

KH  
Heard at Field House  
On: 21 January 2005

OA and OA (Intention to co-habit:  
"intervening devotion") Nigeria  
[2005] UKIAT 00026

## **IMMIGRATION APPEAL TRIBUNAL**

Corrected transcript of decision given at hearing

Signed: 21.01.2005

Issued: 28.01.2005

**Before:**

**Mr J G Freeman (vice-president)**  
**Mr S J Widdup**  
**Mr C Thursby**

**Between**

**and**

**appellants**

**and**

**Secretary of State for the Home Department**

**respondent**

Representation:

The sponsor ( ) in person  
Miss P Ramachandran for the respondent

## **DETERMINATION AND REASONS**

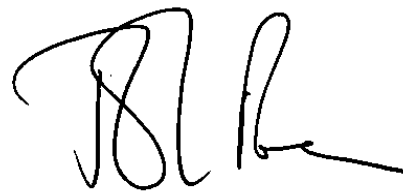
This is an appeal by two citizens of Nigeria, respectively the husband and the daughter of the sponsor, against the decision of an adjudicator, Mr E A W Jones, sitting at Taylor House on 27 May 2004. Permission to appeal was given mainly on the question of whether the adjudicator had limited his consideration of whether the claimant and his wife intended to live together to the evidence as at the date of decision. This is based on what the adjudicator said at paragraph 17 of his decision,

*The evidence of contact between the parties is mainly after the decision. This is surprising if they have been together since March 2002. This raises further doubts as to the subsistence of the marriage.*

2. Miss Ramachandran explained that paragraph on the basis that what the adjudicator says there about post-decision evidence really relates to his credibility finding, to the extent that he makes one, in that paragraph; and not to what he did

or did not consider relevant to the main issue of intention to live together. So far as the credibility finding is concerned, it says no more than that this "raises further doubts" as to the subsistence of the marriage; but we should be prepared to accept that the adjudicator's other findings on that point, taken together with it, would have supported a dismissal of the appeal.

3. We are not, however, satisfied that the adjudicator did regard the evidence of contact produced before him as a serious relevant issue in itself. Clearly what used to be called "intervening devotion" must be as relevant as a matter of law to intention to live together as it used to be to primary purpose; but, contrary to the position with for example the standard of proof in asylum cases, this has not for some time been adjudicators' daily fare, and we do not think we can assume that this adjudicator did regard "intervening devotion" as relevant to the main issue before him. If he had done so, then in our view he would have needed to deal with it in more details than he did.
4. We are not clear exactly how much of the voluminous evidence put before us was before the adjudicator; but in our view the adjudicator did make a mistake of law on this point, and the whole of the relevant evidence will have to be re-examined. It is for this reason that we allow the appeal and remit the case, not to Mr Jones. The next adjudicator will also have to consider the issues raised as to maintenance, on which the relevant evidence will be as at the date of decision. The sponsor is strongly advised to get represented again for the further hearing, whether by IAS who appeared for her before the adjudicator, or some other reputable body.

A handwritten signature in black ink, appearing to be 'JF', with a long horizontal stroke extending to the right.

**John Freeman**

*(approved for electronic distribution)*