



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/12576/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 25<sup>th</sup> September 2017**

**Decision & Reasons  
Promulgated**

**On 4<sup>th</sup> October 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MOHAMMED MUSTAFA WASSIF  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer  
For the Respondent: Mr Williams of Andrew Williams Solicitors

**DECISION AND REASONS**

1. This is the Secretary of State's appeal against the decision of Judge Bradshaw made following a hearing at Bradford on 19<sup>th</sup> May 2017.

**Background**

2. The claimant is a citizen of Iraq born on 4<sup>th</sup> June 1982. He has a lengthy immigration history but last entered the UK in 2007. He made an application for leave to remain on human rights grounds on 30<sup>th</sup> March 2009, and subsequently succeeded in an appeal which was allowed on 18<sup>th</sup>

November 2011 on the basis of his relationship with a British citizen, Susan Edwards. He was granted discretionary leave on 1<sup>st</sup> January 2012 running to 1<sup>st</sup> January 2015.

3. He then made a further application for discretionary leave on 8<sup>th</sup> December 2014 which was refused on 25<sup>th</sup> April 2016 and it was this decision which was the subject of the appeal before Immigration Judge Bradshaw.
4. According to the findings of the Immigration Judge, who found the claimant and Ms Edwards to be credible witnesses, they were still in a relationship, as they had been for many years, although they have lived apart for the past five years. The couple see each other about four times a week and the claimant stays with her but they maintain separate households.
5. The judge concluded that they were in a committed relationship, albeit that they lived separately. He accepted the claimant's explanation about the completion of the application form when he ticked the box marked "single" and not one of the other options such as "unmarried partner."

### **The Grounds of Application**

6. The Secretary of State sought permission to appeal on the grounds that the judge had not made a proper assessment of whether the appeal ought to be allowed outside the Immigration Rules in the light of the public interest in maintaining an efficient immigration policy and whether there were compelling exceptional circumstances in the appeal.
7. Permission to appeal was granted by Judge Mailer on 10<sup>th</sup> July 2017.

### **The Hearing**

8. The judge cited, at paragraph 21 of the determination:

"The Home Office Discretionary Leave Policy document dated 18/08/15 provides at Section 10 transitional arrangements for extension of leave applications where discretionary leave was granted before 09/07/12 as in this case and caseworkers must consider whether the circumstances prevailing at the time of the original grant of leave continue at the date of the decision. If circumstances remain the same (subject to exceptions which do not apply in this case) a further period of 3 years' discretionary leave should normally be granted. If there have been significant changes that mean the applicant no longer qualifies for leave the further leave application should be refused".

9. Mr Diwnycz accepted that the discretionary leave policy applied in this case and that there had been no change in the relationship between the claimant and Ms Edwards since the previous grant of leave. He believed that the author of the grounds had believed that there had been a change of circumstances because the claimant had ticked the box "single" on the

application form and did not have full sight of the facts. He did not challenge the finding that there had been no change of circumstances.

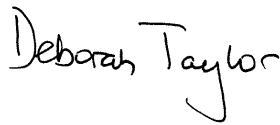
10. The grounds make no reference to the basis upon which the appeal was allowed, and no challenge to the findings of fact at this hearing. No arguments were made as to why the normal course should not be followed in this case.
11. The judge was therefore entitled to consider that the fact that the claimant fell within the policy constituted an exceptional circumstance such that leave ought to be granted outside the Immigration Rules.

**Notice of Decision**

12. The original judge did not err in law. The decision stands. The Secretary of State's appeal is dismissed.

No anonymity direction is made.

Signed



Date 4 October 2017

Deputy Upper Tribunal Judge Taylor