



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

Appeal Number: IA/03280/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 2 September 2014**

**Determination
promulgated
on 3 September 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

CHIMEZIE JAMES ANENE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr B Criggie, of Hamilton Burns WS
For the Respondent: Mr K Young, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Debra Clapham, promulgated on 25 April 2014, dismissing his appeal against refusal of an application based on family life.
2. The first ground of appeal to the Upper Tribunal is that the judge failed to explain why the appellant did not meet the terms of the Immigration Rules, including paragraph EX of Appendix FM (which is not a free-standing provision). As the ground says, the Rules are quite complex, but it was for the appellant (especially as he was legally represented) to demonstrate that he succeeded by reference to those requirements and to the evidence, not for the judge to take the initiative. He did not

show in the First-tier Tribunal any flaw in the analysis in the respondent's decision that he did not meet the requirements as to eligibility, as to his marital relationship, and as to any relationship with his partner's child.

3. The second ground is that paragraph 64 of the determination incorrectly applies the test of "insurmountable obstacles". The phrase is used, but as it is the wording of the Rule there is nothing wrong in that, as long as it is correctly understood. The discussion is in terms of practical difficulties rather than literal impossibility. More to the point, the finding is an alternative to the judge's conclusion that there is no genuine and subsisting marriage, in which no legal error has been suggested and none is apparent.
4. The third ground is lack of consideration of the best interests of the child of the appellant's partner. This is not a fair representation of the determination, in particular at paragraphs 58, 60, 63 and 64. The child is being brought up mainly by her grandparents. There was no evidence that the appellant has any meaningful relationship with her, and none that his departure from the UK would be adverse to her interests.
5. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law, and its determination shall stand.



2 September 2014
Judge of the Upper Tribunal