



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

Appeal Number: HU013782015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 28<sup>th</sup> July 2017**

**Decision & Reasons  
Promulgated  
On 10<sup>th</sup> August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCGINTY**

**Between**

**MOHAMMAD JAHED HOSSAN  
(ANONYMITY DIRECTION NOT MADE)**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Ms F Allen, Paul John & Co Solicitors

**DECISION AND REASONS**

1. This is the Respondent's appeal against the decision of First-tier Tribunal Judge Chamberlain, promulgated on 5<sup>th</sup> October 2016, in which he allowed the Appellant's appeal against the Respondent's decision to refuse to grant leave to remain on the basis of the Appellant's family life in the UK. The Respondent's decision was dated 25<sup>th</sup> June 2015.

2. The Respondent has sought to appeal against that decision for the reasons set out within both the original and the renewed Grounds of Appeal, which I have fully taken account of in reaching my decision. These are a matter of record and are therefore not repeated in their entirety here. However, in summary it is argued that the judge erred in allowing the appeal with consideration to paragraph EX.1. of the Immigration Rules, in respect of whether there would be insurmountable obstacles to family life with the Appellant's partner continuing outside of the United Kingdom. It is said that the judge had not addressed the then Court of Appeal decision of **Agyarko and Others, R (on the application of) v Secretary of State for the Home Department [2015] EWCA Civ 440** as to the meaning of insurmountable obstacles, and the fact that the Court of Appeal at paragraph 25 of the judgment stated that the mere fact that Mr Benette in that case is a British citizen, had lived all his life in the United Kingdom and had a job here and hence might find it difficult and might be reluctant to relocate to Ghana and continue their family life there, could not constitute insurmountable obstacles to so.
3. It is argued that the judge treated inconveniences and difficulties such as employment and reluctance as being determinative. It was further argued that the judge found that there was a very high risk of terrorism in Bangladesh at [32], but it said that the current international threat of terrorism level in the UK is severe. It is also argued that the Sponsor herself has two siblings in the UK who could help look after her parents, with the aid of Social Security help if needed.
4. It was said that there is no engagement by the judge as to whether exceptional circumstances for the Appellant not to seek entry clearance from abroad following the case of **R (on the application of Chen) v Secretary of State for the Home Department (Appendix FM Chikwamba - temporary separation - proportionality) (IJR) [2015] UKUT 00189**.
5. Within the renewed Grounds of Appeal reference is made again to the case of **Agyarko** and again it is contended that the judge failed to properly take account of that case in finding that there were insurmountable obstacles in this case.
6. Permission to appeal was originally refused by First-tier Tribunal Judge Kelly on 2<sup>nd</sup> May 2017, but was then subsequently granted by Upper Tribunal Judge Gleeson on 19<sup>th</sup> June 2017 who found it was arguable that the First-tier Tribunal did not properly address the Court of Appeal case of **Agyarko** and the guidance given therein on what she said may well have been considered to be very similar to facts to this appeal. In the Supreme

Court decision in **Agyarko and Ikugu v Secretary of State for the Department [2017] UKSC 11** the Court upheld the Court of Appeal decision.

7. I have also considered and fully taken account of the Claimant's Rule 24 reply in this case prepared by Ms Allen in which she sets out in some detail what she says the differences are between the Appellant's case and Sponsor's case in this appeal and the decision in **Agyarko**. I am also grateful to the submissions from both the representatives, which I have fully take account of and which are fully recorded within the Record of Proceedings.
8. Having carefully considered the decision of First-tier Tribunal Judge Chamberlain it is clear that the First-tier Tribunal Judge at paragraphs 12 and 13 properly set out the criteria under paragraph EX.1. and the definition of insurmountable obstacles at paragraph EX.2. that had to be met by the Appellant and the partner in terms of there being very significant difficulties to them continuing their family life together outside of the UK and which could not be overcome or would entail very serious hardship for the Applicant or her partner.
9. I find that the judge has addressed that issue and given clear, adequate and sufficient findings for it.
10. Although it was suggested by Upper Tribunal Judge Gleeson that the decision in this case is very similar to the decision in the case of **Agyarko** in which both the Court of Appeal and the Supreme Court refused to interfere with the consideration, in that case it was said that there would not be very significant obstacles.
11. The factors in **Agyarko** were set out in paragraph 21 of the Supreme Court decision, in which it was noted that Mrs Agyarko's case fell outside the Rules and that her case was that she was a British citizen who was settled in the UK and had developed strong social ties in the UK and that her family ties in Ghana had been weakened by a long absence and most of her friends had moved abroad. In that case it was said that there would be consideration given to the separation from her husband in delaying obtaining entry clearance.
12. It is noted within the Supreme Court decision at paragraph 23 that within the refusal notice it is said that she had a genuine and subsisting relationship with a British partner. The question there that was considered by the Supreme Court, and by the Court of Appeal previously, was as stated at paragraph 25 of the Court of Appeal decision in **Agyarko** that the mere fact that someone is a British citizen, and lived all his life in the

United Kingdom and has a job here, hence might find it difficult and might be reluctant to relocate and continue life abroad, could not constitute insurmountable obstacles to his doing so.

13. The linked case that was considered by the Supreme Court in **Ikugu** was a case where the Appellant was going for fertility treatment and there was consideration given to that and the husband's employment, but again those were not found to match insurmountable obstacles.
14. But the point in **Agyarko** was in terms of the Court of Appeal making clear that just being a British citizen and living all your life in the UK and having a job here does not in itself amount to insurmountable obstacles. However, as Ms Allen properly points out within both the Rule 24 reply and in all the submissions today the position found by First-tier Tribunal Judge Chamberlain in this case was actually somewhat different.
15. Judge Chamberlain, when considering whether or not there will be very significant difficulties faced by the Sponsor in continuing her family life with the Appellant outside the UK, which cannot be overcome or would entail very serious hardship for the Applicant or for the partner, made specific findings at paragraphs 17 through to paragraph 21 in terms of the particular difficulties that the Sponsor would face in this particular case in terms of actually residing in Bangladesh. For example at paragraph 17, he referred to the Operational Guidance Notes from the Respondent and the Country Information and Guidance in Bangladesh and particularly the Country Information and Guidance on Women from December 2014.
16. He found at paragraph 18 that at paragraph 2.4.5 on page 43 of the Respondent's own guidance it was stated that the government in Bangladesh is permitted to require foreigners to reside in particular places and to impose 'any restrictions' on their movements and that at paragraph 2.4.1 the restriction on freedom of movements for women is said to be usually to restrict them to the vicinity of their homes and local neighbourhoods. The Judge went on to note that the report further stated that the Islamic practice of purdah may further limit their participation in activities outside the home, such as education, employment and social engagements.
17. At paragraph 19 the Judge further quoted from the Country Information and Guidance from the Home Office at paragraph 2.4.2 which said that *"many women in Bangladesh face multiple intersecting forms of discrimination. Women's enjoyment of human rights is generally impacted by the social and cultural constructions of gender. In Bangladesh women's roles and status are marked by duties as*

*homemakers and more specifically as mothers. These stereotypes place them in a disadvantage and prevent women from fully enjoying their rights”.*

18. At paragraph 20 the Judge referred to how within the guidance it was said that traditionally women are often discouraged from participating in public life and were mainly recognised for their reproductive role and that in the case of employment the employers in Bangladesh still tend to employ men rather than women.
19. At Paragraph 21 the Judge went on to refer to the problems which couples may face in terms of inter-religious marriage in Bangladesh and how, particularly when the couple was not economically independent, that may put them in a precarious position because of the religious disapproval of such a marriage.
20. The Judge found that Mrs Hossan herself had lived in the UK all of her life and had no connection with Bangladesh apart from the relationship with the Appellant and that she did not speak Bengali and had never been to Bangladesh. He also took account of the fact that she had a mother who was suffering from severe mental health and dementia problems at paragraph 23.
21. But in terms of the findings at paragraph 30 the judge went on to find that if she were to move to a country which she has limited knowledge and to which she has not been and where she does not speak the language, where it is said to be very culturally different from the United Kingdom, with very different views on the role of women in society, as was evidenced by the Respondent’s own guidance, he found that she would face very significant difficulties which would entail serious hardship for her in Bangladesh in terms of the significant restrictions in her rights and freedoms. He found that she would be severely restricted in her ability to go out and about without her husband and that she would be unlikely to secure employment, let alone in her chosen field, given the attitude towards women and employment. She would be, he found, entirely reliant upon the Appellant financially.
22. Although the judge has not specifically mentioned the case of **Agyarko** the judge is not required to specifically mention every single possible case that may apply providing they have applied properly the principles set out within the relevant cases.
23. Judge Chamberlain in this case found that it was not simply a fact of the Sponsor was a British citizen, but he actually had given very clear, adequate and sufficient reasons which were open to him on the evidence,

to find that she will be severely restricted in her ability to find employment and to go out without her husband within Bangladesh, which would be a restriction on her rights and ability to move around freely. Judge Chamberlain clearly considered that was a significant restriction on her right to a private and family life and that that would be a very significant difficulty which either could not be overcome or would entail very serious hardship for the Applicant and their partner. Given the fact that they are the cultural difficulties that the Sponsor as a female who has had a career in the UK would face in Bangladesh, I find that those were findings open to the judge on the particular facts of this case in light of the findings that he made regarding the difficulties that she would face as a woman in the specific circumstances in Bangladesh, not simply as a British citizen never having lived abroad.

24. In respect of the other Ground of Appeal which was mentioned within the original Grounds of Appeal that the Judge had not engaged with whether there were any exceptional circumstances for the Appellant not to seek entry clearance from Bangladesh, as has been properly conceded by Mr Tarlow, that was not actually part of the original decision, nor a factor raised before the original First-tier Tribunal Judge. Therefore, it was not a matter that the Judge was required to consider. It cannot be an error of law for the Judge not to deal with something which is not in dispute before him and which did not form part of the Respondent's case.
25. Therefore, having considered all the Grounds of Appeal and the submissions, both in the original and the renewed grounds, I do not consider that the decision of First-tier Tribunal Judge Chamberlain does contain a material error of law, although other judges may have found differently on the facts, it was a finding which was open to him on the facts that he found. I therefore dismiss the Respondent's appeal.

### **Notice of Decision**

The decision of First-tier Tribunal Judge Chamberlain does not contain a material error of law and is maintained.

No anonymity direction is made.

Signed

Date 5th August 2017

RFM<sup>c</sup>ginty

Deputy Upper Tribunal Judge McGinty