

Fee waivers for immigration applications

This fact sheet provides an overview of the fees charged for immigration applications and when an individual might be eligible for their fee to be waived. If making an application, it is important to seek specialist legal advice, wherever possible. Failure to pay a fee could render an immigration application invalid and an applicant's leave could lapse as a consequence.

Do all immigration applications have a fee?

Many immigration applications require the payment of a fee. However, no fee is payable for an asylum claim under the Refugee Convention, nor is a fee payable to make an application based on Article 3 of the ECHR (protection from torture or inhuman or degrading treatment or punishment) or for a stateless application. Failed asylum seekers may make a fresh claim by means of further submissions – this also does not require payment of a fee.

There are a number of other circumstances in which no fee is payable. The list below is not exhaustive. A full list of exceptions is listed in Table 9 of the Immigration and Nationality (Fees) Regulations 2018. [1]

- Applications under the 'Destitution Domestic Violence Concession' or under paragraph 289(A) or Appendix FM/Appendix Armed Forces – 'as a victim of Domestic Violence'
- Applications by children who are being looked after after the local authority are not required to pay a fee
- Applications for discretionary leave by someone with a positive conclusive grounds decision.

What are the current fees for leave to remain applications?

The fee for leave to remain applications for the year beginning April 2018 is £1,033 per person. For

indefinite leave to remain (ILR) applications, the fee is £2,389 per person. [3]

Please note that fees normally increase every year so always check the gov.uk website for the most up to date fees.

What type of application is eligible for a fee waiver?

Most applications made on the basis of Article 8 ECHR are eligible for a fee waiver. This includes applications as a parent under the '10 year route to settlement', applications as a partner under the '10 year route to settlement' and applications on the basis of private life under the '10 year route to settlement'.

It is important to note that those applying as a partner or a parent under the '5 year route to settlement' are not entitled to apply for a fee waiver. The Home Office policy explains that this is because these applications require the applicant to meet financial requirements which would mean they would not meet the fee waiver criteria.

It is not possible to get a fee waiver for applications for indefinite leave to remain or citizenship, even where the applicant has previously been on the '10 year route to settlement' due to their Article 8 rights.

In what circumstances will a fee be waived?

The Home Office will waive the fee in respect of certain types of immigration application (set out above) where failure to do so would render the applicant incapable of exercising their rights under the European Convention on Human Rights. Applicants will qualify for a fee waiver only where they can demonstrate that:

- They are destitute; or

- They would be rendered destitute by payment of the fee; or
- There are exceptional circumstances relating to their financial circumstances and ability to pay the fees such that the fee should be waived in their case.

If the applicant is a child and his or her parent(s) has/have or are seeking leave to remain, the whole family unit must qualify for a fee waiver for any member of it to qualify.

When considering an application for a fee waiver the Home Office must have regard to their duty to safeguard and promote the welfare of children in the UK under section 55 of the Borders, Citizenship and Immigration Act 2009.

Destitution

According to the Home Office, a person is considered destitute if:

- They do not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met), or
- They have adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs. [4]

Assessing whether an applicant would be rendered destitute by payment of the fee

According to the Home Office policy, in order to qualify for a fee waiver on the basis of being rendered destitute by payment of the fee, the applicant must have:

- No or very limited disposable income so that they could neither pay the fee now nor realistically afford to save to apply within 12 months (if it were even reasonable to delay their application for this length of time); and
- No ability to borrow the money from family or friends; and
- No prospect of their financial circumstances changing within 12 months (if it were even

reasonable to delay their application for this length of time). [5]

It is up to the applicant to fully evidence their financial circumstances – the Home Office will not normally make additional enquiries itself.

Exceptional circumstances

'Exceptional circumstances' in this context relate only to the applicant's financial circumstances and not to their human rights claim. An example of 'exceptional circumstances' may be where the applicant is not destitute but cannot pay the fee because they must spend the money on child welfare needs, such as buying items required owing to their child's illness or disability.

How can the application for a fee waiver be made?

Applications for fee waivers must be made on form 'Appendix 1 FLR(FP) / FLR(O)', which can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420911/Appendix_1_fee_waiver.pdf

What documentary evidence should be provided to support an application for a fee waiver?

The applicant must provide relevant supporting documentation to evidence their claims including detailed evidence as to their financial circumstances. This should include, where possible:

- Information and evidence relating to their accommodation, the type and adequacy of this, the amount of their contribution to rent or mortgage, their income and expenditure on food and other costs (this can be demonstrated through evidence such as tenancy agreements, pay slips, utility bills, bank statements etc.);
- If supported by family, friends, a local authority or a charity: evidence should be supplied detailing the nature and amount of

support provided. If support is of a limited duration or about to cease, the applicant must provide a full explanation as to why this is, along with any relevant documentary evidence;

- If the applicant is street homeless: past bank statements or an eviction notice, or written testimonies from persons previously or currently providing them with support should be provided;
- Evidence showing how the individual has supported themselves to date and why their previous means of support is insufficient or no longer available to them.

Caseworkers will look at all income (from employment, family, friends, benefits etc.) and assets (including cash, money in a bank account, investments, property, cars and other personal possessions).

Any statements or letters from the applicant themselves or from friends, family or other supporters should be as detailed as possible and signed and dated. All evidence should be as up to date as possible.

It is important to note that if an individual is in receipt of asylum support from the Home Office or from a local authority, they will need to show that they would be rendered destitute by the payment of the fee, or that there are exceptional circumstances. This is because, according to the Home Office policy, the asylum support or local authority support they are receiving means they are not currently destitute (because their accommodation and essential living needs are being met).

For those supported by the local authority, the application should include (where possible) a detailed letter from the applicant's social worker addressing the criteria set out above (i.e. that the applicant is not able to pay the fee now and they cannot realistically save up within the next 12 months, that they cannot borrow the money from family or friends and there is no prospect of their financial situation changing within the next 12 months).

When assessing whether there are 'exceptional circumstances', the evidence that should be submitted will depend on the circumstances. If the applicant (or a dependent family member) has a physical or mental disability, this is not determinative but is relevant – the applicant will need to establish any disability by means of independent documentary evidence, such as a letter from a hospital consultant.

Home Office policy states that financial and residential enquiries, such as credit checks, interviews and home visits, may be conducted where appropriate in assessing the application for a fee waiver.

Possible outcomes

There is no fixed time frame for assessing whether an applicant qualifies for a fee waiver but caseworkers 'must make reasonable efforts to decide such applications promptly'. [6] Applicants who qualify for a fee waiver will have their application considered without paying a fee further.

Applicants who do not qualify for a fee waiver will not have their whole leave to remain application rejected immediately. Instead, Home Office guidance states that the individual will be notified in writing of the rejection of the fee waiver and be given 10 days to pay the application fee. [7]

How does a fee waiver affect the requirement to pay the Immigration Health Surcharge?

The Immigration Health Surcharge was introduced for all new applications made on or after 6 April 2015. The charge is currently £200 per year for most types of application. If the applicant has any dependants, they will also need to pay their surcharge (for example a mother and a child applying for a 30 month visa - £200 x 2.5 years x 2 = £1,000).

If an individual is destitute and exempt from paying a fee for their application on that basis, then they are also exempt from paying the Immigration Health Surcharge.

Applications for further leave to remain

When an applicant who qualified for a fee waiver at the initial or last grant of leave applies for further leave to remain and requests a fee waiver, providing supporting evidence for this, their eligibility for a fee-waiver will be re-assessed. They will need to demonstrate that they still meet one of the requirements outlined above.

Applications for indefinite leave to remain and citizenship

It is not possible to get a fee waiver for applications for indefinite leave to remain or citizenship.

NOTES

[1] Table 9, Immigration and Nationality (Fees) Regulations 2018, at

<http://www.legislation.gov.uk/uksi/2018/330/schedule/2/made>

[2] Schedule 2, Paragraph 1(c), The Immigration and Nationality (Fees) Regulations 2015 at

http://www.legislation.gov.uk/uksi/2015/768/pdfs/uksi_20150768_en.pdf

[3] Home Office Immigration & Nationality Charges 2018/19, at

<https://www.gov.uk/government/publications/visa-regulations-revised-table>

[4] Definition outlined in section 95 of the Immigration and Asylum Act 1999

[5] Para 4.9, Immigration Directorate Instructions, Fee waiver for FLR(FP) and FLR(O) Forms at

<https://www.gov.uk/government/publications/applications-for-a-fee-waiver-and-refunds>

[6] Home Office Immigration Directorate Instruction, Family Migration: Appendix FM Section 1.0b - Family Life (as a Partner or Parent) and Private Life: 10-Year Routes, August 2015, at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370607/Appendix_FM_Section_1_0b_10-year_Routes.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370607/Appendix_FM_Section_1_0b_10-year_Routes.pdf

[7] Home Office guidance, Applications for leave to remain; validation, variation and withdrawal, 2017, at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606967/Applications-for-leave-to-remain-v1.0.pdf

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Email mcpadvice@coramclc.org.uk or call 0207 636 8505.