



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/03054/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 10 November 2017**

**Decision & Reasons
Promulgated
On 21 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MR EMMANUEL ABOLARINWA GANSALLO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Mold, Counsel, instructed by Daniel Aramide Solicitors

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Coll which was promulgated on 11 April 2017. The claim relates to a Nigerian citizen (aged 33 at the date of the First-tier Tribunal determination) married to a British citizen. The appeal arises from a decision of the respondent to refuse leave to remain, which appeal was dismissed under the Immigration Rules.

2. Upper Tribunal Judge McWilliam gave permission to appeal on 12 September 2017. This was not on any of the grounds advanced in the application but on a separate matter as follows:

“The appellant’s case was not advanced on the basis of **Chikwamba** and the judge found at [73] that the appellant did not wish to acknowledge the strengths in assessing his chances of success in respect of entry clearance; however it is arguable that the strengths as found by the judge should have been (and were not) factored into the proportionality assessment.”

3. The reference made in the grant of permission was to paragraph 73 which reads as follows:

“I find that the appellant and his wife have a pessimistic view of Nigeria. Both consider that it could take two or three years for the appellant to obtain entry clearance as a spouse. Neither referred to objective country evidence to support this assertion. The appellant would seem to have a strong case in respect of an application for a spousal visa: the Home Office has accepted that their relationship is genuine and subsisting and Ms McAvock noted that the income threshold was satisfied. Neither the appellant nor the wife wish to acknowledge the strengths in assessing his chances of success. I do not accept their figures of two to three years.”

4. The judge in paragraph 76 made reference to the recent case of **R (on the application of Agyarko v Secretary of State for the Home Department) [2017] UKSC 11** but came to the view that the appeal should be refused.
5. Mr Mold, who acts for the appellant, has advanced the appeal today with economy and moderation submitting that there is an error of law in the way in which the judge dealt with **Chikwamba** in two regards. First, as relates to the issue of “insurmountable obstacles” and secondly in considering whether this is a case where permission should be granted exceptionally outside the Rules. Mr Mold, entirely properly, conceded that this is not a case where it can be said with any agree of certainty that entry clearance would be granted were the appellant to return to Nigeria and apply in-country for entry clearance.
6. I have been taken to the judgment in **Agyarko** and, in addition, to the well-known decision of **Secretary of State for the Home Department v SS (Congo) [2015] EWCA Civ 387**. I have also helpfully been referred by Ms Ahmad, who acts for the Secretary of State, to the **R (on the application of Chen) v Secretary of State for the Home Department (Appendix FM - Chikwamba - temporary separation - proportionality) [2015] UKUT 00189 (IAC)** which deals the application of **Chikwamba**, particularly in respect of temporary separation while entry clearance is being sought.

7. Although Judge McWilliam properly raised this matter for consideration in the Upper Tribunal, when one examines the decision in the round, there is nothing wrong in the manner in which the judge dealt with considerations such as those in **Chikwamba** (though not expressly cited in the decision) or in **Agyarko** which was referred to.
8. When I suggested to Mr Mold in the course of submissions that the lack of anything approaching certainty in relation to prospective in-country entry clearance was fatal to his appeal, he graciously and properly conceded that it was. In the circumstances, therefore, there is no error of law and this appeal must be dismissed.

Notice of Decision

- (1) Appeal dismissed and decision of First-tier Tribunal affirmed.
- (2) No anonymity direction is made.

Signed *Mark Hill*

Date

21 November 2017

Deputy Upper Tribunal Judge Hill QC