business proposal meets the requirements set out in the relevant guidance.**
>
> You have stated in your application that you propose to engage in business as a residential and commercial cleaning service.
>
> On page 3 of the business plan it states "Mr Icli is a highly intelligent and proven professional with over 12 years business experience in the food industry in Azerbaijan" and "he has a background and strong experience of over 12 years in catering business area". This is not relevant to a residential and commercial cleaning service.
>
> It is stated throughout the business plan that the capital investment will be £5000, but the letter from the representative suggests an investment of £12,000 will be made. A company name or address has not been provided on the application form or within the business plan.
>
> There are no codes on the SGK, therefore we cannot verify any work history. The letter of employment verification from Kael Elektrik confirms you were a catering manager for 2 years.
>
> **The Secretary of State is not satisfied that you can bear your share of any liabilities that the business may incur.**
>
> 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.' (sic)

9. By letter dated 11 March 2021, Paxmen Ltd set out Mr Icli's grounds for AR, submitting that the February Decision had been procedurally unfair and unlawful. It was said that the SSHD had applied the published guidance as to the exercise of her discretion regarding previous experience in too strict a manner and that she had been obliged to have had regard to relevant matters, and to have disregarded irrelevant matters. That guidance, it was said, made clear that experience and qualifications were not requirements of the 1973 business rules, but should be taken into account as part of the overall assessment of evidence provided. It also noted that, in some circumstances, common sense would indicate that it might be

possible for the applicant to establish in business without relevant experience or qualifications. It was said that, in this case, Mr Icli merely wished to establish a commercial and residential cleaning services business, which common sense would indicate was possible without relevant experience or qualifications, and that cleaning businesses did not generally require any qualifications. It was noted that the National Career Services website identified no set entry requirements for such a role and that Mr Icli possessed the skills and knowledge to which that website referred for the relevant job profile. It was noted that, '*The Applicant has a provable funds in question and ready to invest in his projected business once he is permitted to trade in the UK. Therefore, a typo mistake on the representation letter should not lead the Respondent for refusal and it is also cannot be a reason for the refusal.'* (sic) Paxmen Ltd concluded by urging the SSHD to reconsider the February Decision and to grant Mr Icli LTR.

10. The June Decision set out the following reasons for maintaining the February Decision:

> '…
>
> Within your administrative review you claim the decision to refuse your application was unfair and unlawful and that experience and qualifications are not a requirement of the 1973 business rules, but they should be taken into account as part of the overall assessment of the evidence provided. You claim in some circumstances, it maybe be possible for an applicant to establish in business without the relevant experience or qualifications.
>
> You go on to claim that the guidance considers the exercise in discretion regarding a previous experience. You claim have applied to establish a commercial and residential cleaning service and therefore common sense would allow you to establish a business without the relevant experience or qualifications.
>
> You claim that there are no set entry requirements for this job role in accordance to the National Career Services website and therefore the cleaning business does not generally require any qualifications. You go on to provide a list of your skill set and claim that you have the required funds in question to invest in your proposed business. You claim a typographical error on your cover letter should not lead to a refusal and that it also cannot be a reason for a refusal.
>
> Upon a review of your application we note that you have applied to establish in business providing residential and commercial cleaning services and that there are concerns raised within your application as to whether your previous work experience in catering is relevant to your proposed business. In additional, there are concerns to whether you are proposing to invest £5000 into your business or £12,000 as stated by your representative.

> Having reviewed your application, we agree with the concerns raised to whether your previous 12 years work experience in the food industry and the numerous courses and training in cooking is something that is considered to be relevant to your proposed business as a clearer.
>
> Whilst we acknowledge within the 1973 business rules that experience and qualifications are not a requirement and that there are no set entry requirements for this particular role. We have not refused your application on the basis that relevant experience and qualifications are mandatory. We have taken into account your previous work history in relation to your proposed business and have raised concerns that your previous 12 years work experience within the catering industry is not something that we would consider to be relevant to your proposed business as a cleaner.
>
> Furthermore, there are no reasons provided as to why discretion should be been applied to your experience and therefore this was not considered. We do not consider the decision to refuse your application to be unfair or unlawful because the concerns raised are reasonable and within the provision of the ECAA.
>
> We also acknowledge that you have a range of skill sets however, this would not overturn the concerns raised within your decision letter. Furthermore, we acknowledge that you have provided the required funds as noted on your business plan however, it is not considered unreasonable for the original caseworker to point out the discrepancy between the amount stated on business plan and amount stated by your representative. Therefore, the concern raised to whether your business proposal meets the requirements set out in the relevant guidance is considered to be reasonable and therefore we have maintained the original decision.' (sic)

11. Mr Icli's primary contention is that the June Decision ought to inform the correct reading of the February Decision, on the reasons for which it elaborated. Formally, he submits, only the latter decision need be the subject of challenge. Should it be necessary, however, he also challenges the June Decision. He raises the following grounds of review:

Against the February Decision

Ground 1

a. The SSHD's views as to the irrelevance of Mr Icli's experience in the catering industry and based upon her inability to verify his employment history on the SGK system had been unreasonable and irrational because neither the Immigration Rules HC510 ('the Rules') nor the SSHD's published guidance specified the need for prior experience or qualifications, nor any minimum level entry requirements, in order to establish a business. Whilst acknowledging that to have been the case on AR, the SSHD had maintained

her refusal of leave to remain. In any event, the SSHD's conclusion as to the irrelevance of Mr Icli's experience in the catering industry had been wrong; that experience, together with the training which he had undertaken, had been indicative of a determined, dedicated and professional person who had succeeded in that field, and of Mr Icli's acumen and aptitude. Those factors had been amongst the relevant matters which ought to have been taken into account.

Ground 2

b. The SSHD had failed to have regard to her published policy in relation to experience and qualifications, which called for a context-specific, fact-sensitive assessment of all relevant evidence. She had failed to apply the common sense for which the policy guidance had provided, including by reference to the fact that, in circumstances in which mandatory qualifications were required for a proposed business, the guidance envisaged the allowance of time in which to acquire them. At minimum, the SSHD ought to have invited Mr Icli's comment on the experience which she considered that he would be required to gain, by reference to the services which he was proposing to provide.

Ground 3

c. The SSHD had failed to identify the discretion conferred by the Rules and her published policy, whereby she could have accorded Mr Icli the opportunity to address her concerns relating to his lack of business and cleaning experience and/or qualifications. That failure had rendered her decision unlawful in having constituted a failure to have: (i) taken account of a mandatory relevant consideration; (ii) identified and exercised a discretion; and/or (iii) provided any, or adequate, reasons for her failure to have requested further written evidence, in accordance with the guidance, the latter said to encompass the opportunity to address an incorrect premise that such qualifications and experience were required.

Ground 4

d. The SSHD had relied upon a single and erroneous reference to the level of capital investment which Mr Icli would be making, appearing once, in a covering letter, in the context of his multiple and consistent references within the business plan to the correct sum. That had been unlawful in the absence of affording Mr Icli the opportunity to clarify which figure had been correct, contrary to the discretion conferred by the Rules and the SSHD's published policy.

Against the June Decision

e. Without prejudice to his overarching contention that, in order to succeed in his claim, it is unnecessary for him to show that the June Decision is unlawful, Mr Icli contends that it is unlawful on each of the following grounds (which I have numbered, for ease of reference):

Ground 5

i. The February Decision of which it had been an AR had been unlawful (see above).

Ground 6

ii. The typographical error in the covering letter, which had been made by Mr Icli's then representative, had required the SSHD to concede the point, or, at least, to write to that representative seeking clarification. In failing to have exercised her discretion to have taken either course, or to have given adequate reasons for that failure, the SSHD had acted contrary to her published policy and had not taken the Rules into account.

Ground 7

iii. There had been no fact-sensitive, common sense consideration of the particular cleaning services which Mr Icli proposed to provide, as set out in his business plan, which had constituted everyday cleaning activities, and, accordingly, a lack of any, or adequate reasons, for the necessity for experience and qualifications. Furthermore (see above), there had been no discretion exercised to allow the gaining of any required qualifications in the future. A fair, coherent and reasoned exercise of discretion had been called for, but had been absent. Neither the SSHD's published policy nor the business plan had been (adequately) taken into account nor acted upon, for which no (adequate) reasons had been given.

Ground 8

iv. The SSHD's conclusion as to the irrelevance of Mr Icli's experience in the catering industry had been unlawful as having constituted a failure to have had regard to a relevant matter (see ground 1, above).

12. On one or more of the above grounds, Mr Icli seeks orders quashing the February and the June Decisions and requiring that the SSHD remake a decision on his application, in a lawful manner.

The SSHD's defence

13. In broad summary, the SSHD contends that, read as a whole, the February Decision and the June Decision confirm a fact-sensitive, qualitative (and, thus, inevitably, to some extent, subjective) judgement regarding Mr Icli's ability to pursue the proposed business. It is said that the decisions were reasoned and incapable of being described as perverse or irrational. The SSHD acknowledges that: the Rules apply, paragraph 4 of which grants her a broad discretion in determining applications for LTR and paragraph 21 of which contains a list of relevant factors, said to be non-exhaustive; and the Rules are supplemented, or explained, by Home Office guidance (as applicable to Mr Icli's application, dated 30 March 2020). It is said that the business plan provided by Mr Icli had formed the core basis of the SSHD's consideration of his application. In the event that the

challenge against the June Decision only were to succeed, that would simply lead to another administrative review of the February Decision. Against that background, the SSHD's response to the grounds of review is as follows:

Ground 1

14. This ground is said to disclose no public law error because:

    a. paragraph 4 of the Rules grants a broad discretion to the SSHD in her assessment of applications, the essence of the overarching question being whether it is likely that the applicant will set up and maintain a viable business;

    b. the breadth of paragraph 4 of the Rules entitles the SSHD to determine not only the weight to be given to relevant considerations, but those factors which are and are not relevant and the manner and intensity of the enquiry to be made into those factors, subject only to *Wednesbury* review: *R (Khatun) v Newham LBC* [2005] QC 37 [35], per Laws LJ. The court should not intervene merely because it considers that further enquiries would have been sensible or desirable: *R (Bayani) v Royal Borough of Kensington and Chelsea* (1990) 22 HLR 406, at 415, per Neill LJ. Thus, for Mr Icli to point to the absence of a specified requirement for prior experience or qualifications in the Rules or the policy is to miss the point; if the SSHD considered his lack of specific cleaning experience to be a factor worthy of consideration, that was a matter for her, subject to bare rationality. Having so decided, the manner and intensity of her enquiry was also a matter for her, as was the weight to be accorded to the absence of cleaning experience. It was plain that, in her broad discretion, she had considered there to be no substitute for specific cleaning experience;

    c. the SSHD's comment that Mr Icli's catering experience was not relevant fell to be viewed in its true context; that the latter was not relevant to her particular concern over his lack of cleaning experience. Accordingly, Mr Icli's contention that its relevance had been rejected in general terms did not bear scrutiny.

Ground 2

15. Ground 2 is said to be a continuation of Ground 1, albeit focused on the published guidance, itself said to be entirely consistent with the approach adopted by the SSHD in this case. Mr Icli's real complaint is said to be the SSHD's decision that relevant specific cleaning experience was required and that the lack of it, taken with other factors, constituted a barrier to his application. Those had been matters for the SSHD (see above), on which it was not for the court to substitute its judgment, *Wednesbury* irrationality being a very high bar. Whether or not common sense dictated that specific cleaning experience was required in order to create and maintain the proposed business had been a value judgement for the SSHD, as decision-maker, to be respected subject to *Wednesbury* irrationality: *Hopkins Homes Ltd v Secretary of State for Communities and Local Government and Another* [2017] UKSC 37.

Grounds 3 and 4

16. It is said that the SSHD had been under no obligation to write to Mr Icli requesting further information, or enquiring as to the inconsistency between different aspects of the application and that he could point to no mandatory requirement that she do so. In any event, the relevant inconsistency had been only one factor in the SSHD's reasonable conclusion that the application should fail. There had been nothing perverse or irrational in her overarching conclusion that Mr Icli's proposed business plan did not stand a 'realistic chance of success'. Further, when applying for AR, Mr Icli had asserted that there had been a typographical mistake in the covering letter, such that there had been no need for the SSHD to have sought further information, which had been volunteered. On AR, the SSHD had been entitled simply to say, correctly, that, nevertheless, the error had been of relevance, given the overarching question before her.

17. The SSHD's defence to Grounds 5 to 8 is implicit in that to Grounds 1 to 4.

Alleged failure to have given adequate reasons

18. In the course of the hearing, and, pragmatically, without objection from the SSHD, Mr Icli's challenge developed to encompass a contention that insufficient reasons had been given for the February Decision, including when read with the June Decision. That flowed from the SSHD's contention that adequate and clear reasons had been provided for her refusal of his application. The parties are agreed as to the duty to give reasons, but not as to its extent in this case. Acknowledging that the extent of the reasons required in any given case will be fact- and context-dependent, Mr Icli's position is that the reasons given in this case were inadequate and had not admitted of meaningful challenge to the decisions taken. In any event, he submits, this is a case in which reasons for the SSHD's stated reasons were required. The SSHD had been obliged to explain how it was that she had arrived at her decision that his previous experience and success in catering were irrelevant to his pursuit of a business in the cleaning sector. Furthermore, she had not explained why his application had been rejected by reference to the specific services which he had been proposing to provide, for which no mandatory prior qualifications were required, nor had he been provided with sufficient gist to enable him to understand and challenge her negative decisions. To the extent permissible, the June Decision had failed to remedy that failing, and was itself undermined for the same reasons. The absence of an ability to reapply for LTR (following the cessation of the scheme) ought to incline this tribunal to subject both decisions to a greater intensity of review than would be appropriate were the position otherwise.

19. The SSHD contends that the explanation which Mr Icli asserts ought to have been given amounts to a requirement that she give reasons for her reasons and was not incumbent upon her, in particular given the nature of the application to which her decisions had related. The reasons provided had been intelligible and susceptible of challenge. Mr Icli's application had been to start a business in the UK, as an economic migrant; this had not been a decision relating to asylum, or engaging human rights. The SSHD enjoyed a broad discretion to decide a question essentially of predictive fact; whether Mr Icli's business plan had been viable — only limited reasons had been required, and her decision had not been one with

which this tribunal lightly should interfere on judicial review. Mr Icli knew why his application had been rejected; the SSHD's caseworker, exercising broad discretionary judgement, had decided that his experience in the catering sector had not been relevant to the skills and experience needed to operate a successful commercial and residential cleaning business. That is to say that there had not been sufficient correlation between the two to persuade her that Mr Icli had possessed that which was required to make the intended business work. On the facts of this case, there had been no requirement to provide chapter and verse as to the particular features of the cleaning business which the caseworker considered could not be met by the experience and skills developed through Mr Icli's experience in catering. He knew why the application had been rejected and had made a good fist of challenging it, advancing various arguments based upon policy and other matters. The freestanding reasons challenge had been developed only at the hearing. The requirement to give reasons did not extend to a requirement to give reasons which would suffice to enable an applicant *to succeed* in his challenge. He must be told the gist, as Mr Icli had been told.

The legal framework

20. By section 3(2) of the Immigration Act 1971, the SSHD was authorised to lay down Immigration Rules HC 510, for control after entry, paragraphs 4 and 21 of which provided:

> '**General considerations**
>
> 4. The succeeding paragraphs set out the main categories of people who may be given limited leave to enter and who may seek variation of their leave, and the principles to be followed in dealing with their applications, or in initiating any variation of their leave. In deciding these matters account is to be taken of all the relevant facts; the fact that the applicant satisfies the formal requirements of these rules for stay, or further stay, in the proposed capacity is not conclusive in his favour. It will, for example, be relevant whether the person has observed the time limit and conditions subject to which he was admitted; whether in the light of his character, conduct or associations it is undesirable to permit him to remain; whether he represents a danger to national security; or whether, if allowed to remain for the period for which he wishes to stay, he might not be returnable to another country.
>
> …
>
> **Businessmen and self-employed persons**
>
> 21. 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 dependence. 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 work permit is required. Where the applicant intends to join an existing business, audited accounts should be produced to establish its financial position, together with a written statement of the terms on which is to enter into it; evidence should be sought that he will be actively concerned with its running and that there is a genuine need for his services and investment. Where the application is granted the applicants stay may be extended for a period 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.'

21. The SSHD published ECAA business guidance ('the Guidance'), to be followed when deciding applications from self-employed Turkish businesspersons who wished to apply for an extension of stay in the UK in order to self-establish in business or continue operating their business under the ECAA. The ECAA was set up with the general aim of promoting economic relations between Turkey and the Community and the eventual accession of Turkey to the Community. Articles 13 and 14 of that agreement referred to a process for abolishing the restrictions on the freedom of establishment and the freedom to provide services between the contracting parties. Those provisions were developed in Article 41(1) of the Additional Protocol, which stated that, *'The contracting parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services.'* That provision was commonly known as a 'standstill clause', prohibiting the introduction of new national restrictions which were less favourable than those which had applied before the Additional Protocol had come into force. The UK became bound by the ECAA and the Additional Protocol upon joining the European Economic Community in 1973. For Turkish Nationals seeking to enter or reside in the UK to establish themselves in business or provide a service, the UK was obliged to apply the domestic business provisions as they stood in the immigration rules then in force (being HC 509 (on entry rules) and HC 510 (after entry rules)). The latter were engaged in this case.

22. So far as material, the Guidance relating to HC510 provided:

> '**Evidence the applicant can bear their share of debts and liabilities**
>
> This page tells you about what type of documents should be submitted to show that a person applying as a Turkish businessperson under the Turkish EC association agreement is able to bear their share of any liabilities the business may incur.

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

Applicants are responsible for any debts or liabilities that exist when they buy or join an existing business, or debts and liabilities run up by the business in the course of trading, such as overheads and purchasing large quantities of stock.

The following figures shown on the balance sheet (BS) will be relevant in assessing if the applicant can bear their share of the liabilities:

- the value of the businesses fixed assets as shown on the BS (land, buildings, machinery, Goodwill, trademarks, website domain names)
- the current assets of the business (stock, working progress, debtors, cash in hand)
- short-term liabilities falling due within one year (business loans, overdraft, VAT, PAYE, Corporation Tax)
- longer term liabilities falling due after one year
- shareholder's funds
- net profit or loss made by the business in the preceding 12 months

The applicant is not allowed to claim public funds in the UK or add to their business activities through paid employment, to top up the net profits of the business in order to meet any debts or liabilities of the business. However, applicants may have insurance cover to meet the cost of any liabilities that may arise, such as a claim for damages.

Applicants may not need to show they can meet their debts or liabilities straight away. You must consider the size of the debt in relation to the overall value of the business and whether the business is likely to wipe out the debts or liabilities from the profits of the business in following years.

Applications with documents that show the business carries significant debts or liabilities that cannot be met by the applicant must be refused under paragraph 21 of the 1973 rules (HC510).

…

Evidence to assess the applicant has met the requirements of the Turkish ECAA

This page tells you about what documents and applicant should submit with an application to prove they meet the requirements of the Turkish ECAA. 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 applicants business proposal.

The documentary evidence caseworkers may expect to see include:

…

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 why and how any missing documents led to a refusal.

…

Interviewing applicants

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:

- …
- inconsistencies in the evidence provided
- …

…

Evidence of experience and qualifications

This page tells you about how a person's experience and qualifications can be used in part to assess their ability to establish in business or continue operating their business when applying as a businessperson under the Turkish ECAA.

Experience and qualifications are not requirements of the 1973 business rules but should be taken into account as part of the overall assessment of the evidence provided.

You must examine this evidence in the context of the proposed business, taking into account the other supporting evidence provided.…

> In some circumstances, common sense will tell you it may be possible for the applicant to establish in business without relevant experience or qualifications. In other circumstances, a lack of previous experience and/or qualifications may be a barrier to establishing a business. For example, it could extend the time taken to establish the business and slow the rate of growth of the business in subsequent years.
>
> All businesspersons are expected to have at least a basic understanding of business and financial management including cash-flow management.
>
> …
>
> **Mandatory qualifications**
>
> Where an applicant is wishing to start a business it may not be possible for them to have acquired all the qualifications/licenses they require in advance. In such circumstances, they should submit evidence that they have researched what is required and planned to obtain them in due course. Where the applicant is already running a business, you must see any mandatory professional qualifications before you make a decision on a case.
>
> These might include
>
> - …
> - …
>
> **Insufficient evidence**
>
> 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.
>
> If the applicant is currently running a business but does not provide sufficient evidence of relevant experience and/or qualifications that suggest the business is not credible, they should be refused leave under paragraph 21 of the 1973 rules (HC 510).'

Relevant caselaw

23. Where a public authority issues a statement of policy in relation to the exercise of one of its functions, a member of the public to whom it ostensibly applies has a right at common law to require the authority to apply the policy, so long as it is lawful, to himself, unless there are good reasons for the authority not to do so: *Lee-Hirons v Secretary of State for Justice* [2016] UKSC 46 [17], citing *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59, [29] to [31].

24. In *EK (Ankara Agreement - 1972 Rules - construction) Turkey* [2010] UKUT 425 (IAC), this Tribunal observed [23] that, in 1973, the immigration rules *'were a[n] open textured exercise in discretion in the round having regard to the general policy and particular factors identified; so was the practice in applying them: … The Ankara Agreement precludes the introduction of either stricter rules or a stricter practice in the administration of the rules.'*

25. In *Akinci (paragraph 21 HC 510 – correct approach) Turkey* [2012] UKUT 00266 (IAC), this tribunal observed that, in doubtful cases, an applicant's previous experience will help to inform the decision-maker whether a projected turnover is likely to be achieved, but such experience is not a pre-requisite.

26. Following his exegesis of the principles to be drawn from earlier authority, in *R (Karagul & Others) v SSHD* [2019] EWHC 3208 (Admin) Saini J set out his general conclusions as to the requirements of procedural fairness in relation to ECAA applications [106] to [111]:

> '106. My conclusions are as follows:
>
> (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.
>
> (iv) In this regard, one needs to guard against a rationality challenge to an ECCA decision being 'dressed' in the clothes of a procedural fairness challenge. The observations of Singh LJ in Talpada v Secretary of State for the Home Department [2018] EWCA Civ 841 at [58]-[65] are particularly relevant in this context...
>
> (v) The factors which the Secretary of State will take into account in considering an application are fairly and fully set

out in the terms of paragraph 21 of HC510 and the Guidance. No further elaboration is required. The applicant knows of the requirements he or she needs to satisfy in the application.

(vi) …

(vii) ….

(viii) In general, if an applicant is asked questions (or for information) in the processing of an application, that does not imply that the remainder of their application is necessarily in order and is compliant. As recognised by the Guidance, the caseworker might in certain circumstances exercise a discretion to interview or ask for more information but whether that should have been done in any case is fact-specific. If a court can identify a rational reason why a decision not to interview or seek additional material was made, it will not interfere.

(ix) 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 a sensible provision and reflects what fair decision-making at common law would require.

(x) 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 [a] false basis to obtain LTR. Not only is that the general English language meaning in this context of "genuine intention or wish" but it also appears to be the understanding of the draftsman of the Guidance who specifically identified the following indicators of a lack of genuineness (when an interview might be required):

"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 is in doubt."

(xi) 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. That is an application of the general principle I have identified at para. [103] above[1].

(xii) In cases where the application is potentially to be rejected on a lack of genuineness basis, fairness standards may equally be satisfied be a "minded to refuse" process on the terms identified in Balajigari at [55]. That is by (i) indicating a suspicion of bad faith and particulars; (ii) giving an opportunity to respond and (iii) taking that response into account.

107. I would respectfully adopt the observations of Holman J in ***Akturk*** which I have set out in full above at para. [72]. In particular, I agree with him that (save where there is powerful documentary evidence of a lack of genuineness) it is a strong thing, and likely to be unfair for any decision maker to reach adverse conclusions as to integrity, credibility or legitimacy without, at some point in the process, the person concerned having the opportunity to answer questions and explain himself.

108. One can add to Holman J's observations, the summary provided by Singh LJ in Citizens UK at [82] as to why fairness is important. As he observed, procedurally fair decision-making is liable to result in better decisions (ensuring that the decision-maker receives all relevant information and that it is properly tested) as well [as] including the avoidance of the sense of injustice which the person who is the subject of the decision will otherwise feel

[1] I interpose to note that the latter principle was to the effect that, where a public authority exercising an administrative power to grant or refuse an application proposes to make a decision that the applicant may have been dishonest in his application, or otherwise acted in bad faith or disreputably in relation to it, common law fairness would generally require at least the following safeguards to be provided: either the applicant is to be given a chance, in the form of an interview, to address the claimed wrongdoing, or a form of written ‘minded to’ process should be followed, which would allow representations on the specific matter to be made prior to a final decision.

> when they have been accused, at least implicitly, of a lack of integrity in not having their professed intention.
>
> 109. Overall, these principles require that (where a finding that the applicant has not satisfied the Secretary of State as to their genuine intentions is to be made) the caseworker acts fairly before coming to a conclusion, and not just an ability for the applicant to challenge the original decision on AR...
>
> 110. However, in cases where the application is not being rejected on genuineness grounds but on the basis that the business proposal is flawed or otherwise defective (such as for example where the financial projections or business plan suggest the proposed business would not succeed or is wildly optimistic), there is no need for an interview or "minded-to" process. That is because there is no suggestion of bad faith and the applicant is well aware of the factors which the Secretary of State will address in considering the application.
>
> 111. In this regard, I reject the Claimants' submissions that the statutory context and the width of paragraph 21 HC[5]10 discretion demand an interview or "minded-to" process in the run of the mill cases where an application is to be refused on the merits... Such process standards go substantially beyond any principle to be found in the authorities.'

27. The nature of judicial review, and the intensity of the scrutiny required, is dependent upon the context in which the particular challenge arises: *Pham v SSHD* [2015] UKSC 19 [61]. Where a decision is taken by a body or person akin to an expert tribunal, such as a specialist planning inspector, the courts have cautioned against undue intervention in policy judgments within their areas of specialist competence: *SSHD v AH (Sudan)* [2007] UKHL 49, SC [30]. Where a statute conferring discretionary power provides no lexicon of the matters to be treated as relevant by the decision-maker, it is for the decision-maker, and not the court, to decide what is relevant, subject only to *Wednesbury* review. It is for the decision-maker and not the court, subject, again, to *Wednesbury* review, to decide upon the manner and intensity of enquiry to be undertaken into any relevant factor accepted or demonstrated as such: *R (Khatun) v Newham LBC* [2005] QC 37, CA [35].

28. The rule of law requires effective access to justice. Therefore, generally, unless (for example) excluded by Parliament, there must be a proper opportunity to challenge an administrative decision in the court system. As a consequence, unless rendered impractical by operational requirements, sufficient reasons must be given for an administrative decision to allow a realistic prospect of such a challenge. Where the reasons given do not enable such a challenge, they will be legally inadequate: *R (on the application of Help Refugees Ltd) v The Secretary of State for Home Department & Anor* [2018] EWCA Civ 2098 [122(iii)]. It will not suffice to be told that the relevant criteria have not been met, as distinct from why it is that that is the case. Decision letters should set out, with clarity: a) the facts

determinative of the application; b) why the applicant's evidence has been rejected; and c) the reasons for coming to the conclusion reached: *SI (India) v Secretary of State for the Home Department* [2016] EWCA Civ 1255 [18]. *'The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration…Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.'*: *South Buckinghamshire District Council v Porter (No. 2)* [2004] UKHL 33, [36]. In *RG (Ethiopia) v SSHD* [2006] EWCA Civ 339, [37] Keen LJ, citing *Porter*, held:

> '37. It follows from these and other authorities that, while a decision must show to the losing party why he has lost, it most certainly need not deal with all the evidence placed before the decision-maker. That must especially hold good when one is dealing with background material dealing with conditions in the country from which an asylum seeker has come. Such material is often voluminous and it would place an intolerable burden on adjudicators to expect them to refer expressly to all the relevant factual material. It is, of course, a long-established principle of administrative law that it is not to be assumed that a decision-maker has left a piece of evidence out of account merely because he does not refer to it in his decision. …'

Discussion and conclusions

Grounds 1 and 2

29. Grounds 1 and 2 overlap and may be taken together. The SSHD does not dispute that no specific qualifications or experience were required by the Rules or the Guidance in order to establish and run a cleaning services business. Mr. Icli did not, and does not, suggest that his experience in the catering industry was of direct relevance to the running of such a business; rather, he asserts that it was a relevant consideration in its indication of a determined, dedicated and professional individual who had succeeded in that field, and that, in failing to have had regard to it, the SSHD had ignored a relevant consideration and contravened her own Guidance, the latter requiring that experience and qualifications be taken into account as part of the overall assessment of the evidence provided, alternatively that common sense should have told her that it might be possible for him to establish his proposed business without relevant experience or qualifications.

30. The overarching statement made in the February Decision was that there was insufficient evidence to demonstrate that Mr Icli's business proposal met the requirements set out in the Guidance. In context, the paragraphs which followed can only be read as intended to explain that statement. In summary, the SSHD concluded that his business experience in the food industry was not relevant to his proposed business in the UK; there had been a discrepancy in the stated level of capital investment; no company name or address has been provided on the application form, or within the business plan; she had been unable to verify any work history; and the letter of employment verification provided had related to a two-year period only. There was then a freestanding further statement to the effect that the SSHD was not satisfied that Mr Icli could bear his share of any liabilities which the business might incur, followed by her stated conclusion that, having regard to all of the above, she was not satisfied that the documents provided reflected a business proposal which had a realistic chance of success.

31. From that, the following matters are apparent: (1) that Mr Icli's prior experience in the catering industry had not been considered relevant (in any respect) to his proposed business in the UK; (2) that no consideration appears to have been given to whether any prior experience of the latter was required, and, if so, whether it needed to have been acquired in full prior to the establishment of that business; (3) that all of the other reasons given for the SSHD's ultimate conclusion related to asserted inadequacies in the material relating to experience which she had considered to be irrelevant, or to an inconsistency in the application; (4) that the conclusion as to Mr Icli's ability to bear his share of any liabilities which the business might incur did not obviously appear to relate to any of the considerations previously identified and its relationship to them was not explained; (5) that the relevance to that conclusion of any of the matters, other than a lack of relevant experience, to which reference had been made was not self-evident, unless it was to be inferred that a view had been taken that the application was in some way dishonest, or otherwise lacking in integrity; (6) that the conclusion that the documents provided by Mr Icli did not reflect a business proposal with a realistic chance of success derived from the same considerations which had informed the other stated conclusions — certainly none other was identified; and (7) that, there having been no suggestion that key documents had not been provided, so as itself to undermine the credibility of Mr. Icli's business proposal, that cannot have formed a basis for the caseworker's decision.

32. Given the nature of the information provided in the business plan and the SSHD's case before this tribunal, to the effect that the February Decision was not to be read as requiring specific qualifications and prior experience in the cleaning sector; simply as an observation that prior experience in catering would not be directly relevant to the latter, the February Decision is devoid of consideration or explanation of the following matters:

    a. the perceived relevance, or otherwise, of the other material (projected costs, revenue, market analysis, demonstrated personal characteristics and track record etc) which had been included within the business plan, notwithstanding the requirement in the Guidance that the caseworker examine Mr Icli's

experience and qualifications in the context of the proposed business, taking into account the other supporting evidence provided;

b. on the basis that the lack of directly relevant qualifications and experience was not considered a barrier to establishing the proposed business, why it was that qualifications and/or experience in the cleaning industry were required, alternatively why common sense did not dictate that it might be possible for Mr Icli to establish his proposed business in their absence;

c. given the requirement set out in the Guidance that all businesspersons were expected to have at least a basic understanding of business and financial management, including cash-flow management, why it was that Mr Icli's prior experience was not of relevance in that connection; alternatively, if the caseworker considered that Mr Icli had not provided sufficient evidence of his previous experience and/or qualifications of broader relevance to the application, why he had not been asked to provide further written evidence, in accordance with the Guidance.

33. The SSHD accepts (rightly) that she was obliged to decide Mr Icli's application in accordance with the Guidance. Acknowledging, as I do, the wide margin of appreciation to be given to the SSHD as to the merits and feasibility of a proposed business, I am satisfied that, in this case, her assessment was procedurally unfair. In the respects summarised at paragraph 32 above, she failed to follow the Guidance, did not take account of all relevant considerations and took account of considerations which were irrelevant.

34. Once it is acknowledged that industry-specific qualifications and experience were not required, fairness entailed that the SSHD explain why it was that the asserted lack of relevance of Mr Icli's qualifications and experience in a different industry mattered in his case, and how that had led to her overarching conclusions that she was not satisfied that: (1) he could bear his share of any liabilities which the business may incur; and (2) the documents provided reflected a business proposal which had a realistic chance of success. That was not explained, even in gist, in either the February Decision or the June Decision. Contrary to the SSHD's submission, Mr Icli's challenge does not mark simple disagreement with an adequately reasoned and permissible conclusion. I am satisfied that her further objection, that Mr Icli seeks reasons for her reasons and an intensity of review which, as a matter of principle, ought not to be required for an application of the relevant nature, engages a debate which is sterile on the facts of this case — as the above analysis indicates, such reasons as were given in the February Decision (and, later, in the June Decision) did not suffice to explain, even in gist, the basis upon which the application had been refused, in the context of the Guidance and the acknowledged lack of any requirement for directly relevant qualifications and experience. They did not enable Mr Icli (or this tribunal) to understand why the matter had been decided as it had been. Mr Icli has been substantially prejudiced by the failure to provide an adequately reasoned decision. The broad discretion enjoyed by the SSHD in determining applications for LTR does not extend to the making of arbitrary decisions, or those for which inadequate reasons have been provided. Her submissions are misdirected. It is not that she was being asked, as she submits, *'to provide chapter and verse as to what particular features of the*

cleaning business the case worker felt could not be met by the experience and skills developed by the Applicant through his catering experience'; rather, how it was that the absence of prior relevant experience (if that was her conclusion) had led to a refusal of the particular business proposal in all the circumstances and having regard to the Guidance which she had been obliged to follow. That was not to place an intolerable burden upon her, nor one which required reference to voluminous material or the provision of pages of reasons.

35. Moreover, a refusal of LTR taken even on the narrow basis that Mr Icli's prior experience in catering was not directly relevant, was irrational; the question had been whether there was a need for him to demonstrate prior experience and qualifications in the provision of cleaning services, which was not then, and is not now, advanced by the SSHD. In so far as the June Decision addressed that issue it did so in a circular fashion:

> 'Whilst we acknowledge within the 1973 business rules that experience and qualifications are not a requirement and that there are no set entry requirements for this particular role. We have not refused your application on the basis that relevant experience and qualifications are mandatory. We have taken into account your previous work history in relation to your proposed business and have raised concerns that your previous 12 years work experience within the catering industry is not something that we would consider to be relevant to your proposed business as a cleaner.'

That statement was the more inexplicable in light of the further, Delphic statement in the June Decision that, '*We also acknowledge that you have a range of skill sets however, this would not overturn the concerns raised within your decision letter'*, and the acknowledgement that Mr Icli had provided the required funds, as noted in his business plan. If it was intended to suggest that Mr Icli was lacking some relevant qualification or experience which was deemed necessary, on the facts of this case, for his proposed new business to satisfy the Rules and/or the Guidance, those ought to have been, but were not, identified. In any event, a conclusion that prior business experience, albeit in a different field, and the personal skills, traits and expertise which it evidenced, was of no relevance to the viability of the proposed new venture was itself irrational.

36. In the June Decision, the relevance of the typographical error in the covering letter regarding the sum to be invested by Mr Icli was reduced to a statement that, '*it is not considered unreasonable for the original caseworker to point out the discrepancy between the amount stated on business plan and amount stated by your representative'*, though the end to which that discrepancy had been pointed out, and its perceived ongoing relevance, if any, was not identified. Together with each of the remaining points made in the February Decision (none of which was referred to in the June Decision), that went (if to anything) to the integrity of the application and, accordingly, ought, pursuant to the Guidance and the principles adumbrated in *Karagul*, to have led to a consideration of whether Mr Icli ought to be interviewed, or, at the least, to the adoption of a 'minded to refuse' process. If, as is implicit in the June Decision, no such consideration was in fact thought to be of significance, such a process would not have been required, but that would have

meant that the original refusal of LTR had been interpreted to have been based, and later maintained, solely upon the perceived merits of the business plan, consideration of which was defective in the respects previously set out.

37. It follows that Grounds 1 and 2 succeed, as does the reasons-based challenge, to the extent that it is free-standing.

Ground 3

38. In so far as Ground 3 is founded upon a failure to have afforded Mr Icli an opportunity to address concerns related to his integrity, considered above, it, too, succeeds, but I do not uphold the broader challenge to the effect that, in the particular circumstances, the SSHD was obliged to exercise her discretion to afford Mr Icli the opportunity to address any general concern as to the absence of directly relevant qualifications and experience. As was observed in *Karagul*, an applicant knows the requirements which s/he needs to satisfy in the application and, in this case, Mr Icli's application and covering letter had made clear the bases upon which his prior qualifications and experience were said to be relevant. Save in relation to any concern as to integrity, the real mischief in this case is not the SSHD's need and failure to have sought, or permitted the provision of, further representations from Mr Icli (which were, in any event, considered on AR), but her failure to have considered the information which he had provided in an appropriate way.

Ground 4

39. Ground 4 may also be taken briefly, having regard to my conclusions set out above. As I have observed, it would appear from the June Decision that, on AR, no continued reliance was placed upon the subsidiary matters to which the February Decision had made reference. Certainly, no emphasis was placed upon such matters in the course of the hearing before this tribunal. The June Decision took account of, and implicitly accepted, the explanation given for the discrepancy which the SSHD had identified in the February Decision.

40. Nevertheless, to the extent that the February Decision relied upon the relevant discrepancy and the SSHD maintains her reliance upon it as a reason for refusing LTR, Ground 4 succeeds. As explained above, the matter can only have gone to the integrity of Mr Icli's application. It was not suggested, for example, that a capital investment of £5,000 would not suffice; indeed, in the June Decision, it was acknowledged that it would do so. In particular in circumstances in which Mr Icli's business plan had made repeated reference to the lower sum, itself referred to in an earlier paragraph of the covering letter, and the single reference to the higher sum had appeared in the covering letter, but in any event, both the Guidance and the common law required that he be given the opportunity to address any integrity-related concern before a final decision was taken, and a failure to do so was unlawful.

Grounds 5 to 8

41. As the challenge to the February Decision has succeeded, it is unnecessary for Mr Icli to demonstrate that the June Decision was itself unlawful. Suffice it to state

that the respects in which the February Decision had been unlawful were not addressed, or remedied, by the June Decision and the flawed approach to the former decision was compounded. If and in so far as continued reliance was placed upon the inconsistent statements of the sum proposed by way of capital investment, that ought to have been stated and an explanation given for the SSHD's decision not to accept the explanation for the inconsistency advanced by Mr Icli's then legal representatives, or view that the inconsistency remained relevant notwithstanding their explanation. The conclusions drawn from Mr Icli's lack of directly relevant qualifications and/or experience were irrational, for the reasons which applied to the February Decision, and did not have proper regard to the Guidance by reference to which relevant and irrelevant factors ought to have been identified. (See the analysis above, relating to Grounds 1 to 3.) In those circumstances, inadequate reasons were provided for maintaining the February Decision.

Relief

42. Mr Icli submits that the appropriate relief is that the February Decision (and, if necessary, the June Decision) be quashed and the matter remitted for consideration afresh. On the hypothesis that Mr Icli succeeds in his challenge, the SSHD does not demur.

43. I quash the February Decision, from which it follows that the June Decision falls away and need not itself be quashed. I remit the matter to the SSHD, in order that she can reconsider her decision in accordance with law and having complied with all relevant procedural requirements.

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