

Fee waiver for human rights applications

The charges

The cost of an application to assert your human rights is currently £1033 plus an Immigration health charge of £400 a year (£1000 in total for those applying for 2 ½ years status).

The Immigration health charge is going to increase to £624 a year (£470 a year for children) from October 2020.

The fees are set out [here](#).

The legal position

The courts have said, in 2 high court judgements called **Omar, R (on the application of) v Secretary of State for the Home Department [2012] EWHC 3448 (Admin)** and **Carter, R (on the application of) v Secretary of State for the Home Department [2014] EWHC 2603 (Admin)**, that *'a person who can show that they cannot afford to pay this fee'* is entitled to a fee waiver and so does not have to pay to assert their human rights.

The Home Office policy

This is [here](#).

It sets out the categories for which a fee waiver can be applied for. These are

- applications for status under the 10-year partner, parent or private life route,
- applications for status on the basis of other Human rights
- applications for status on Human rights grounds from someone granted discretionary leave (DL) following refusal of asylum or humanitarian protection.
- applications from victims of trafficking or slavery who have already had 30 months' status under this category and are applying for a further extension.
- applications for leave to remain under the 5-year partner route where the sponsor is getting a disability benefit and can show that the family will be adequately maintained without access to further public funds.
- Applications under the 5-year parent route

You cannot apply for a fee waiver if you are applying for permanent stay. The Home Office logic is that if you cannot afford the permanent stay fee, you need to apply for temporary status until you can afford the £2389 permanent stay application fee.

The policy also says that a person will only get a fee waiver if they can show that they will be destitute if they pay the fee. This is not the legal test, which is that the applicant has to show that *'they cannot afford to pay the fee'*. The court in the case of **R (on the application of Dzineku-Liggison and Others) v Secretary of State for the Home Department JR/2249/2019** found that this part of the policy is unlawful. The Home Office have appealed against this decision but, as set out above, the Judges in the cases of **Omar** and **Carter** made it clear that a person who cannot afford the fee is entitled to a fee waiver.

The policy confirms that, in a family application, if you only have enough money to pay for some members of the family, you can apply for a fee waiver for those you cannot pay for.

You cannot apply for part of the application fee to be waived. You cannot, for example, say that you can only pay ½ the application fee for a person but cannot pay the rest of the fee. In such a situation you have to either apply for a full fee waiver or pay the full fee.

You can apply for the Health Charge to be waived if you can afford to pay the application fee. You have to make the fee waiver application and wait for a decision in such a case.

The process

It is an online application, [here](#).

If you currently have status, you have to make this application in the month before your visa runs out. Your status will automatically be extended until a decision is made on the fee waiver.

If a fee waiver is granted, you are then given 10 working days in which to make the full Human Rights application. This is also an online application, and the grant of fee waiver will have a unique code that you can use to make sure that you do not have to pay to submit that full application.

If the fee waiver is refused, you are given 10 working days to make a full paid application.

There is no right of appeal against the refusal of a fee waiver, with the only challenge being by a legal process called a Judicial Review. You will need to seek expert legal advice on the possibilities of such a challenge.

The application form

It initially asks for the basis on which you are making the application. It sets out 3 categories, none of which include an inability to pay. You need to tick one of the categories to proceed with the application. If you are not destitute you should tick the category that says *'I am not destitute but I would become destitute if I paid for my own application and/or for the application of any of my dependants'*

It then asks for, in addition to your personal details, all the addresses you have lived at in the last 5 years and the dates, details of your current accommodation, details of your current (or expired) passport and your Biometric card number (if you have one) and your national insurance number (if you have one).

It also asks for details of all the bank accounts you and your children hold, details of your income, and details of your outgoings.

You can go back and amend the application as many times as you want until the application is submitted. It is submitted by pressing the **'save and continue'** button on the final page which is headed **'No payment required'**.

Once you press this button your application is submitted and you are then given instructions on the steps to follow; specifically you are given a list of documents to send, and where to send them. You can either post them to the address given or send them by email to DestitutionDocs@homeoffice.gov.uk. You can send a cover letter to explain why you believe that you are entitled to a fee waiver.

The Home Office assessment

The Home Office policy says that:

- The fee waiver request must be assessed on the basis of the information provided by the applicant in the relevant form and by the accompanying documentary evidence.
- If the applicant does not complete every section of the relevant application form, their application for a fee waiver should not be rejected on that basis alone.
- It is the responsibility of the applicant to fully evidence their claimed financial circumstances, or to provide a credible explanation of why such evidence is not available.
- Caseworkers should not normally need to make additional enquiries to try to 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. If insufficient information is provided the request may be refused at that point.

The Home Office will, in most cases, make a decision on the basis of the information/documents sent in and will not ask for more documents. Our experience is that they will only ask for clarification/more documents when the applicant is applying for an extension of their existing status.

Bank statements

The crucial documents they ask for are '6 months bank statements for all accounts with all large, and regular incoming and outgoing payments explained.'

They will check with credit agencies to see if the applicant has any other accounts not listed on the form. If there are other accounts they will either refuse the fee waiver immediately or, if it is an extension application, will ask for 6 months accounts for that statement.

So it is important to make sure that bank statements for **all** accounts are sent in, even for accounts which have not been used for a long time. It is also important to let them know of any accounts you have held which have been closed. This is because those accounts might still be registered as open.

They check to make sure that they have 6 months bank statements, etc. They can refuse if, for example, only 4 months bank statements are sent in unless a reasonable explanation for this is provided when the application is made.

They check to see if the income coming in matches the money going into the bank account. In particular they identify money coming in from other sources, including friends, and can refuse a fee waiver on the basis that that person can lend you the money to pay. It is important to provide an explanation for any such money coming in. Such a refusal could be challenged depending on the fact of the case.

They then check the money going out and initially look for money transferred into another account to see if that matches the money going into that account. They do this to identify whether all the accounts have been named.

They then look for large outgoings to identify whether money has been taken out to reduce the balance of the account.

It is therefore very important to provide an explanation of large transfers in and out.

More Information

This information sheet is not a substitute for legal advice which addresses your particular circumstances. If, after reading this sheet, you still have questions, then please contact our office and we will see if we are able to offer you further advice and assistance.