



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

Appeal Number: OA/12265/2014  
OA/12270/2014, OA/12276/2014  
OA/12277/2014, OA/12282/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 January 2016**

**Determination Promulgated  
On 8 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**ADETOUN ALIMAT ADENUBI**

**DOA**

**DAA**

**HTA**

**HKA**

**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Uwe-Ezeoke (for Waterdenes Solicitors)

For the Respondent: Mr P Duffy (Presenting Officer)

**DECISION AND REASONS**

1. This is the appeal of Adetoun Alimat Adenubi and her named dependents identified above against the decisions to refuse their applications for entry clearance to join the Sponsor, who is respectively their spouse and parent. The appeals having been dismissed by the First-tier Tribunal, they now appeal to the Upper Tribunal with permission
2. The First Appellant (though for convenience I shall henceforth style her simply as "the Appellant") explained in her witness statement that she had met the Sponsor in October 2004 and their relationship developed from there. At that time he was married with three children, to his first wife, but she was nevertheless impressed by his attitude to her daughter DOA, then an infant, that she contemplated having a relationship with him. She visited him in the United Kingdom on a number of occasions. In June 2005 he visited her in Nigeria and they went through a traditional marriage ceremony on 2 June 2005.
3. His first civil marriage in the United Kingdom having ended, he subsequently married his second wife and sponsored her entry as his spouse. The Appellant kept up a relationship throughout these marriages, visiting him in April 2005, October 2005 (when their daughter DAA was conceived: she was subsequently born 8 August 2006), March 2007, June 2008, February 2009, November 2009, June 2011 and April 2012. The Sponsor visited her in Nigeria and during his stay, their twins HTA and HKA were conceived in December 2011; they were subsequently born 24 August 2012. Their relationship could thus be seen as having endured ever since they first met and he had treated her daughter DOA as his own: she even bore his name as her own father was not involved in her life.
4. She had been awarded a BA (Hons) in Business (Finance) from the University of Wales in January 2012, and had submitted the original certificate with her entry clearance application, which was eventually returned to her by the Entry Clearance Officer following her application's refusal.
5. There was evidence of social media exchanges between them by way of an August 2004 extract from a Yahoo Account in which the Sponsor describes the Appellant as "princess" and enquires after the well-being of DOA, in messages that include various expressions of affection and intimacy. A document sworn at the Lagos Magistrates Court recorded DOA taking the [Sponsor]'s surname as from April 2011.
6. The First-tier Tribunal directed itself that the claims of the dependent children would necessarily fail if their mother's appeal was dismissed as there was no viable independent case for their admission (there being no serious reasons for thinking their exclusion undesirable and no suggestion that the Sponsor had sole responsibility for them). The principal issue that concerned it was whether the relationship was a subsisting one. In this respect, the history of the relationship caused concern: the Appellant had apparently entered into a traditional marriage with the [Sponsor] only

days after his civil marriage to the wife that he then sponsored to come to this country. Although it was said that that marriage had broken down quickly it took nine years for it to be finally dissolved; and given the failure of that other relationship, then given the fact they had had children together, it was to be expected that they would have lived together much sooner.

7. There was no evidence beyond their passport stamps that they enjoyed a life together, and the photographs provided were uncertain as to their date: the 200 or so that she claimed to have provided with the application had not been put forward on appeal. The telephone records that had been produced were for the period running up to the hearing rather than that before the application. Witnesses who might have been called, such as the Appellant's uncle in the United Kingdom or other friends and relatives, had not been produced. There was in general a lack of photographs, emails and other social media contact, and other sources of potentially corroborative material, for example from the childrens' school or their respective churches, had not been brought forward.
8. As to the Appellant's English language capability, the First-tier Tribunal was not satisfied that the original degree certificate had been before the Entry Clearance Officer.
9. Permission to appeal was sought and was granted on 27 November 2015 on the grounds, as to English language proficiency, that the First-tier Tribunal had apparently erred as to the availability of the evidence as to the Appellant's (English-taught) degree from the University of Wales; and as to the question of genuine and subsisting relationship, it was unclear why little weight had been attached to a volume of email messages between the spouses that potentially constituted evidence of the relationship's subsistence.
10. Before me Mr Uwe-Ezeoke emphasised the extent of the evidence which had been before the First-tier Tribunal: there had been emails, for example, and the Tribunal failed to take account of the large number of photographs that had been provided with the application. Mr Duffy contended that the Tribunal below had not necessarily intended to suggest that there was no such material before it: merely that, given the length of the relationship, there was a lack of emails and other material. Its reasoning would have been no different had it expressly noted that there were some emails before it.

### **Findings and reasons**

11. Appendix FM requires at E-ECP.2.6 that "The relationship between the applicant and their partner must be genuine and subsisting." Similar language was construed in relation to earlier Immigration Rules in *GA ("Subsisting" marriage) Ghana* [2006] UKAIT 00046, where the Tribunal stated that "the requirement ... that a marriage be 'subsisting' is not limited to considering whether there has been a valid marriage which

formally continues. The word requires an assessment of the current relationship between the parties and a decision as to whether in the broadest sense it comprises a marriage properly described as 'subsisting'."

12. It is quite clear that the Appellant and Sponsor have had a relationship of some kind for a very significant period. Their evidence by way of witness statements was to just such effect. It is not disputed that they have had children together in 2006 and 2012. There was some evidence of their ongoing contact by way of photographs before the First-tier Tribunal, though it would seem that neither party to the appeal provided the Tribunal with those that accompanied the original application. There were at least some emails that expressed intimacy and mutual devotion. It seems to me that, in the light of the material that was before the First-tier Tribunal, it was wrong to dismiss the appeal essentially for want of corroboration, without making the clearest of findings on the oral and witness statement evidence which itself gave a detailed account of the development and maintenance of an unconventional but not necessarily implausible relationship.
13. As was pointed out in the grounds of appeal, the guidance to Appellants to the First-tier Tribunal expressly counsels against the provision of original documents by post. So it was unsurprising that the original certificate was produced only at the hearing. The original certificate had been given to the Entry Clearance Officer, as was asserted in the original grounds that launched the appeal and again in the Appellant's witness statement. Accordingly the First-tier Tribunal made an error of fact of sufficient severity, given the Appellant had done all that was reasonably possible to correctly appraise her of the true situation, to amount to an error of law.
14. For these reasons the appeal requires re-hearing. As there is no solid platform of facts upon which the Upper Tribunal might itself build, remittal to the First-tier Tribunal is appropriate.

## **Decision**

The appeal is remitted for hearing afresh in the First-tier Tribunal.

Signed

Date 20 January 2016

A handwritten signature in black ink, appearing to read 'MASymes', with a long, sweeping underline that extends to the left.

Judge Symes  
Deputy Upper Tribunal Judge Symes