Upper Tribunal
Immigration and Asylum Chamber

JR/5863/2019 ('V')

Field House,
Breams Buildings
London
EC4A 1WR

Heard on: 27th October 2020

BEFORE

UPPER TRIBUNAL JUDGE KEITH

Between

The Queen (on the application of Ms Syeda Ahmedi)

(No anonymity directions are made)

Applicant

v

Secretary of State for the Home Department

Respondent

Having considered all documents lodged and having heard *Mr J Gajjar*, instructed by Edward Marshall Solicitors on behalf of the applicant and *Mr J Holborn*, instructed by the Government Legal Department on behalf of the respondent, at a hearing which I attended at Field House, London, and which the representatives attended via Skype for Business on 27th October 2020 and upon judgment being handed down on the same date.

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APPLICATION FOR JUDICIAL REVIEW
JUDGMENT

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The remote hearing

(1) Both representatives attended the hearing via Skype and I attended the hearing

in-person at Field House. The parties did not object to the hearing being via Skype and I was satisfied that the representatives were able to participate in the hearing.

(2) These are a written record of the oral reasons given for the judgment at the hearing.

The application

(3) The applicant, an Indian citizen, applied on 22nd November 2019 for judicial review of the respondent's decision dated 22nd May 2019, (the 'Decision') which was maintained in a decision on administrative review dated 29th August 2019, to refuse the applicant entry to the UK as a Tier 1 (Entrepreneur) Migrant. The applicant applied for entry clearance under the Points Based System on 7th February 2019, on the basis of a stated intention to invest £200,000 in a healthcare business at a location in the area of W1, London. She provided a business plan with her application, which had been prepared with the assistance of an accountant, and which provided turnover and profit forecasts.

(4) The respondent interviewed the applicant on 19th March 2019 and following that interview, refused her application in the Decision. The respondent accepted that the applicant had access to not less than £200,000, and these funds were disposable by the applicant in the UK; that she had the requisite English language proficiency; and she had previous relevant experience in the healthcare sector. However, the respondent did not accept that the applicant genuinely intended to make an investment in the UK business; or had a business plan which was viable and credible and so her application was rejected under paragraphs 245DB(f) and (h) of the Immigration Rules. The respondent regarded the applicant's answers to the question of why she planned on setting up a business in the W1 area of London, which had included her reference to half of her family living in the UK, as not one which a genuine entrepreneur would have given, and that instead, a genuine entrepreneur would have focused solely on specific business-related reasons for choosing their business location.

(5) The respondent also regarded the applicant's answers about how she would spend her investment funds as vague, with a lack of detail about how she would spend working capital; and how much by way of salaries would be incurred from the initial investment. When asked about turnover in the first year of business, the applicant began to talk about gross profit and net profit, and was, in the respondent's view, clearly unable to distinguish profit from turnover, which again undermined the genuineness and viability of the proposed investment.

(6) The applicant requested administrative review of the Decision and the request was received on 20th June 2019. The applicant asserted that the requirement that the choice of business location should be dictated solely by the business reasons was irrational and had ignored her answers about why she had

identified London W1 as appropriate. The respondent's conclusion that her business plan was not viable because of her inability to explain how working capital would be used was indicative of a potential lack of experience at best, and not an absence of genuine intentions. The questions around turnover should have been followed up with additional questions in the interview and was therefore procedurally unfair, as per the authority of R (Anjum) v Entry Clearance Officer, Islamabad (entrepreneur – business expansion – fairness generally) [2017] UKUT 00406 (IAC). The applicant's answers in fact demonstrated an understanding of the difference between gross and net profit and the respondent had failed to place any weight on the difficulties which the applicant had raised in hearing the interviewing officer, given background noise and the interviewing officer speaking too fast; or that the quality of any answers might have been affected by nerves.

(7) In the administrative review decision, the respondent accepted that some technical difficulties may have arisen at the beginning of hearing, but these did not seem to prevail during the whole of the interview. The applicant had clearly indicated which parts she did not hear by asking them to be repeated and the quality of answers was not explained by any delay in the communications. At the end of the interview, the applicant confirmed that she was happy with its conduct.

(8) The respondent did not believe that the applicant had carried out a sufficient analysis of the business environment within the UK, in locations other than London W1. The applicant's assertion that W1 was a 'medical hub' was a mere assertion and there was no comparison with other potential locations. The applicant had to provide some indication as to how she would invest her money and she was unable to explain in any detail, particularly how working capital would be used, even if some of it were retained for contingencies. The respondent continued to have concerns about the applicant's lack of knowledge of the difference between turnover and profit. The authority of Anjum was not relevant where the respondent asked direct questions and received direct answers. There was no unqualified requirement to ask further questions in clarification. In essence, the respondent continued to believe that the applicant's proposed business venture backed credibility.

The grounds in the application

(9) The applicant essentially raised three grounds:

a. Ground (1): the requirement that the choice of business location be dictated solely by business reasons, as opposed to business and personal reasons, remained irrational as was the respondent's failure to consider the reasons given for choosing the location of the business as London W1. The respondent placed impermissible weight on the applicant's reference to a substantial proportion of her family living in the UK;

b. Ground (2): the respondent's conclusions about the applicant not

knowing how working capital would be spent and her conclusions about the applicant's knowledge of the difference between turnover and profit were also irrational, in the context of difficulties of the applicant being able to hear her interviewing officer. It was also irrational for the respondent to focus on answers given in relation to staff salaries when the applicant had confirmed that she would not have any employees for the first six months of the business and the recruitment would take place according to the growth of the business.

c. Ground (3) – the process was procedurally unfair, given the respondent's failure to follow up with additional questions, should she have any concerns.

Grant of permission, strike-out and reinstatement

(10) On 10th January 2020, Upper Tribunal Judge Norton-Taylor granted permission on the papers for the application to proceed on all grounds. In his grant of permission, Judge Norton-Taylor issued standard directions for payment of a further fee, or in the alternative, for an application for fee remission. Following an apparent breach of those directions, the continuation fee was not received and the application stood as struck-out.

(11) The applicant then applied on 30th January 2020 for reinstatement of her application, based on an asserted delay in receipt of the grant of permission. Asim Hussain, Lawyer of the Upper Tribunal (IAC) with delegated judicial powers, granted the application for reinstatement on 3rd February 2020.

The basis of the respondent's resistance to the orders sought

(12) The respondent filed an Acknowledgement of Service on 24th December 2019, followed by a detailed defence on 19th February 2020. In essence, in relation to the irrationality challenge, the respondent was plainly entitled conclude that the applicant's answers during her interview were unsatisfactory, and the test for irrationality was a high one. In relation to the location of the proposed business, the applicant had been asked whether she had considered locations other than London W1 (question 23) which the applicant had responded by saying not yet, because many of her family lived in the UK. The applicant's own annotated version of the conversation was not materially different. Her answer failed to engage with why she was only looking at one particular postcode when she was intending to invest substantial sums of money in the UK. She had provided no further research on alternative locations or background information to support the estimated budget of £21,000 for six months' rent, rates, deposits and agents' fees in London W1.

(13) The respondent regarded as similarly vague the applicant's answers about what she would use her investment for. Whilst the applicant had clarified in supplemental notes how much she intended to retain as working capital (£109,5000 rather than £198,000), it was not enough to say staff would be hired

subject to business conditions particularly where it was asserted that the business would need to achieve £120,000 turnover in the first year alone. Moreover, it was quite open to the respondent to conclude that the applicant appeared to misunderstand the difference between turnover and profit. The decision was plainly not perverse.

(14) The authority of Anjum could be distinguished on the basis that in that case, the decision-maker had failed to understand the difference between the applicant's present business and plans for its future enlargement and had failed to resolve a misunderstanding through follow-up questions. It was a different from this case, where the interviewing officer had asked simple questions such as the turnover of the proposed business, in circumstances in which it was unnecessary to ask further questions. In simple terms any requirement of procedural fairness would depend on the particular factual context, and there was no procedural unfairness in the process adopted with the applicant's interview.

The applicant's submissions

(15) The applicant provided written submissions, in which she reiterated the irrationality of the respondent's decision as already set out. She added that the test for whether the applicant met the requirements of 'Tier 1' was not whether she was a "good" entrepreneur, rather a genuine one. In addition, the respondent had failed to consider in her assessment that the applicant had applied for entry to the UK, to start a healthcare business, which was a field in which the applicant already had substantial experience and suitability. The authority of Anjum remained the reported decision in respect of procedural unfairness and general principles of procedural fairness required the respondent to probe and ask follow-up questions as opposed to sticking to a scripted list of questions.

(16) In oral submissions developed by Mr Gajjar, the Decision rested on three points. First, a lack of consideration of alternative locations other than London W1. Second, a concern of the respondent was how the applicant intended to invest the £200,000, in particular a reference to staffing costs. Third, what was described in the Decision as a nonsensical answer to turnover.

(17) In relation to the first concern over the location of the business, the real problem was in the Decision at page [17] of the applicant's bundle where it is stated:

> "In reaching the decision to refuse this application I have noted the following:
>
> You told the interviewer that you plan on setting up your business in the W1 postcode area of London. When asked if you considered any other areas in the UK, I noted you stated:

No not yet so because of my family, half of my family ties in the UK. I will just leave my own mother here and she is very concerned of my being lonely here. So that is one reason why I want to move to the UK.

Whilst I appreciate the importance of family ties, it is reasonable to expect a genuine entrepreneur to have solely specific business-related reasons for choosing their business location."

(18) In fact, on that basis alone, the requirement to have solely specific business-related reasons for identifying a business was clearly and unarguably irrational. People may have a wide variety for reasons for picking a location and it was not a requirement of the Immigration Rules that it either be the sole or even the predominant reason. Mr Gajjar referred to the extreme example, of where an applicant had given as the location for a healthcare business the summit of Ben Nevis, then one might see why the Entry Clearance Officer had concerns, but in this case, the applicant had identified London W1. I was invited to take judicial notice, as Mr Gajjar reminded me, that Harley Street is located within London W1 and is notable for its medical services, both public sector and privately provided. To suggest, in that context, that someone must be guided solely by business-related reasons for the location of their business, and ignore convenience and co-location of a personal support network, was unarguably irrational. Indeed, the respondent recognised the weakness of that analysis by later relying on broader areas of concern in the administrative review decision.

(19) In any event, when considering whether the applicant was a genuine entrepreneur, there was a failure to deal with all of the applicant's evidence, which was detailed. The applicant could have been dishonest and said that she had considered alternative locations. She had instead clearly identified and given detailed reasons for why London W1 was the appropriate location for her business. In that regard, I was asked to consider the answers to questions [22] and [23] at page [35] of the applicant's bundle. It was clear here that the location of the applicant's family was secondary to the business rationale for choosing London W1 as the place for the proposed business.

(20) Next, Mr Gajjar submitted that it was clear that there were technical difficulties at least identified at the beginning of the hearing, that arguably could be inferred throughout. As part of the administrative review process and as already referred to earlier in these reasons, the applicant had provided her own version of her transcript, which she asked the respondent to consider in its administrative review decision. This can be seen at page [48] of the applicant's bundle. The question as heard and understood by the applicant was as follows:

"I seem to have heard - Did you consider any areas outside UK?

No, not yet, so because my family, half of my family lives in the UK."

(21) In essence, the applicant's answer given in relation to her family residing in the

UK, which would otherwise not make sense unless the question had been misheard as relating to whether the applicant had considered business locations outside the UK as opposed to within it, was clearly explicable. The respondent had ignored this in the administrative review decision. It made no sense to ignore this where, as here, the respondent accepted that the applicant's intentions were honest and that instead of considering whether she was telling the truth, there was an appraisal of whether she was a 'good' entrepreneur.

(22) In terms of the second reason for refusal at page [17] of the applicant's bundle, as referred to in the Decision, the respondent had had concerns about how much the applicant would pay her staff. However, the respondent had failed to consider her answers to two questions, [21] (page [35]) and [29] (page [37]), where she had clearly stated that at least for the first six months she had no intention of employing any staff and she would need to decide whether to employ staff as the business developed. More importantly, in relation to the criticism that the applicant had failed to give a detailed breakdown as to any staffing costs, when the respondent's questions were considered (particularly question [28] at page [36]) the respondent had never in fact asked any specific questions about salary costs. The applicant could hardly be criticised for failing to set out more detail about salary costs, when she was never asked to.

(23) Next, in terms of what was described as a 'nonsensical answer' at page [17] of the applicant's bundle, as contained in the Decision, namely the applicant's response to a question about turnover, by setting out in detail gross and net profit margins, this was explicable once again by reference to the applicant's record of what she had heard. She recorded this in the notes which she asked the respondent to consider in the administrative review, at page [53B] of the applicant's bundle. As recorded there, question [37] states:

> "What do you forecast the turnover … How have you come to this figure?
>
> Repeat the question please. ... I asked the question to be repeated again as I could not hear properly and understand what was being asked. I seem to have heard as - what do you forecast to be for year 1? How have you come to this figure?
>
> We don't expect annual profit. There will be about 70% gross profit but there is no net profit as such. It is in minus (negative) account. There is a gross profit though."

(24) In essence, the applicant was unable to hear the reference to turnover and this was not a case that she had misunderstood the concept, which would have meant that it was pointless to repeat the question – rather, she simply misheard the question, and she had thought it had referred to margin profit rather than turnover. In that context, this was an Anjum paradigm case, where it screamed out for further clarification. Clearly, Anjum had a far wider application than merely the specific circumstances of that case, as it was a Presidential panel and

also at paragraph [20], recited the test under the well-known authority of R v SSHD, ex parte Doody and Others [1994] 1 AC 531.

The respondent's submissions

(25) The respondent reiterated that the Decision was plainly open to her to reach on the evidence before her and that the Decision could not be impugned on irrationality grounds. The applicant's explanation for not researching any business locations other than London W1, namely because of family members living in the UK, was unsatisfactory. The administrative review decision had noted that, even setting aside the original reference in the Decision to the choice of location solely for specific business reasons, the explanation given by the applicant remained inadequate. This was particularly striking noting that the business plan stated that the success of the concept was wholly dependent on identifying the right location for the first clinic. Whilst there was a claim to have researched premises, no details had been provided to underpin the £21,000, said to relate to 6 months' rent, rates deposit. There was a similar vagueness in relation to how working capital would be invested, even after the issue of the amount of that working capital (£109,000) was corrected. For example, in answer to question [28], (page [39]), the applicant had been asked:

> "Can you explain how the £109,500 set aside for cash flow shall be used?
>
> For the purchase of stock because I don't know exactly which stock I will be needing. For the purchase of the stock and the employees, the salaries of the employees. Staff, employees are also part of the £200,000."

(26) It was not enough to suggest that flexibility in any business investment is needed, as a genuine entrepreneur would have a clear idea about how they were going to use the money they claimed to want to invest, even if there needed to be flexibility in that plan. It was also not enough to say that staff would be hired subject to business conditions, particularly when in order to break even, the business plan suggested that the business would need to realise £124,350 in sales in the first year alone.

(27) Finally, the applicant's inability to explain the concept of turnover in answer to question [37] (page [39]) was particularly striking.

(28) The respondent reiterated that the requirements of procedural fairness would always depend on the particular factual context. In this case, the respondent was entitled to consider that the questions asked were sufficient and that in light of those questions and the answers given, that the applicant was not a genuine entrepreneur.

(29) In terms of the respondent's oral submissions, it was important to read both the original Decision and the administrative review decision together in the round. There were three points identified, as had been referred to by Mr Gajjar, but the decision that the application was not genuine was one that the respondent was

entitled to reach. At heart, all of the challenges were rationality points.

(30) In terms of the issue around alternative location, a lot hanged on Mr Gajjar's submission of the Decision referring to a need for exclusively business-related reasons for choosing the location. This was not a position maintained in the administrative review decision and instead there was concern about the limits of the applicant's research. It was accepted that Harley Street may be based in London W1 but there had only been research based on the internet and no suggestion of alternative searches, albeit it is accepted that there was no requirement for alternative searches. Even if it were now suggested that the applicant had misunderstood the question and given reasons for why she wished to base her business in the UK as opposed to in a location in London, she had not given any wider answer or suggested that she wished to conduct the business in any other part of the UK and therefore it was rational for the respondent to consider the limits of her research.

(31) The second limb of the challenge was in relation to the lack of detail about investment, in particular in answer to question [28]. If I referred to this at page [36] of the applicant's bundle, it was clear that the applicant could not identify what the salary costs would be or even give an estimate and it was rational for the respondent to take this into account.

(32) The third limb was around the consideration about the applicant's answers as being nonsensical even if it were accepted that the applicant had misheard the question. When I was asked to consider the answers given at page [53B] (the applicant's more detailed notes) with her answer to question [37] at page [39] (the respondent's transcript), the answer in relation to question [37] made no sense. It reads as follows:

> "We don't expect. There will be about 70% of the gross profit but there is not net profit as such. It is in the minus account. There is a gross profit though.
>
> Figure? 77% of the gross profit will go on the first year, financial figures and the second year it will be around 88% plus there is going to be a profit of £8,000 in the second year."

(33) The applicant's answers were confusing, as to which years she was referring to and her answers simply did not "hang together".

(34) The final substantive challenge was in relation to procedural fairness. As could be seen from the notes, the applicant had asked for a question to be repeated (question [37] at page [53B]) and it could not be right that the respondent would have to be required to ask questions on a third occasion. In reality, the applicant had been given an opportunity to answer the questions and it was not suggested that she had anything else substantively to say.

The Law

(35) Paragraphs 245DB (f) and (h) of the Immigration Rules, as applied in the Decision, state:

> *"245DB. Requirements for entry clearance*
>
> *To qualify for entry clearance as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below. If the applicant meets those requirements, entry clearance will be granted. If the applicant does not meet these requirements, the application will be refused.*
>
> *(f) Where the applicant is being assessed under Table 4 of Appendix A, the Entry Clearance Officer must be satisfied that:(i)the applicant genuinely intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months;(ii)the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);*
>
> *(h) In making the assessment in (f), the Entry Clearance Officer will assess the balance of probabilities. The Entry Clearance Officer may take into account the following factors:*
>
> *(i) the evidence the applicant has submitted;*
>
> *(ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;*
>
> *(iii) the viability and credibility of the applicant's business plan and market research into their chosen business sector;*
>
> *(iv) the applicant's previous educational and business experience (or lack thereof);*
>
> *(v) the applicant's immigration history and previous activity in the UK; and*
>
> *(vi) any other relevant information."*

(36) The well-known authority of R (Anjum) v Entry Clearance Officer, Islamabad (entrepreneur – business expansion – fairness generally) [2017] UKUT 00406 (IAC) makes clear that an immigration interview may be unfair where there is inflexible adherence to prepared questions, which prevents clarification of obscure questions or to probe or elucidate answers given. That was in the context of a Tier 1 (Entrepreneur) visa application.

Discussion and conclusions

(37) First of all, I accept that the first limb of challenge, namely one of irrationality, is a high one and I am not considering a statutory appeal. I have considered Mr Holborn's submission that I need to consider the original Decision of 22nd May 2019 and the administrative review decision of 29th August 2019 together and in particular that there has been a move away from the respondent's initial decision that the applicant's choice of business location should be dictated solely by business, as opposed to personal, reasons. Nevertheless, in relation to this first ground and even taking both decisions together, I do conclude that the respondent's reasoning is irrational. Mr Holborn does not seek to defend the requirement of solely business-related factors. Instead he referred to the reasoning in the administrative review decision at page [12] of the applicant's bundle, which states:

> "You confirm that you did not consider any other areas in the UK. Whilst I appreciate that you might have proposed some of the reasons for choosing this particular area of the UK, it does not suggest that sufficient analysis of the business environment in different locations was conducted for an entrepreneur to conclude that the chosen location is best for their business. Within your review you indicate that your decision was not solely based on your family members' presence and that fact could only be considered as an added benefit. I note you enumerated several reasons for choice of the UK however, you only focussed on one area of London, which is not indicative of genuine entrepreneur who has given due consideration to the market landscape. By having limited your choice to [London area] [sic] only, you failed to demonstrate the research having conducted prior to your application. You say that W1 is considered to be medical hub however your reasoning has not been substantiated with empirical data. The ECO is not considered to have made an error when highlighting that these responses provide insufficient business details as to why the location is best, particularly as you failed to discuss that against other potential locations with similar market features."

(38) In reality, I take judicial notice of the location in London W1 of Harley Street and the medical services providers well-known for focussing on that area; and I noted the applicant's consideration of that business location in her business plan, included with her application. I accept the Mr Gajjar's submission that there is no requirement to have actively considered alternative locations in the UK other than in relation to the London W1 area; and that the respondent's assertion that there was no evidence supporting that London W1 (including Harley Street) is a medical hub is one which, when considered in the context of the earlier reference in the Decision to having solely specific business related reasons for the choice of location, is irrational. The applicant had provided detailed reasons in her business plan for choosing the London W1 area, as being the focus of her business, in the context of her substantial previous experience in the healthcare business, which the respondent does not question.

Having initially suggested that she must exclude any personal, non-business related reasons in her choice of location, the respondent then moved to criticise her for failing to go through a process of listing, analysing and discounting other alternative locations, when she had already given reasons for her choice of location. In reality, I conclude that the respondent's concerns were as a result of the applicant's reference to having family members in the UK. While the respondent subsequently sought to rationalise its refusal because of an absence of comparison with other locations within the UK, that is not in my view, even taking into account the high threshold, a rational decision for the respondent to have reached, in the context of the well-known hub of healthcare businesses in London W1.

(39) Dealing with the next question of what was said to be the absence of details provided by the applicant in relation to working capital, I once again accept Mr Gajjar's submissions that while the respondent's concerns focussed around salary costs, first, the applicant had stated clearly that for the first six months, she did not intend to employ any other staff member. That was a submission that Mr Holborn indicated was contradicted by her statements during her interview, when she referred to salary costs. However, as explained and as clearly can be seen in the business plan at pages [67] and [68] of the applicant's bundle, there was in fact an intended payment of a staff salary, but that was solely in relation to the applicant's own salary. I also further accept Mr Gajjar's submission that having asked the applicant for a breakdown of how her working capital was spent, it was irrational for the respondent to criticise the applicant for failing to set out further detail of the breakdown of salary costs, when she never asked for a specific breakdown of salary costs. Coming on to the authority of R (Anjum), if there were any confusion on whether there were any salary costs and the respondent needed a breakdown of what those salary costs were, I accept the Mr Gajjar's submission that this cried out for further questions of the applicant, by way of clarification.

(40) The final basis for the respondent's refusal of the application was the asserted confusion on the part of the applicant about the difference between turnover and profit. First, I accept Mr Gajjar's submission that the applicant had drawn to the respondent's attention, prior to the administrative review decision, that there had been a potential confusion about the question asked. I accept further his submission that there is an important difference between the pointlessness of asking the same clear and simple question repeatedly, when the person questioned does not understand the concept; and when the person asked is unable to hear the question properly, and clearly (and obviously) answers a different question. The respondent had asked about turnover; the applicant thought she heard the question as relating to profit and her answer, in that context, is entirely explicable. In the absence of further probing, the respondent's conclusion that the applicant did not understand the different between the two, was irrational, particularly when she had pointed out her confusion in seeking administrative review.

(41) Mr Holborn bases the final part of the criticism in the applicant's answer in relation to profit margins as being that her answers were confusing as to which year she was referring to.

(42) Once again, I accept Mr Gajjar's submission that if there were such confusion, that this was entirely apt for a follow-up question. In reality, the confusion lay in the mishearing of the question by the applicant, which she had attempted to resolve by sending her notes as part of the administrative review. Having received those notes, I accept the submission that the respondent had failed to engage with them. In the circumstances therefore I also accept that there was irrationality in this ground.

(43) In relation to the final ground of procedural fairness, as will have been appreciated in some of my earlier reasoning, I have identified areas where, but for additional, basic probing by the respondent during the course of the interview, obvious errors in answers such as in relation to profit, when the question related to turnover, could easily, and should have, been resolved. I do not accept the submission that the authority of Anjum is not to the point in this case and indeed I am reminded of the headnote to which I was referred, (ii), which states:

> *"An immigration interview may be unfair, thereby rendering the resulting decision unlawful, where inflexible structural adherence to prepared questions excludes the spontaneity necessary to repeat or clarify obscure questions and to probe or elucidate answers given."*

(44) While there was not an inflexible adherence to prepared questions, there was a clear unfairness in failing to clarify answers which otherwise made no sense. While the need for such probing is, as Mr Holborn rightly argued, intensely fact-specific, there was such a failure here, where the applicant had made clear at the time her difficulties in hearing what the interviewing officer was saying, and her answers obviously made no sense if she had hear the question as the respondent recorded it, but her answers were explicable (and addressed the concerns) where she heard the answers as recorded and explained by her. Particularly where the applicant's honesty has never been challenged, the role that questions of clarification could have played was all the more important, and in these circumstances I do regard there as having been a procedural unfairness by which the decisions, particularly the later decision of the administrative review, was reached.

(45) In those circumstances therefore the application for judicial review is granted on all grounds.

Costs

(46) In relation to costs, I am mindful of the authority of M v London Borough of Croydon [2012] EWCA Civ 595. On the one hand, the applicant has succeeded in her application. On the other hand, and without criticism whatsoever of Mr

Gajjar, this is a case where there was no compliance by the applicant with the pre-action protocol, which is an important and necessary part of the litigation process, for which there is no explanation. Even though it might be said, in light of the respondent continuing to resist the application, that on receipt of the application, the respondent could have sought resolution by way of a consent order, I accept Mr Holborn's submission that the application was made without any compliance by the applicant with the pre-action protocol.

(47) I also note that whilst I have been provided with a schedule of the respondent's costs in accordance with the standard directions, there is no similar schedule from the applicant, thereby preventing me from making a summary assessment of costs and as a result, leaving the assessment of the amount of costs as unresolved.

(48) Therefore, in these circumstances, I order that the respondent shall pay the applicant's costs, to be assessed if not agreed, from the date of the respondent's Acknowledgement of Service, but not before, as a result of the failure to comply with the pre-action protocol, up to and including the costs of this Hearing, but specifically excluding any costs related to the assessment of the costs.

Application for permission to appeal to the Court of Appeal

(49) While there has been no application for permission to appeal to the Court of Appeal, I considered whether to grant permission. I do not grant permission as I do not regard there as being any arguable error of law in my decision.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **3rd November 2020**

UTIJR6

JR/5863/2019 ('V')

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen (on the application of Ms Syeda Ahmedi)

Applicant

v

Secretary of State for the Home Department

Respondent

Before Upper Tribunal Judge Keith

Having considered all documents lodged and having heard *Mr J Gajjar,* instructed by Edward Marshall Solicitors on behalf of the applicant and *Mr J Holborn*, instructed by the Government Legal Department on behalf of the respondent, at a hearing which I attended in-person at Field House, London, and which the representatives attended via Skype for Business on 27th October 2020 and upon judgment being handed down on the same date.

It is ordered that

(1) The judicial review application is granted in accordance with the judgment attached.

(2) I order, therefore, that the respondent's decisions dated 22nd May 2019 and 29th August 2019 are quashed.

Permission to appeal to the Court of Appeal

(3) While no application has been made for permission to appeal, I nevertheless considered whether to grant permission. I refuse permission to appeal to the Court of Appeal as I do not regard there as being any arguable error of law in my decision.

Costs

(4) I note the principles set out in M v London Borough of Croydon [2012] EWCA Civ 595. I also note that the applicant has failed to comply with the pre-action protocol, without explanation. The applicant has also failed to provide a schedule of her costs, for me to consider at this hearing.

(5) I therefore regard it as appropriate to order the respondent to pay the applicant her costs from the date of the Acknowledgment of Service (noting the failure to comply with the pre-action protocol); to be assessed if not agreed, but excluding the costs of any assessment. This reflects the fact that that the applicant has nevertheless succeeded, but has also prevented the issue of costs being resolved at this hearing.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **3rd November 2020**

Applicant's solicitors:
Respondent's solicitors:
Home Office Ref:
Decision(s) sent to above parties on:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an applicant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).