



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003395

First-tier Tribunal No:
EA/08240/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

10th October 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Border Force Officer,
Heathrow Airport**

Appellant

and

**Gifty Kangah Appoh
(no anonymity order made)**

Respondent

Representation:

For the Appellant: Mr E. Terrell, Senior Home Office Presenting Officer
For the Respondent: Mr T. Boyebonwo, Citi Law LLP

Heard at Field House on 4 October 2023

DECISION AND REASONS

1. The Respondent is a national of Ghana born on the 30th March 1995. On the 25th May 2023 the First-tier Tribunal (Judge Davey) allowed her appeal under the EUSS, reversing the decision of a Border Force Officer (BFO) at Heathrow Airport to cancel her family permit. The BFO now has permission to appeal against Judge Davey's decision.

2. The substantive matter in issue between the parties is whether Ms Appoh's marriage to a Mr Stephen Prempeh, a Dutch national residing in the UK, is a marriage of convenience. The Secretary of State for the Home Department had issued Ms Appoh with pre-settled status as the spouse of an EEA national on the 14th May 2021. However upon her presenting to the BFO at Heathrow on the 10th July 2022, she had been unable to answer basic questions about her husband, and had given confusing and contradictory evidence about the history of the relationship. Mr Prempeh himself could not be contacted. The BFO concluded that this was a marriage of convenience and cancelled Ms Appoh's status.
3. Ms Appoh appealed to the First-tier Tribunal. Ms Appoh and Mr Prempeh both attended the hearing to give live evidence. Judge Davey heard them both cross examined. He noted that this exercise did not produce any discernible contradictions or differences in their account of their current relationship. 18. They gave mutually consistent evidence about the marriage itself. He concluded that although the BFO had been justified in reaching the conclusion that he did, on the evidence presented on appeal this was a genuine and subsisting marriage. He allowed the appeal.
4. The challenge to that decision is a simple one. It is submitted that Judge Davey produced an answer to the wrong question. He was not tasked with assessing whether Ms Appoh and Mr Prempeh's relationship is subsisting today. The question was whether, at the date of the marriage in November 2020, it had been a marriage of convenience. That is because it is only by focusing on the intentions of the parties at the date that the marriage was entered into that we are able to determine whether the predominant purpose off it was to circumvent immigration control. See Rosa v SSHD [2016] EWCA Civ 14:

41....It may be useful to contrast a marriage of convenience with a "genuine" marriage (indeed, Underhill LJ treated them as antonyms at paragraph 6 of his judgment in *Agho*), but the focus in relation to a marriage of convenience should be on the intention of the parties at the time the marriage was entered into, whereas the question whether a marriage is "subsisting" looks to whether the marital relationship is a continuing one. I am satisfied, however, that the tribunal understood that the ultimate question was whether it was a marriage of convenience, not whether the marriage was subsisting, and that its findings provided a proper basis for the conclusion it reached that the marriage was one of convenience. The tribunal was correct to look at the evidence concerning the relationship between the appellant and her husband after the marriage itself (both before, during and after the husband's period of imprisonment), since that was capable of casting light on the intention of the parties at the time of the marriage. The tribunal's finding that "it is a marriage of convenience and always has been" (paragraph 26) covered the position at the time of the marriage. The wording suggests that the tribunal had in mind the possibility that a marriage of convenience might turn into a genuine marriage in the course of time, but the finding that it had always been a marriage of convenience makes it unnecessary to consider that potentially interesting issue in the present case.

5. In his submissions Mr Terrell for the Secretary of State highlighted three particular passages in the First-tier Tribunal decision to illustrate his case that the Tribunal had lost sight of that central question. The Tribunal had acknowledged that the Respondent's performance at interview had legitimately given rise to concerns on the part of the BFO. The decision contrasts her answers at interview with the consistent and apparently credible evidence given by the live and written witnesses before saying this:

30. It is perhaps surprising that in preparation of this case which appears to be scant no photographs or evidence was particularly addressing the life they currently live in the UK but in the circumstances whilst its absence is noted I do not find that that is a determinant of the issues of whether their marriage is one of convenience. I note that they share as husband and wife the same address and that third parties know them as husband and wife rather than people who are connected or live together and know of their family and religious circumstances. In the light of that I find the Appellant has discharged the burden of proof that on a balance of probabilities it was and remains a genuine marriage *albeit its practical character may well have changed over time.*

(emphasis added). Then perhaps more problematically:

"28. I do not speculate as to what its real state was back in 2018, 2019 and 2020..."

6. As to this latter paragraph, Mr Terrell submits that the Tribunal's only job was to make a finding on what the real state of the marriage was in 2020. He also points to the Tribunal's remark about Ms Appoh's claim that she was put under pressure on arrival at Heathrow [at 14]: "I concluded that these allegations fairly reflected her trying to avoid the consequences of her conduct and *perhaps at that stage the real nature of her relationship with Mr Prempey*".
7. For the Respondent Mr Boyebonwo argued that when the decision is read as a whole it is clear that the Tribunal directed itself properly. He pointed out that this was a marriage which had already been accepted as genuine by the Secretary of State who had granted Ms Appoh pre- settled status. The present proceedings arose solely because of an interview conducted with her when she had just stepped off a long flight, was frightened, stressed, tired and confused. Once all of the evidence was assessed together, it was apparent that this was in fact a clearly genuine marriage entered into for no other purpose than her and Mr Prempeh living together permanently as man and wife. The judge had before him not only their credible evidence about their relationship, but the evidence of several acquaintances and friend, as well as documentary evidence showing that they shared banking facilities and utility bills, and had lived together at the same address throughout the relevant period. He asked me to find no error of law.
8. I did not find this an easy decision. On the one hand, the passages set out above do tend to indicate that the Tribunal's focus was on the present state of the marriage rather than the intentions of the parties in November 2020. I have however come to the conclusion that those passages alone are not a sufficient basis upon which to conclude that the Tribunal misunderstood its task.

9. The evidence in this case was that Ms Appoh and Mr Prempeh had met in 2018 and embarked on a relationship in 2019. They lived in different countries, and each had, if I can put it like this, ‘baggage’. Mr Prempeh in particular was said to be cautious because he had been emotionally damaged by earlier relationships, and had children from a previous marriage. Ms Appoh still had strong ties to Ghana, as illustrated by her return visit there in 2022. Any decision to marry was therefore not going to be straightforward. There would inevitably be a period of time in which the two would have to organise their affairs before they could settle down into what might be regarded as conventional married life. It is against this background that the Tribunal balanced the “very confused” responses Ms Appoh gave at Heathrow to the credible and consistent evidence from multiple sources that this was a genuine marriage, and that it had been since its inception. I read the Tribunal’s references to the “real state” of the marriage in the past, and to the “practical character” of the marriage changing over time as allusions to this period of flux. This becomes clear when the damning sentences are read in context (all emphasis mine):

28. I do not speculate as to what its real state was back in 2018, 2019 and 2020 but what is quite apparent is that the evidence has been provided which has not been substantially challenged to show that the relationship is not a marriage of convenience. *I found therefore there was no dispute that they had entered into a valid customary marriage in Ghana and there was no real evidence to contradict the point that the marriage and its predominant purpose was that of marriage.*

....

30. It is perhaps surprising that in preparation of this case which appears to be scant no photographs or evidence was particularly addressing the life they currently live in the UK but in the circumstances whilst its absence is noted I do not find that that is a determinant of the issues of whether their marriage is one of convenience. I note that they share as husband and wife the same address and that third parties know them as husband and wife rather than people who are connected or live together and know of their family and religious circumstances. In the light of that I find the Appellant has discharged the burden of proof that on a balance of probabilities *it was and remains a genuine marriage* albeit its practical character may well have changed over time.

10. Most tellingly, as Mr Terrell very fairly pointed out, the final paragraph of the decision indicates that the Tribunal understood that it was not being asked to simply determine whether this was a genuine marriage today:

31. It was not put to the Appellant and her husband by the Home Office that their current living arrangements were anything other than that they claimed. *I found that significant in terms of weighing the totality of the evidence.*

11. I therefore uphold the decision.

Decisions

12. The First-tier Tribunal's decision is upheld, and the appeal is dismissed.
13. There is no order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
9th October 2023