



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

Appeal Number: EA/08540/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5<sup>th</sup> April 2018**

**Decision & Reasons**

**Promulgated**

**On 17<sup>th</sup> April 2018**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MRS MARIAM KHVEDELIDZE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Patyna (instructed by Sterling & Law Associates LLP)

For the Respondent: Mr T Wilding (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision and Reasons promulgated by Judge Chudleigh in the First-tier Tribunal following a hearing at Hatton Cross on 6<sup>th</sup> December 2017. The appeal was by a citizen of Georgia who was married to an EEA national and who had sought residence on that basis. It was refused by the Secretary of State, the Secretary of State having reasonable grounds, it was said, to suspect this was a marriage of convenience and the Secretary of State's reason for doing so was that despite apparently two invitations to attend a marriage interview neither had been taken up.

2. The case, when it came before the Judge, unfortunately was not without its difficulties. The matter had originally been on the list of one Judge who was taken ill on the day and therefore placed before another Judge at what I can only assume was much later in the day by which time there was no Home Office Presenting Officer available. The Judge was then in some difficulties in how the case could proceed and clearly was very careful about what questions ought to be asked of the Appellant and witness.
3. The Judge was left with effectively the documentary evidence, which in the main consisted of various pieces of correspondence addressed to the Appellant and her spouse at various addresses and a number of photographs. The Judge found that this indeed was a marriage of convenience. She did so disbelieving the Appellant's excuse for not attending the second interview, having given her the benefit of the doubt that she was not aware of the first. She also looked at some of the photographs, of which there were numerous copies in the bundle and a set of five originals. At paragraph 35 of the Decision and Reasons the Judge sets out six criticisms of some of the photographs.
4. The Judge placed heavy reliance on her criticism of those photographs. Unfortunately, however, that does not tell the whole story because, of the original photographs that were produced, two are date-stamped by the camera. One of them, showing the couple cuddling on a settee, is dated November 2011, which was prior to the Appellant's detention by the Secretary of State and prior to the application, the subject of the appeal. There was another date-stamped photograph, dated March 2012, and the Judge has not given any consideration to those dated photos. That alone is enough to find that the conclusion that this was a marriage of convenience was inadequately reasoned and Mr Wilding accepted that. He also agreed that the appropriate course of action was to set aside the Decision and remit it to the First-tier Tribunal.

### **Notice of Decision**

For the above reasons the appeal by the Appellant to the Upper Tribunal is allowed to the extent that it is remitted for a full rehearing on all matters by the First-tier Tribunal. There is necessity for an anonymity order and I do not make one. The appropriate hearing centre is Hatton Cross.

Signed

Date 12<sup>th</sup> April 2018

Upper Tribunal Judge Martin