



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: EA/08927/2016**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 January 2018**

**Decision & Reasons  
Promulgated  
On 14 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MRS RACHEL BROWN TAGOE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - GHANA**

Respondent

**Representation:**

For the Appellant: Ms B Jones, Counsel  
For the Respondent: Mr I Jarvis, HOPO

**DECISION AND REASONS**

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Lawrence promulgated on 4 September 2017, dismissing the appellant's appeal against refusal to grant her a family permit under Regulation 12 of the Immigration (European Economic Area) Regulations 2006.
2. The appellant is a citizen of Ghana, born on 2 January 1990. She made an application to join Riccardo Merlini as her spouse in the UK. He is an

Italian national living in the UK. The respondent found that the marriage was one of convenience and, as a consequence, the appellant was not a family member of Mr Merlini.

3. At the hearing before the judge, Mr Merlini gave oral evidence. The judge noted Mr Merlini's claim that his relationship with the appellant began on 30 January 2014 online. They met on 15 January 2015 when he visited the appellant in Ghana. They got married on 20 January 2016. After the wedding Mr Merlini remained in Ghana for eleven days. He has not visited the appellant again since.
4. The judge stated that the appellant submitted photographs of the wedding. The appellant claimed she maintained contact with her spouse via Viber but did not provide any evidence of this with the application. The judge noted that in the light of these, more particularly set out in the decision, the respondent found that this was a marriage of convenience.
5. In cross-examination Mr Merlini accepted that he had not made any visits to the appellant since the wedding. He had initially said he visited the appellant since the wedding but when asked to be clear as to when exactly he last saw the appellant, he said it was eleven days after the wedding, and not since. He had planned to visit her on 12 May 2017 but contracted a stomach bug and had to cancel the visit. The judge found that there was no evidence of any travel booked or evidence of cancellation or evidence of any stomach bug which led him to cancel the journey planned for 12 May 2017.
6. The judge noted that the appellant and Mr Merlini first met online. In his witness statement and in the current application form it was stated that their meeting online took place on 30 January 2014. However, in oral evidence Mr Merlini insisted that the relationship started on 14 February 2015 and not on 30 January 2014. The judge said that in the sense of being committed to each other, it was reasonable to expect the couple to know approximately when it was. That was so in a serious and genuine relationship. The fact that there was a discrepancy in Mr Merlini's evidence on this point led the judge to find that their relationship was never a serious matter.
7. The judge also said that in his oral evidence Mr Merlini said he got married on 20 January 2015. However, when this was challenged by the HOPO, Mr Merlini said he got confused. The judge took into account the pressures of giving evidence and the fact that Mr Merlini had previously been married. However, the judge found that this confusion undermined the rebuttal that this was not a marriage of convenience.
8. The judge noted that the appellant and Mr Merlini have only submitted photographs taken at the wedding ceremony. There were none others. Mr Merlini visited the appellant on 15 January 2015. It was after meeting the appellant that he fell in love with her and married the following January. The judge stated that in this modern age where practically every mobile phone is also a camera, for there to be no photographs of a couple

at all at the first meeting was incredible. It did not accord with everyday experiences.

9. The judge noted that the appellant had previously made an application under the Immigration Rules. This was refused on 5 April 2016. He noted that the respondent found the marriage was not genuine. The reason given by the respondent was the lack of evidence of contact between the appellant and Mr Merlini. In the light of this, and taking into account the contents of the current decision, it was reasonable to expect Mr Merlini and the appellant to provide evidence of contact between them since 2014. The failure to do so led the judge to find that there was no evidence of contact or if there was, the contact did not assist the appellant and Mr Merlini.
10. The judge stated that in his witness statement and in his oral evidence, Mr Merlini said he has been in contact with the appellant since 2014. However, the evidence of electronic contact did not predate the decision. In cross-examination Mr Merlini accepted that he has known since the last refusal that relationship was in issue and that he ought to be able to produce evidence of contact tracing back to 2014. He asserted that he had them on his electronic devices but did not think to bring them with him to the Tribunal.
11. The judge said that Mr Merlini had provided vast quantities of evidence of contact in his bundle. There was no evidence of the sender and recipient in these. Mr Merlini told him that due to data protection issues such information was deleted. There was no independent evidence on this point. The judge said that the evidence of contact only went back to 1 April 2016 and nothing prior.
12. In his oral evidence Mr Merlini said he is a Catholic and wanted to marry a Catholic and his marriage to the appellant was not one of convenience. Ms Jones, his Counsel, submitted that this was an important issue going to rebut the assertion of a marriage of convenience. The judge said in his view the fact that he may be a Catholic or of any other religion was evidentially neutral. Not only Catholics marry, Jews, Christians, Muslims and Hindus also marry. Asserting the fact of a particular religious faith does not assist. There has to be evidence touching upon the issue of marriage of convenience. Pleading religious faith does not by itself amount to evidence in rebuttal of the respondent's assertion that this is a marriage of convenience.
13. On the totality of the evidence before him, the judge found that the respondent has demonstrated that this is a marriage of convenience. The issue was first raised in a decision dated 5 April 2016. In that decision the respondent set out in clear terms the reasons why he or she found the marriage was not a genuine marriage. Lack of evidence of contact played a major part in that refusal. The appellant and Mr Merlini have had plenty of time to print evidence of contact from 2014 and submit it with the current application and in support of this appeal. Their failure, without good reason, to do so fundamentally undermined their credibility. The

judge found that they have failed to rebut the respondent's assertion that this is a marriage of convenience.

14. The appellant submitted two grounds of appeal. The first ground relied on the case of **Rosa v Secretary of State for the Home Department [2016] EWCA Civ 14** to argue that the legal burden of proof is on the respondent to adduce evidence capable of pointing to the conclusion that the marriage is one of convenience. The ground went on to say that evidence of contact and photos is an expectation for an application under the Immigration Rules. This case concerns an application under EEA law where such evidence is not required and the absence of evidence of contact and photographs which they are not required to produce, cannot lead to a conclusion that the marriage is one of convenience. Lack of evidence of contact and photos is not an indicative trigger suggesting a possible marriage of convenience and the burden of proof requiring the respondent to adduce evidence capable of pointing to the conclusion that the marriage is one of convenience has not been met.
15. The second ground asserted that marriages of convenience are defined as marriages contracted for the sole purpose of enjoying the right of free movement and residence - **Molinar (on application of) v Secretary of State for the Home Department [2017] EWHC 1730 (Admin)**. The ground asserted that no consideration whatsoever has been had by the First-tier Tribunal on the intention of the parties at the time the marriage was entered into and that the First-tier Tribunal Judge misdirected himself by focusing on the question of whether the marital relationship was a continuing one. No finding has been made by the First-tier Judge that the marriage entered into on 20 January 2016 was a marriage of convenience at that time.
16. Ms Jones relied on the grounds. She said essentially that the judge placed too much weight on deficiencies in communication between the appellant and Mr Merlini and the lack of evidence of such communication. She submitted that there is no legal requirement under the EEA Regulations for the appellant to produce such evidence. The judge in her opinion has not examined the intention of the sponsor in order to assess whether the marriage was valid from the outset.
17. She said that the sponsor corrected himself in his evidence as to when they first met. He said they first met online on 13 January 2014 and met in person on 4 January 2015. Ms Jones submitted that the judge found a discrepancy when one did not exist.
18. She submitted that the respondent has not shown that this is a marriage of convenience.
19. Ms Jones submitted that there was no focus by the judge on whether the relationship of the appellant and Mr Merlini was genuine at the time the couple met. The judge has not made reference to the intention of the parties at the time of the marriage. As the facts of this case have not

been rejected, she questioned what evidence the judge needed in order to assess the genuineness of their intention at the date of their marriage.

20. Mr Jarvis submitted that at paragraph 6 of the determination the judge made a clear and proper self-direction as to the approach to a marriage like this. The judge said the application of the legal principals set out in **Rosa** is that the respondent has the legal burden of proving the appellant's marriage to Mr Merlini is one of convenience. Once discharged, the evidential burden shifts to the appellant to rebut it. Whoever has the evidential burden of proof, the standard is on a balance of probabilities.
21. Mr Jarvis said that there have been two applications made by the appellant. The first was on 5 April 2016, which was rejected under the Immigration Rules. The appellant did not lodge an appeal against this decision. The second application is the one that she has made under the EEA Regulations, which has led to the appeal that we are considering today.
22. Mr Jarvis submitted that the judge assessed the overall evidence which included the decision in 2016 and the latest decision. The judge considered whether the marriage was a sham marriage. He submitted that the judge's finding at paragraph 9 that there was a discrepancy in Mr Merlini's evidence as to when they first met online was not a public law error. At paragraph 10 the judge gave the appellant the benefit of the doubt about his confusion as to when they got married. He said the judge's findings at paragraph 11 about lack of photographs in this modern era disclose no error of law. The sponsor accepted that he had not produced the evidence required to support the application. There was no challenge to the judge's finding that Mr Merlini's evidence of contact only went back to 1 April 2016 and there was nothing prior to that.
23. Ms Jones replied by saying that lack of communication is not a requirement. A marriage of convenience cannot be based on assumption and suspicion. The judge did not consider the evidence correctly.
24. Having considered the submissions made by the parties, I find that the judge's decision discloses no error of law.
25. I take on board the argument that as this case concerns an application under the EEA law, evidence of contact and photographs is not required and the absence of such evidence should not lead to a conclusion that the marriage is one of convenience. However, I note that in this case the appellant had made a previous application under the Immigration Rules which was turned down. She was given reasons why the application was refused. The reasons included lack of contact and photographs of the couple together. Having met online, and the sponsor visiting the appellant the following year in 2015 and the marriage taking place the following year in Ghana in 2016, I find that the judge did not err in his expectation that there would be evidence of contact and communication between the couple prior to their marriage in January 2016. I find that without such

evidence, the judge would be operating in a vacuum in trying to assess whether the marriage was genuine or not.

26. The other argument was that the judge has not made findings on the intention of the parties at the date the marriage was entered into, namely 20 January 2016. The grounds did not identify the evidence that went to the intention of the marriage which the judge did not consider. The factual evidence of when they first met and when they married was not disputed. I find that this factual evidence without more was insufficient to show that their intention to marry was genuine and that their marriage entered into was genuine and not one of convenience. Without evidence to show how their relationship developed from when they first met online to their marriage in 2016, the judge was left with no option but to find that this was a marriage of convenience.
27. I find that the appellant has not assisted herself by not producing some evidence at least to assist the judge in deciding that her marriage was genuine and not one of convenience.
28. I find for these reasons that the judge's decision does not disclose an error of law.
29. I find that the judge's decision dismissing the appellant's appeal shall stand.

No anonymity direction is made.

Signed

Date: 9 February 2018

Deputy Upper Tribunal Judge Eshun