


“I can’t afford immigration fees”: how to prepare successful fee waiver applications

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Structure of the course

- Who is eligible for a fee waiver?
- How to prepare a fee waiver application?
- What is the application's process?
- What happens after a decision is made
- Entry clearance fee waivers
- Case studies in-between sections

Eligibility – which applications?

- Human rights applications (e.g. spouse; parent; long residence; insurmountable obstacles; discretionary leave; trafficking etc) *but*
 - Only when “minimum income requirement” is not a requirement
 - Only where human rights are the “main reason for the application”
 - Only *limited* leave applications – not ILR (except DV ILR)
- British citizenship registration applications for under 18 (not covered in this course)
- NB: Not all Human Rights applications need a fee waiver
 - Article 3 applications are exempt
 - Applications while in detention/subject to “active enforcement”
 - Children in care

Eligibility – which applicants?

- A fee waiver is *not* a recourse to public fund – those with an NRPF condition can still apply for a fee waiver.

Eligibility – the test

- The test is **affordability** – case of Dzineku-Liggison
- There are 3 more ways the Home Office states one can demonstrate (non)-affordability:
 - Destitution (inability to meet essential needs and/or accommodation)
 - Risk of destitution
 - Inability to meet children’s particular and essential additional needs
- Ultimately, however, the point is showing whether you can or cannot afford the fee – this can be the full fee or part of the fee (e.g. Immigration Health Surcharge versus application fee and/or fee of some but not all members of the household)

Eligibility – what is affordability?

- The Home Office takes into account:
 - Income versus expenditure
 - “non-essential or excessive purchases”
 - Intentional disposal of funds
 - Savings
 - Best interests of children
- The Home Office cannot take into account
 - Ability to borrow → see paragraphs 95 and 96 of Dzineku-Liggison

Eligibility – section 55

- Obligation to safeguard and promote the welfare of children in the UK
- Children's best interests must be a primary consideration
- The Home Office asks what is the impact of paying fees on children (e.g. school activities and further needs based on protected characteristics)

“The question is not whether a fee waiver would make more money available to a parent that may then be spent on a child. It is whether paying the fee would lead to the child experiencing a lower level of well-being than they currently enjoy, being deprived of something they currently enjoy, or not having access to a specific item or items of recognised benefit”.

→ Still about affordability!

Examples

Alberto is a Colombian national, with leave to remain as a spouse on the 5-year route to indefinite leave. He is on that route because, at the time of his previous application, his spouse was earning an annual salary of £20,000. He is in the first tranche of leave, and needs to submit his first extension application.

Can Alberto apply for a fee waiver?

Audrey is a South African national, with leave to remain on the ancestry route. She has been in the UK for 4.5 years and will soon be eligible for indefinite leave to remain. She is the primary carer of a British citizen child.

Can Audrey apply for a fee waiver?

Preparation – evidence?

- Evidence of household's income and expenditure (including non-applicants)
- Copy of passport and BRP for all applicants
- Labelled 6-month bank statements for all account of all applicants and other members of household
- Evidence of income for 6 months
- Evidence of regular expenditures
- Evidence of support received
- Evidence of accommodation
- Evidence of other “unusual” circumstances
- Evidence of debts

Preparation - tips

- Use a table setting out regular income and regular expenditures → what is the “disposable income”? Is it sufficient to pay a fee?
- If there is no evidence of income/expenditure (e.g. homeless applicant), prepare a statement
- Covering letter setting out background; unusual expenses; and why applicant needs a fee waiver
- Focus on affordability and, if needed, review the caselaw

Examples

Aroon is a Thai national. He arrived in the UK on a student visa 6 years ago. After his first year of university, he suffered a serious accident which meant he lost the use of his right arm and right leg. Aroon fell into serious depression and started self-medicating by drinking. Aroon has since lost his place at university; his parents no longer speak with him; and he ended up sleeping in the streets. He has recently started getting support by a homeless charity, who wants to help him regularise his status in the UK.

Assuming Aroon can make a human rights application on the basis of his article 8 rights, what documentation would you submit in support of his fee waiver application?

Ayesha is a Bangladeshi national. Her leave expires on 19 May 2023. She comes to see you on 12 May 2023, with her bank statement (attached)

What more evidence/information do you ask Ayesha, having reviewed the statement?

After the appointment, Ayesha sends you her saving bank statements by email. What questions do you now have and how do you advise Ayesha?

Ayesha tells you that she had to fly to Bangladesh because her mother fell gravely ill, and was told she might pass away soon.

Ayesha gave £1,500 to her family to help with her mother's healthcare costs.

Ayesha also tells you that she is expecting, and is due on 30 June 2023. The father did not want to have a child and they are no longer in touch.

Does your advice change?

Process – WHEN to make application ?

- If a person does not have leave to remain
 - Make fee waiver application before the substantive application
- If a person does have leave to remain
 - Before leave to remain expires
 - BUT not more than 28 days before leave expires
- The date of the fee waiver application is the date at which the substantive application is deemed to have been made when applicant already has leave to remain
 - Dates are important where Section 3(c) protection is relied on...

Section 3(c) of the Immigration Act 1971

If a person has leave to remain and fee waiver application made in time:

- All existing rights and entitlements will continue as if the applicant had made a leave to remain application, under Section 3C of the Immigration Act 1971
- Includes right to work, public funds if currently entitled to them, access to NHS etc
- Rights will continue until a decision is made on the leave to remain application
- See Immigration Rules 34G(4)

Process – how to make application?

- Application for a fee waiver is made online
- It is free to apply
- Dependents should be added to the main applicant's fee waiver application
- Online form - does the person qualify?
 - Online form provides a list of four reasons why an applicant may qualify – these are narrower than the affordability test
 - Even if applicant does not meet any of these, you can tick one, then explain in covering letter applicant cannot afford the fees

Process – providing documents

- Once online fee waiver application submitted, supporting documents must be submitted
 - A “documents checklist” will be generated once online form submitted
 - You must provide these documents, and any other documents you consider helpful, within 10 working days
 - Any Section 3(c) leave will continue during this time
 - You will receive an email instructing you to either upload the documents online, or to post them
- If you cannot provide the evidence, explain why and ask the Home Office to exercise flexibility

Example

Ajoke is a Nigerian national. She has leave to remain until 1 June 2023. She wants to apply for a fee waiver.

When can she submit her fee waiver application?

Example

Ajoke submits her application on 15 May 2023. On 3 June 2023, she receives a request for further evidence, giving her 10 working days to submit that evidence.

What should Ajoke do? Will her existing leave be affected?

Decision – fee waiver allowed

- If the fee waiver application is allowed, you will receive an email to notify you
- The email will contain a fee waiver code
- You will have 10 working days to submit the application for leave to remain
- You will need to submit the code when prompted
- When you complete the application for leave to remain, details of applicant need to correspondent **exactly** with the details in the fee waiver application

Decision – further info requested

- If the Home Office cannot make an informed decision based on information provided, it must request further evidence
- If an applicant requires further time to provide evidence for exceptional reasons, they can request further time
- Crucial to submit further evidence in time to ensure validity of application

Decision – further info examples

- *“We note in your application you have stated that you are getting help from family/friends. If you are currently receiving support from a friend or family member, please provide a letter from this person to explain that they are currently supporting you, what the support includes and whether or not the support can continue. Please also provide any information as to whether this friend or family member is able to assist you in paying the fees.”*
- *“As part of the evidence submitted, we note that your client(s) have a monthly combined family income of £XXX. Evidence provided for XXX, bank statements *XXX, show a balance of £XXX which is sufficient to part-pay the immigration application fee(s). Please provide an explanation, along with supporting evidence, of why your client(s) would be unable to use these funds to pay/part-pay the fee(s).”*
- *“We acknowledge your supporting letter, but we note that on your application from the total of your outgoings covered by the Fee Waiver Policy as essential living needs is £441.00 [...] However, between the XXX and XXX a total of £2,700.00 has been withdrawn from the account. You have explained this as being spent on your daily needs. Please explain the discrepancies between these amounts, considering an additional £2,259.00 has been spent above your stated outgoings. It is noted that your client stated they furnished their flat. If these funds were used to furnish the flat, please provide evidence of this, such as receipts or alternative evidence.”*

Decision – fee waiver refused

- If the fee waiver application is refused:
 - There is no right of appeal
 - There is no reconsideration process
- EITHER a new application must be made, OR the refusal challenged by way of judicial review if the decision is unlawful
- The steps to be taken following a refusal depend upon the applicant's circumstances

Refusal – where existing leave

- Failure to make an application within 10 days of refusal will mean the applicant becomes an overstayer
- Judicial review
 - No Section 3(c) protection **unless interim relief granted** – without this protection
 - Will lose leave to remain and all existing rights
 - Time will stop running for ILR
 - Potentially long time frames
- Pay the fee and make the further leave to remain application within 10 working days of the refusal

Refusal – where no existing leave

- Judicial Review
 - Section 3(c) not relevant
 - Potentially long time frames, although often resolved at pre-action letter stage
- Make a new application addressing the reasons for refusal
 - Pragmatic option as decisions often made within 4 weeks
- Pay the fee and make leave to remain application; no time frame for this as no existing leave

Example

Ajoke has received a request to submit further evidence. Ajoke submits the new evidence on 7 June 2023. On 15 June 2023, she receives a letter granting her the fee waiver.

What does Ajoke need to do now?

Example

Ajoke has received a request to submit further evidence. Ajoke submits the new evidence on 7 June 2023, however on 15 June 2023 she receives a letter rejecting her fee waiver.

What do you advise Ajoke?

Entry clearance fee waivers

- Available for applications which engage Article 8
- The ‘strength and force’ of the underlying human rights claim is relevant
- Same affordability test but considers “urgency” of travel, and whether it would be possible to save for fees
- Takes into account financial circumstances of applicant, sponsor, and anyone the applicant is reliant on for financial support
- Need to address how applicant will be able to afford cost of travel
- Evidence in foreign language must be accompanied by full translation that can be independently verified
- Have 28 calendar days to submit application after fee waiver granted

Useful resources

- Home Office fee waiver in-country guidance - <https://www.gov.uk/government/publications/applications-for-a-fee-waiver-and-refunds>
- Home Office fee waiver out of country guidance - <https://www.gov.uk/government/publications/affordability-fee-waiver-overseas-human-rights-based-applications-article-8>
- Caselaw:
 - Omar, R v Secretary of State for the Home Department [2012] EWHC 3448
 - Carter, R v Secretary of State for the Home Department [2014] EWHC 2603
 - Dzineku-Liggison & Ors, R [2020] UKUT 222 (IAC)
- JCWI info sheet - <https://www.jcwi.org.uk/home-office-application-fees-a-guide-to-fee-waivers>
- Freemovement article - <https://www.freemovement.org.uk/fee-waiver-policy-who-qualifies-and-what-does-the-home-office-policy-say/>