Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/24233/2014

THE IMMIGRATION ACTS

Heard at Glasgow
on 14 April 2015

Determination issued
on 17 April 2015

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ALYSSA CHARLES D'SOUZA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Winter, Advocate, instructed by Livingstone Brown, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination, promulgated on 24 November 2014, by a panel of the First-tier Tribunal comprising Designated Judge Murray and Judge Watt.

2. After hearing from both parties, I was satisfied that ground 3 identifies material error of law on the basis of *Chikwamba* [2008] 1 WLR 1420 and *MA (Pakistan)* [2010] Imm AR 196.

© CROWN COPYRIGHT 2015

3. The panel found as fact that the appellant had the option of returning to India to make an application to return as the fiancée or as a spouse. The panel recognised that might be inconvenient and would cost money, but thought that it would not be unduly harsh, because the parties would be apart only temporarily. They decided against the appellant on the basis that there were no compassionate or compelling circumstances and no good reason to go outside the Rules.

4. Unfortunately, the panel in its analysis confused the tests of insurmountable obstacles and compassionate and compelling circumstances with the principle in *Chikwamba,* which is that a person should not be required to submit to the formality of applying from abroad without a good reason, such as a bad immigration history.

5. The respondent's Rule 24 response to the grant of permission submits that *Chikwamba* does not apply since amendment of the Immigration Rules in 2012 and the introduction of section 117A to D of the 2014 Act, but it does not develop that argument or refer to any further authority. Nor did Mrs O'Brien do so in her submissions. So far as I am aware, there is no case law to suggest that the *Chikwamba* principle does not remain good, and tribunals continue to apply it.

6. The appellant does not have a bad immigration history. The test in *Chikwamba* is not a high one. An Entry Clearance Officer would be no better placed to examine the issue – indeed, the panel decided the case on the basis that the appellant would succeed under the Rules. The panel identified no adequate reason why the appellant should be required to apply from India. This decision should therefore be reversed.

7. The determination of the First-tier Tribunal is **set aside**. The appeal, as originally brought to the First-tier Tribunal, is **allowed under Article 8 of the ECHR**.

8. No anonymity order has been requested or made.

Upper Tribunal Judge Macleman
15 April2015