



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/02669/2014

THE IMMIGRATION ACTS

Heard at Glasgow

**Decision & Reasons
Promulgated**

On 11 November 2014

On 12 November 2014

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M M F K AWAN

Respondent

For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer

For the Respondent: Mr A Devlin, Advocate, instructed by Lighthouse, Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but are referred to in the rest of this determination as they were in the First-tier Tribunal.
2. The SSHD appeals against a determination by Judge O'Garro, promulgated on 15 July 2014, allowing the appellant's appeal against refusal of leave to remain in the UK as the partner of a UK citizen, outwith the Rules, on the basis of Article 8 of ECHR. The grounds are that the judge failed to identify any compelling circumstances not sufficiently recognised under the Rules.

3. I do not find either the respondent's original decision or the determination very well explained; but it is plain that the judge thought that the case ultimately turned on an issue similar to that in *Chikwamba* [2008] UKHL 40, whether it was proportionate to expect the appellant to apply for leave from abroad. The appellant did not do much to show that an application made from abroad would succeed. The judge has said little to explain why she thought an application would succeed in all respects but the requirement to make it from abroad. However, the grounds do not say it was an error to approach this as a "*Chikwamba* case". Nor do they contain anything to suggest that once identified as such, the judge should have resolved it otherwise than she did.
4. The determination shall stand.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

11 November 2014
Upper Tribunal Judge Macleman