



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**  
**Extempore Decision**

Case Nos: UI-2021-000269  
UI-2021-000270  
UI-2021-000273  
UI-2021-000274

First-tier Tribunal Nos: HU/18507/2019  
HU/18509/2019  
HU/18531/2019  
HU/18506/2019

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 1 February 2024**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**MS MODUPE MUSLIMA ADENUSI (FIRST APPELLANT)  
MR HUSSIEN ADEYEMI KEHINDE ADENUSI  
MR HASSAN ADEKUNLE TAIWO ADENUSI  
MR ISMAIL ADEIFE IDOWU ADENUSI**

**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Ms S Ferguson, Counsel

For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

**Heard at Field House on 26 January 2024**

**DECISION AND REASONS**

1. By my decision promulgated on 24 March 2023 I set aside the decision of the First-tier Tribunal. I now re-make the decision.
2. The appellants are citizens of Nigeria. The first appellant is the mother of the other three appellants, all of whom are children. The first appellant married her husband ("the sponsor") in October 2018. The sponsor is a British citizen. He is not the father of the first appellant's children.

3. In July 2019 the appellants applied for entry clearance to join the sponsor.
4. In October 2019 their applications were refused for several reasons, including that the respondent did not accept that the relationship between the first appellant and sponsor was genuine and subsisting.
5. Ms McKenzie and Ms Ferguson confirmed that there was only one remaining issue in dispute (given the findings of fact preserved from the First-tier Tribunal) which is whether the first appellant and sponsor are in a genuine and subsisting relationship. Ms McKenzie acknowledged that if I were to decide this issue in the appellants' favour the appeal would fall to be allowed.
6. There was some discussion at the hearing, with reference to several cases, as to the relevant legal principles when evaluating whether a marriage is genuine and subsisting. I do not consider it necessary to refer to these cases or set out the submissions on them as, in my view, the applicable law is straightforward. In summary:
  - (a) The burden is on the appellant to establish, to the standard of the balance of probabilities, that the marriage is genuine and subsisting.
  - (b) It is necessary to consider the current relationship to determine whether it is subsisting (and it is not enough that there has been a valid marriage).
  - (c) In assessing whether a marriage is subsisting, there are no specific documents that must be adduced (although, plainly, a case is likely to be assisted by the production of corroborating documentary evidence) and it is necessary to consider all of the evidence in the round.
7. The most significant evidence before me is that of the first appellant and the sponsor, both of whom submitted witness statements and gave oral evidence. The sponsor gave evidence through an interpreter. The first appellant did not require an interpreter.
8. Ms McKenzie, in a well structured and careful cross-examination of the first appellant and sponsor, posed a range of questions that tested the consistency of their accounts and explored whether the relationship is subsisting and genuine.
9. Several questions were asked about the sponsor's most recent visit to Nigeria where his and the first appellant's evidence was that they stayed together for approximately a month. The first appellant and sponsor gave consistent answers on topics such as how they spent their time together and the food they ate and enjoyed. The consistency extended to answers given to very specific questions, such as what they ate on their last meal together at the end of the visit.
10. Ms McKenzie asked about the first appellant's visits to the UK. There was an inconsistency in the answers given to a question about where they ate after a day out in London. The first appellant's evidence was that they ate in the Chinese

restaurant; the sponsor's evidence was that they ate in McDonald's. Ms McKenzie highlighted this discrepancy in her submissions.

11. The first appellant submitted very little documentary evidence to corroborate the subsistence of the relationship. For example, there were no photographs of the sponsor's recent visit to Nigeria. And, as argued by Ms McKenzie, the documentary evidence that was submitted was of little assistance. Evidence of the sponsor's flight to Nigeria was provided but this does no more than show that he travelled to Nigeria at the time he says he did; it says nothing about what he did, and where he stayed, in Nigeria. The print out of WhatsApp calls that was lodged is equally as uninformative, as it did not contain any written messaging or even a record of the length of the calls.
12. Despite the lack of corroborating documentary evidence that could have been provided and which could have strengthened the appellants' case, I have nonetheless reached the conclusion that they have discharged the burden of establishing that, on the balance of probabilities, the relationship between the first appellant and the sponsor is genuine and subsisting. This is not only because the oral evidence of the first appellant and sponsor was consistent (with one notable exception concerning where they ate on a particular occasion) but also because they answered questions in a way that appeared straightforward and honest. Based on the oral evidence, I have formed the firm view that the first appellant and sponsor are, and have been, telling the truth about the relationship.
13. As the only issue in dispute is whether the relationship is genuine and subsisting and I have decided this issue in the appellants' favour, it follows that the appeal must be allowed.

**Notice of Decision.**

14. The appeal is allowed.

**D. Sheridan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**30 January 2024**