



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

Appeal Numbers: IA/53196/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 5 September 2014**

**Determination Promulgated
On 10 September 2014**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MR STEVEN NAKOKO
(no anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Lay of Consel

For the respondent: Mr Kandola, Senior Presenting Officer

1. The appellant is the Secretary of State for the Home Department and the respondent is a national of Uganda born on 18 February 1978. I shall however for the sake of convenience, refer to the Secretary of State as the appellant and Mr Nakoko as the appellant which are the designations that the parties had in the First-tier Tribunal.

2. The appellant appeals to the Upper Tribunal against the determination of the First-tier Tribunal Judge Hodgkinson dated 27 June 2014 allowing the appellant's appeal pursuant to Article 8 against the decision of the respondent refusing him leave to remain as the spouse of a British citizen pursuant to paragraph 276 ADE and Appendix FM of the Immigration Rules.
3. Permission to appeal was granted by the First-Tier Judge PJG White dated 16 July 2014 stating that it was arguable that the Judge gave inadequate reasons for his finding that there were insurmountable obstacles preventing the appellant and the sponsor relocating to Uganda to continue family life in that country.
4. The First-tier Tribunal made the following findings in his determination which I summarise.
 - i. It is common ground that the appellant and the sponsor have a genuine and subsistent marital relationship. There is also no challenge to the evidence in terms of the sponsor's pregnancy, diabetes and the antenatal treatment which she is receiving in relation to her pregnancy. There is no challenge to the evidence of the appellant, the sponsor and the sponsor's parents, Mr and Mrs Mitchell with reference to Mr and Mrs Mitchell's medical conditions and the assistance which the sponsor and the appellant provide to them. There is a wealth of independent documentation with regard to the various medical conditions of the sponsor and the parents, the authenticity and the veracity of which is not the subject of challenge.
 - ii. Mr Kandola on behalf of the respondent stated that there was no medical report available that the sponsor could not relocate to Uganda and no evidence available which establishes that requisite medication was unavailable to the sponsor in Uganda, which submissions are entirely factually correct. Mr Kandola also noted that there was some, albeit I consider slight, discrepancy in terms of the level of assistance which the sponsor's older sister, Nichola currently provides to Mr and Mrs Mitchell and in any event, the sponsor's oral evidence was to the effect that, if Nicola was asked to help Mr and Mrs Mitchell more, she probably would provide such help.
 - iii. However, the multiple facets and extensive arguments advanced on behalf of the appellant and the sponsor, as to why there are insurmountable obstacles to the sponsor relocating to Uganda to live with the appellant. Not the least of which obstacle is the fact that the sponsor is well advanced in pregnancy and is clearly being specifically and carefully monitored because of the complications arising from her diabetes. Additionally there is no challenge to the evidence that the sponsor and the appellant have a close relationship with the sponsor's parents who suffer from medical conditions and there is a material level of dependency of Mr and Mrs Mitchell upon the sponsor, who is their primary carer.

The appellant sponsor's ties to her parents, Mr and Mrs Mitchell are over and above the normal ties which subsist between adult children and their parents.

- iv. The evidence satisfies that the sponsor does indeed provide support to her father, Mr Mitchell who suffers from certain mobility problems and also has type II diabetes, these conditions also been documented by independent and unchallenged evidence within the appellant's bundle. Neither parent of the sponsor, in the circumstances, could realistically be expected to move to Uganda.
- v. The case law of **LM (Democratic Republic of the Congo) v SS HD [2008] EWCA Civ 325** (Sedley LJ's obiter comments), **Gulshan, MF (Nigeria) v SS HD [2013] EWCA Civ 1192** has been taken into account in assessing whether there are insurmountable obstacles to the appellant and the sponsor conducted their family life in Nigeria and taking into account the unborn child being a British citizen.
- vi. The sponsor would also have to relinquish a long-standing employment with no certain prospects of finding alternative employment in Uganda. This move would also involve the sponsor relinquishing her role as the main carer for her mother, who not only has type II diabetes, but has been diagnosed with leukaemia.
- vii. The combination of relevant factors set out above result in there being insurmountable obstacles to family life between the appellant and the sponsor continuing outside the United Kingdom. It is common ground that the sponsor is a British citizen born in the United Kingdom.
- viii. The decision of the respondent was not in accordance with the law and the relevant Immigration Rules and the appeal must be allowed pursuant to paragraph EX1 (b) of appendix FM of the Immigration Rules.

The grounds of appeal

5. The grounds of appeal stated the following which I summarise. Ground one is that the Judge made a material misdirection of law by finding that there are insurmountable obstacles to family life continuing outside the United Kingdom. The Tribunal has materially misdirected as to the interpretation of "insurmountable obstacles". in the case of **Gulshan (Article 8-new Rules-.correct approach) [2013] UKUT 00640 (IAC)** where the upper Tribunal expressed that insurmountable obstacles as being those circumstances that would render relocation impractical. The insurmountable obstacles highlighted in case law would be those circumstances that constitute serious difficulties (or impracticalities) in the appellant's ability to enjoy a family life outside of the United Kingdom. This would entail something that could not be overcome, even with a degree of hardship, and is not merely what may be considered undesirable by the appellant or the Tribunal.

6. The Judge refers to the sponsor performing a significant carer role for her parents and it is clear from the determination that the sponsor's sister, Nicola is able to provide assistance to the sponsor's parents if required. Therefore the needs of the sponsor's parents do not amount to insurmountable obstacles.
7. The Judge referred to the sponsor's medical requirements. There was no medical evidence available showing that the sponsor could not relocate to Uganda because of her parents' medical needs. The Judge therefore has no basis upon which to find that the appellants and the sponsor's circumstances amount to insurmountable obstacles.
8. The Judge refers to the sponsor's long-standing employment in the United Kingdom. The Judge therefore had no basis upon which to find that the circumstances amount to insurmountable obstacles. The decision of the Secretary of State is proportionate and does not amount to being unjustifiably harsh.

The hearing

9. Mr Kandola in his submissions at the hearing said that he relies on the Secretary of State's grounds of appeal. He stated that the definition of insurmountable obstacles must be that the appellant circumstances are such that they cannot be overcome and not simply undesirable. The determination at paragraph 7 states that the sponsor sister was able to provide assistance to the sponsor's parents. The long-standing employment of the sponsor does not amount to an insurmountable obstacle because she could find a job in Uganda. The Judge has materially erred and made an unsustainable decision.
10. Mr Lay on behalf of the appellant stated that the grant of permission was whether the facts amounted to insurmountable obstacles for the appellant and his sponsor to relocate to Uganda. The determination at paragraph 29, 31, 34, 36 and 37 made crystal clear findings that the appellant was seven and a half months pregnant with type II diabetes and that was found to be insurmountable obstacles for her to relocate to Uganda with the appellant. He further submitted that the sponsor's care of her parents with their medical conditions also constituted insurmountable obstacles. He submitted that there was no error of law in the determination.
11. Mr Kandola in reply stated that there was no evidence that the sponsor could not receive prenatal care in Uganda.

Decision on the error of law

12. The only issue in the appeal before the First-Tier Tribunal Judge was whether the appellant and his sponsor can relocate to Uganda or whether there were insurmountable obstacles in them doing so.

13. The Judge found on the evidence that there were insurmountable obstacles for the appellant and her sponsor relocating to Uganda to continue family life in that country. The Judge considered that the obstacles consisted of the sponsor's pregnancy which required constant monitoring because of her type II diabetes and her being her parents' main carer who have medical conditions.
14. The Judge refers to the case of **Gulshan**, which demonstrates that he was aware of the criteria to apply as to the factors which should be considered to be insurmountable that would render relocation impractical. He found that the appellants and sponsor's circumstances constitute serious difficulties (or impracticalities') in the sponsor's ability to relocate to Nigeria with the appellant.
15. The Judge found that the appellant had demonstrated that the sponsor could not relocate to Uganda when she was in her third trimester of her pregnancy with type II diabetes which required appropriate treatment and regular monitoring. The Judge in the circumstances, was entitled to find on the evidence that the sponsor was in the high-risk category as a mother and relocation to Uganda in such circumstances, would put her and her unborn child (a potential British citizen) at risk. (At the hearing, the six-week baby was in court) I find there is nothing perverse or irrational in the Judge's evaluation of the facts and the conclusion that he reached upon them. I also find that the Judge give sufficient reasons for his findings.
16. I find that a material error of law has not been established in the determination. In the circumstances the respondent's appeal must fail.

DECISION

The Secretary of State's appeal is dismissed

Signed by

Ms S Chana
A Deputy Judge of the Upper Tribunal

Dated this 10th day of September 2014