



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/23532/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 1 March 2018**

**Promulgated  
On 12 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LATTER**

**Between**

**ENTRY CLEARANCE OFFICER (VAC), IRAQ**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P Nath, Home Office Presenting Officer.  
For the Respondent: No appearance.

**DECISION AND REASONS**

1. This is an appeal by the Entry Clearance Officer against a decision of the First-tier Tribunal allowing an appeal by the applicant against the decision made on 31 August 2016 refusing him entry clearance as a partner. In this decision I will refer to the parties as they were before the First-tier Tribunal, the applicant as the appellant and the Entry Clearance Officer as the respondent.

**Background**

2. The applicant is a citizen of Iraq born on 1 July 1957. He married his wife, his sponsor, in Kirkuk, Iraq on 25 December 2008. He was granted entry clearance following a successful appeal in September 2012 and entered

the UK in October 2012. His leave to remain expired in December 2014 and he left the UK on 22 January 2015, returning to Iraq.

3. He applied for entry clearance to re-join his wife but the respondent was not satisfied with his explanation for leaving the UK. He had said that he had to leave the UK as his visa had expired on 13 December 2014 but added that he had been in the process of applying for naturalisation as a British citizen. If that was the case, it was the respondent's view that he would not have had to leave the UK when he had a pending application. He also said that he had to leave as his passport was about to expire and because his mother was ill. The respondent commented that he had not explained why he had had to leave the UK to obtain a new passport when there was an Iraqi embassy in London offering a renewal service for its citizens.
4. It was the respondent's conclusion that the appellant had left the UK as his relationship with the sponsor had broken down and he wished to resume his life in Iraq. He noted that amongst the documents submitted was an eligibility and assessment summary for the sponsor dated 25 November 2015 from the local authority which under the section entitled "Carer views" stated that "Mrs Mohammed's partner was her main carer but they have separated. She is having to depend on her family for support." The respondent was accordingly not satisfied that there was a genuine and subsisting relationship between the appellant and his wife.

#### The hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal the judge said that the appellant's case was set out in the bundle of documents paginated 1-120, which contained a detailed explanation from the appellant and his wife together with subjective information and details about their current status. The appellant had explained that he had to go home for his mother's illness, he made three applications for entry clearance and it had taken a significant amount of time for them to be dealt with [14]. He said that he regularly contacted his wife by phone using Viber and social media and his wife eventually came to visit him in Iraq on 27 January 2017, leaving on 8 February 2017 [16].
6. At [17] the judge said that there was no challenge to this evidence by the Home Office Presenting Officer before him or when the case was put by the appellant, his wife and his step-daughter who had confirmed that her relationship with her step-father was continuing and that she had attended the wedding in Iraq when her mother married and they started living together.
7. At [18] the judge said that there was overwhelming evidence before him that the rather ambiguous entry by the care provider stating that the parties were "separated" was taken far too literally by the respondent and it was abundantly apparent from the papers that this had always been a genuine subsisting marriage and that the parties had always intended to continue to live together as husband and wife. The judge

commented that it was unfortunate that there had been repeated refusals when there was overwhelming evidence to the contrary and he expressed concern about the care with which the application had been considered. He allowed the appeal.

### The Grounds

8. The respondent applied for permission to appeal on the grounds that the judge had allowed his personal opinions about the conduct of this application to affect his decision. It is further argued that he failed to deal adequately with the issues relied on by the respondent. Permission to appeal was refused by the First-tier Tribunal but granted by the Upper Tribunal on the basis that there was an arguable failure to give adequate reasons. When granting permission, the judge added that it would be helpful if a rule 24 response could set out with precision the issues which were in dispute at the hearing, given the observation that at least some of the evidence was unchallenged, and what issues continued to be in dispute in the light of all the evidence available.
9. No rule 24 response has been filed by the respondent. At the hearing before me there was appearance or representation on behalf of the appellant. I am satisfied that the notice of hearing has been served both on the sponsor and on the representative. There is no explanation for the failure to appear and I am satisfied that the proper course to proceed with the hearing.
10. Mr Nath submitted that the judge had failed to deal adequately in his decision with the issues arising in the appeal and had failed to give adequate reasons. However, he accepted that there had been no challenge by the respondent, whether in a rule 24 notice or otherwise, to the judge's comment in [17] about there being no challenge to the evidence.

### Assessment of the Issues.

11. Permission to appeal has been granted on the sole issue of whether there has been an arguable failure to give adequate reasons. In order to succeed on a challenge based on a claimed inadequacy of reasons, it has to be shown there is a real cause for concern that a relevant matter has not been properly taken into account in the assessment of the appeal and that, if it had, there was a real prospect of a different decision being reached: per Elias J in Atputharajah [2001] Imm AR 566.
12. The issue of fact the judge had to consider was whether there was a genuine and subsisting relationship between the appellant and his wife. He had a statement from the appellant dated 12 September 2017, which confirmed that the relationship was subsisting and explaining the circumstances in which he returned to Iraq. It asserts that he and his wife were not separated and had never been so. The time spent apart was caused by factors beyond their control, his mother's illness and the subsequent refusal of his applications for entry clearance and the time

taken to deal with them. His statement was supported by a statement from his wife also dated 12 September 2017 which sets out the background to their marriage and at [20] the circumstances in which she obtained the letter from the local authority in which it was said that she and her husband had separated. Their evidence is further supported by the statement from his step-daughter dated 14 September 2017 and there is further support in the letter from the appellant's two other step-children dated 14 September 2017.

13. In the light of the fact firstly, that the substance of the evidence relied on at the hearing was not challenged before the judge and secondly, that the respondent has not subsequently sought to take issue with the judge's record that there was no challenge, I am not satisfied that there is any substance in the argument that the judge failed to give adequate reasons. As there was no challenge to the evidence before him, there was no need for him to set the matter out at any greater length than he did in [14]-[18]. There is no inadequacy of reasons to suggest that the judge had failed to take any relevant matter into account. It is clear that he accepted the evidence adduced by on behalf of the appellant and there was no need for him to say any more than he did. There is no substance in the respondent's appeal.

#### Decision

14. The First-tier Tribunal not err in law and the decision to allow the appeal stands.

Signed            H J E Latter

Date:            9 March 2018

Deputy Upper Tribunal Judge Latter