



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

Appeal Number: HU/24574/2016

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre  
On 9 May 2019**

**Decision & Reasons  
Promulgated  
On 23 May 2019**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

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

Appellant

**and**

**FATIMAZOHRA [A]**

Respondent

**Representation:**

For the Appellant: Mr C Howells, Senior Home Office Presenting Officer

For the Respondent: Ms L King, instructed by Qualified Legal Solicitors

**DECISION AND REASONS**

1. The claimant is a citizen of Morocco who was born on 23 August 1995. She came to the United Kingdom on 17 June 2015 as a visitor together with her son. They had previously lived in Spain and her son, who was born on 28 November 2017, is a Spanish citizen. Prior to coming to the UK, on 29 May 2014, she went through an Islamic marriage with the sponsor (Mr [IM]). The claimant's son is from a former relationship. When they came to the UK, they lived with the sponsor. The claimant and sponsor married at the Cardiff Registry Office on 22 September 2015.

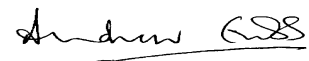
2. On 11 November 2015, the claimant made an application for leave to remain based upon her private and family life in the UK. That application was refused by the Secretary of State on 22 January 2016.
3. The claimant appealed to the First-tier Tribunal. In a decision sent on 20 October 2017, Judge Rolt allowed the claimant's appeal under Art 8 of the ECHR.
4. The Secretary of State was granted permission to appeal against that decision by the First-tier Tribunal (Judge Saffer) on 3 April 2018.
5. The appeal was initially listed before me on 3 January 2019.
6. At that hearing, it was accepted by the Secretary of State that Judge Rolt was entitled to find that it would be disproportionate to expect the claimant to permanently relocate to Morocco to live there with her son. However, Judge Rolt's finding, based upon Chikwamba v SSHD [2008] UKHL 40, that it would also be disproportionate to expect the claimant temporarily to go to Morocco in order to seek entry clearance was flawed as the judge had wrongly determined that issue on the basis that the claimant met the requirements of the Immigration Rules for entry clearance as a partner. It had been conceded before Judge Rolt that she did not have the required English language qualification.
7. In a decision dated 16 January 2019, I concluded that the First-tier Tribunal had erred in law in allowing the claimant's appeal on the basis of Chikwamba. To that extent, I set aside Judge Rolt's decision and directed that the matter be re-listed in the Upper Tribunal for a resumed hearing in order to re-make the decision under Art 8 exclusively on the issue of whether it was proportionate for the claimant to return to Morocco in order to seek entry clearance.
8. At the resumed hearing on 9 May 2019, Mr Howells, who represented the Secretary of State, invited me to allow the appeal outright under Art 8. He accepted that, on the evidence now before the Tribunal, the claimant had the required English language certificate. He also drew my attention to the evidence showing an impact upon the sponsor if the claimant was required to return to Morocco and upon her son if removed. He accepted, referring to the view of Lord Reed in R (Agyarko) and Another v SSHD [2017] UKSC 11 at [51] that as the claimant was likely to succeed in gaining entry clearance under the Immigration Rules there was no public interest in her removal. When taken with Judge Rolt's unchallenged finding that it would be disproportionate to remove her permanently to Morocco, Mr Howells accepted that the appeal should be allowed under Art 8 of the ECHR.
9. In the light of that concession, which, on the evidence now before the Upper Tribunal, is entirely properly made, I am satisfied that the Secretary of State's decision to refuse the claimant leave to remain breached Art 8 of the ECHR.

10. For these reasons, I re-make the decision allowing the claimant's appeal under Art 8 of the ECHR.

**Decision**

11. The claimant's appeal is allowed under Art 8 of the ECHR.

Signed



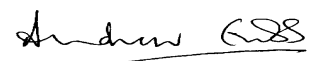
A Grubb  
Judge of the Upper Tribunal

22 May 2019

**TO THE RESPONDENT**  
**FEE AWARD**

Judge Rolt, despite allowing the appeal, did not make a fee award. As my decision to allow the appeal turns upon evidence only now available at the time of the Upper Tribunal, and not at the date of the claimant's application for leave, I do not consider this an appropriate case to make a fee award and I do not do so.

Signed



A Grubb  
Judge of the Upper Tribunal

22 May 2019