IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/38789/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 July 2015	**On 10 August 2015**

Before

UPPER TRIBUNAL JUDGE STOREY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HUBERT OSEI WELBECK
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr S Whitwell, Home Office Presenting Officer
For the Respondent: Mr C Pulman, Counsel, instructed by Toltops Solicitors

DECISION AND REASONS

1. In a determination sent on 2 October 2014 First-tier Tribunal Judge Norton-Taylor allowed the appeal of the respondent (hereafter "the claimant") on Article 8 grounds against the decision by the appellant (hereafter "the Secretary of State or SSHD") refusing to vary his leave to remain. The SSHD challenges the determination of the FtT on two grounds only, both of which are carefully drawn.

2. The first ground maintains that the judge misdirected himself in wrongly treating s.117B(6) of the Nationality, Immigration and Asylum Act 2002 as

a determinative fact rather than one among a number of factors in a holistic assessment. The second ground, expressed as being in the alternative, avers that the judge erred in considering that the claimant stood to benefit from the "Chikwamba ([2008] UKHL 40) principle".

3. The first ground cannot succeed for the simple reason that even though the judge did say that the approach of treating s.117B(6) as determinative was "the right one", he expressly went on in the alternative at [82]-[85] to find that even if s.117B(6) was "only one factor among others" it remained in his assessment that the decision would be disproportionate. At [83] he referred back to his previous findings that it was reasonable to expect that the claimant's British citizen wife and children would remain in the UK. In [83] he also found that it would be unreasonable to expect the claimant and his wife and children to relocate to Nigeria. The SSHD made no challenge to these findings, and no steps have been taken to amend the grounds.

4. As regards the second ground, it must also fail for the reason that it challenges what was an additional reason for why the appeal was allowed, namely that on Chikwamba principles it would not be reasonable to expect the claimant to return abroad and apply from there for entry clearance. But that additional reason did not impact on the judge's finding that the decision under challenge ws in any event a disproportionate one because the claimant's removal in consequence of the decision would violate Article 8. What he said about Chikwamba was superfluous.

5. I would observe that in the course of submissions Mr Whitwell sought to identify a number of shortcomings in the judge's determination and did so with some cogency. However, as he himself accepted, these required him to go outside the grounds on which the SSHD had brought her appeal. No good reason has been advanced for permitting the SSHD to go beyond those grounds and indeed Mr Whitwell did not even request that I do so.

6. For the above reasons the SSHD's appeal is dismissed.

No anonymity direction is made.

Signed Date

Upper Tribunal Judge Storey