



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/14246/2019**

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On the 16<sup>th</sup> August 2022**

**Decision and Reasons  
Promulgated  
On the 05<sup>th</sup> September 2022**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER  
DEPUTY UPPER TRIBUNAL JUDGE KELLY**

**Between**

**[ ] ]  
(ANONYMITY DIRECTED)**

Appellant

**and**

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

Respondent

**DECISION AND REASONS**

**Representation:**

For the Appellant: Mr Holt, Counsel instructed by TMC Solicitors Limited  
For the Respondent: Mr Tam, Senior Home Office Presenting Officer

*Introduction*

1. The appellant is a male citizen of Ghana who was born on the 11<sup>th</sup> September 1966. His application for settlement (indefinite leave to remain) was refused by the respondent on the 8<sup>th</sup> August 2019 and his appeal

against that decision was dismissed by the First-tier Tribunal (FtT) on the 31<sup>st</sup> October 2019. He was granted permission to appeal against the decision of the FtT by Upper Tribunal (UT) Judge Canavan on the 15<sup>th</sup> March 2022. Thus the appeal comes before us.

- In the course of determining his appeal, the FtT noted that the appellant had been granted discretionary leave to remain (outside the Immigration Rules) in January 2012. This had been granted on the basis of his spousal relationship with Ms Ricketts. However, that relationship ended in February 2019. Having considered the respondent's transitional Discretionary Leave Policy of 2015 and the relevant Immigration Directorate Instructions, the FtT concluded that it was "very clear" that whilst the appellant had accrued 6 years discretionary leave, he would also need to show that his circumstances has not changed in the interim if he were to qualify for settlement in the United Kingdom. He was unable to do this due to the ending of his relationship with Ms Ricketts.

#### *Ground of appeal*

- The sole ground of appeal against the decision of the FtT is that in conducting its assessment of the appellant's rights under Article 8 of the Human Rights Convention (the right to respect for private and family life), it ought to have had regard to what is said to have been the appellant's eligibility to be considered for a grant of indefinite leave to remain irrespective of the change in his circumstances. This in turn is said to have arisen due to two earlier grants of discretionary limited leave to remain, each for a period of three years, that had been granted on the 31<sup>st</sup> January 2012 and the 25<sup>th</sup> February 2015 respectively.

#### *The relevant provisions of the policy*

- The passage of the respondent's 2015 policy concerning grants of discretionary leave to remain upon which the appellant relies appears under the heading, 'Applicants granted DL before 9 July 2012', and is as follows:

Those granted leave under the DL policy in force before 9 July 2012 will normally continue to be dealt with under that policy through to settlement if they continue to qualify for further leave on the same basis as the original DL was granted (normally they will be eligible to apply for settlement after accruing 6 years' continuous DL (or where appropriate a combination of DL and LOTR, see section 8 above))), unless at the date of decision they fall within the restricted leave policy.

Caseworkers must consider whether the circumstances prevailing at the time of the original grant of leave continue at the date of the decision. If the circumstances remain the same, the individual does not fall within the restricted leave policy and the criminality thresholds do to apply, a further period of 3 years' DL should normally be granted. Caseworkers must consider whether there are any circumstances that may warrant departure from the standard period of leave.

## Submissions

5. We intend no disrespect to Mr Holt's submissions if we summarise them thus. The requirement for the applicant's circumstances to remain unchanged since being granted limited discretionary leave to remain applies only to applications for further limited leave to remain. It does not apply to applications for settlement (indefinite leave to remain) in respect of which the sole requirement is for the applicant to have previously been granted periods of limited leave to remain totalling six years. This position derives from the words in parentheses - "normally they will be eligible to apply for settlement after accruing 6 years' continuous DL" - which make no reference to the basis of the original grant of discretionary leave to remain being unchanged. Whilst the respondent relies upon the decision in R (on the application of Ellis) v Secretary of State for the Home Department (discretionary leave policy; supplementary reasons) [2020] UKUT 82 (IAC) as authority of the proposition that the policy should not be read as saying that an applicant must *automatically* be granted settlement in such circumstances, that has never been the appellant's position. Rather, the appellant submits that the FtT was wrong to assume that the appellant did not qualify to be *considered* for settlement by reason of the change in his circumstances since the earlier grant of limited leave to remain.

## Discussion

6. It was held in SF and Others (Guidance, post-2014 Act) Albania [2017] UKUT 00120 (IAC); [2017] Imm AR 1003 that, even in the absence of a "not in accordance with the law" ground of appeal, the tribunal ought to take the respondent's guidance into account if it points clearly to a particular outcome in the instant case. Only by doing so can consistency be obtained between those cases that do, and those cases that do not, come before the tribunal. It follows that if Mr Holt's submissions as to the interpretation of the policy are correct, the FtT will have erred in law by not having had regard to the appellant's eligibility to be considered for indefinite leave to remain under the policy
7. During the course of our discussions with the representatives, it was noted that the section of the 2015 policy upon which the appellant relies is primarily, if not exclusively, concerned with the circumstances in which applications for further discretionary leave to remain will continue to be dealt with under the DL policy that was in force prior to the 9<sup>th</sup> July 2012. We therefore stood the matter down to allow Mr Holt to consider the terms of that earlier policy. Having done so, Mr Holt accepted that the appellant was not eligible to be considered for indefinite leave to remain under the 2012 policy. He was thus driven to submit that the words in the 2015 policy, contained within parentheses, create a free-standing eligibility requirement for settled status solely by reason of having accrued 6 years continuous discretionary leave. We reject that argument. We hold that when read within the context of the sentence as a whole, the words in parentheses are also

intended to cross-refer to the earlier 2012 policy. We cannot accept that a paragraph seeking to set out the circumstances in which applications will continue to be dealt with under the 2012 policy would parenthetically create an entirely new set of circumstances leading to consideration of settled status. Moreover, even if the 2012 policy could be said to apply to the applicant, it is clear from the wording of the 2015 policy that the appellant's application would be excluded from consideration under it due to the change in the circumstances upon which the original limited discretionary leave to remain had been granted.

### **Notice of Decision**

**8.** The appeal is dismissed.

Signed: David Kelly

Date: 17<sup>th</sup> August 2022

Deputy Judge of the Upper Tribunal