



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/14944/2015**

**Appeal Number:**

**IA/1495**

**0/2015**

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 4 May 2016**

**Determination issued  
on 10 May 2016**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**A B HADJI  
S HADJI**

Respondent

**Representation:**

For the Appellant: Mrs S Saddiq, Home Office Presenting Officer  
For the Respondent: Ms A Darvishzadeh, of Ethnic Minorities Law Centre

**DECISION AND REASONS**

1. The parties are as described above, but for continuity and ease of reference the rest of this decision refers to them as they were in the First-tier Tribunal.
2. The appellants are mother and daughter, born on 25 April 1983 and 18 March 2012, both citizens of Algeria. Anonymity orders have not been requested or made.
3. The other members of the family are the first appellant's husband, who is the father of the second appellant and of a younger child of the marriage.

The appellant's husband, originally also from Algeria, has become a UK citizen. The younger child is also a UK citizen.

4. The appellants came to the UK as visitors and then sought to remain on the basis of family and private life. Those applications were refused on 2 April 2015.
5. The appellants appealed to the First-tier Tribunal. Their case came before Judge David Clapham SSC on 25 August 2015. The appellants sought an adjournment, to bring further evidence to show that they could meet the financial requirements of the Rules. The respondent's representative opposed that, on the view that in any event the appropriate course would be for the appellants to return to Algeria to seek entry clearance.
6. I suspect that there was some confusion of approach at that stage on both sides. It might have been difficult for the appellants to show that their appeals could be allowed in terms of the Immigration Rules, if the appropriate evidence had not been presented with their applications. At the same time, I think the respondent was incorrect in submitting that even if financial requirements were met, there could be no *Chikwamba* based issue.
7. The judge went on to deal with this case as if it did turn on the *Chikwamba* question: whether there was any good reason to require the appellants to return to Algeria to make fresh applications for entry clearance which would (more than likely) succeed.
8. The judge found no such reason, and so allowed the appeals on human rights grounds.
9. The SSHD appeals to the Upper Tribunal on the following grounds:
  1. Failing to give reasons or any adequate reasons for findings on material matters ... the judge has not adequately explained why the facts of this case are sufficient to outweigh the policy reasons why the Secretary of State does not allow those in the UK as a visitor to "switch" into a different category.
  2. Making a material misdirection of law in any material matter ... the judge ... misinterprets the "*Zambrano*" principle at paragraphs 27 and 29 and arrived at an absurd position of assessing whether or not it would be reasonable for the 2 appellants to leave the UK to make an entry clearance application, leaving the sponsor and the British child in the UK. Whilst it is accepted that a British child cannot be forced to leave the UK, and cannot be expected to leave permanently, that is very far from requiring an assessment of whether it would be reasonable to expect that the British child accompanies his mother and sibling, on a temporary basis, while she applies for entry clearance, particularly given the child's young age.
10. The first ground of appeal is, plainly enough, directed against the appeal having been allowed on a *Chikwamba* basis.

11. The second ground of appeal I find difficult to follow. I cannot discern that it adds anything to the first. I see no reference to *Zambrano* in the decision.
12. I observed to the Presenting Officer that the grounds did not appear to take any issue with the judge having approached the case on the basis that the appellants would succeed on the merits under the rules, but for the requirement to apply from outside the United Kingdom. Mrs Saddiq responded the appellants had failed to establish that such was the case. She sought to argue that the appellants had not shown that they could meet the financial requirements of the Rules and that the appeal should not have succeeded outwith the Rules, whether the appellants were in the country or not.
13. I declined to permit the grounds to be amended to that effect. The application came far too late. The appellants had not been put on notice of any such case. The grounds of appeal to the Upper Tribunal effectively accepted that the question was simply whether or not the appellants should be expected to make their applications from outside the UK.
14. Mrs Saddiq submitted that the appeal should not have been allowed on a *Chikwamba* basis, because it was not disproportionate to expect the appellants to comply with that requirement.
15. I indicated that having kept the grounds to the terms on which permission was granted, I did not find them to disclose any error of law.
16. There was a respectable argument to be made that there is no grave inconvenience to any family members in expecting applications to be made from abroad in accordance with the rules. That requirement by itself can be complied with in various ways - by 2, 3, or 4 members of the family travelling to Algeria. There does not have to be a separation, and if there is one, it is not long term. However, confining the case to that one issue, it was capable of being resolved either way. The judge thought that there was no good reason to require fresh applications to be made from abroad. That was within his reasonable scope, taking account of all the circumstances before him.
17. The determination of the First-tier Tribunal shall stand.



5 May 2016  
Upper Tribunal Judge Macleman

