IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002416
First-tier Tribunal No:
EU/54279/2023
LE/01263/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23rd September 2024

Before

UPPER TRIBUNAL JUDGE NEVILLE

Between

Ms Salomey Aku Allotey
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr H Kannangara, counsel instructed by Jade Law Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 18 September 2024

DECISION AND REASONS

1. The appellant's application for pre-settled or settled status under the EU Settlement Scheme was refused by the respondent on 23 June 2023. While the respondent accepted that the appellant is married to an EEA national, she concluded that the marriage "is one of convenience entered into as a means to circumvent the requirements for lawful entry to or stay in the UK". That conclusion relied on a series of inconsistencies said to have emerged from interviews conducted with the appellant and her husband.

2. The appellant's subsequent appeal was dismissed by First-tier Tribunal Judge Suffield-Thompson in a decision promulgated on 8 April 2024. The sole issue for the Judge was whether the marriage between the appellant and her husband was one of convenience. As defined by the relevant Immigration Rules, a marriage is one of convenience if it was:

> …entered into as a means to circumvent:
>
> (a) any criterion the party would have to meet in order to enjoy a right to enter or reside in the UK under the EEA Regulations; or
>
> (b) any other provision of UK immigration law or any requirement of the Immigration Rules; or
>
> (c) any criterion the party would otherwise have to meet in order to enjoy a right to enter or reside in the UK under EU law; or
>
> (d) any criterion the party would have to meet in order to enjoy a right to enter or reside in the Islands under Islands law

3. This corresponds with the well-established definition arising from the law of the European Union as it formerly applied in the UK, for example in the Immigration (European Economic Area) Regulations 2016. It is the parties' intentions at the time the marriage was entered into that matters. That is a different issue to whether their relationship is (or has ever been) genuine, but of course that is a relevant factual consideration: see, for example, the observations of Richards LJ in *Rosa v SSHD* [2016] EWCA Civ 14 at [41].

4. The appellant's appeal against the Judge's decision is brought on the grounds that the Judge did not make any finding as to whether the marriage is one of convenience, instead restricting her consideration to whether the couple's relationship is currently genuine. On 1 July 2024, Upper Tribunal Judge Rintoul held that this contention was arguable and granted permission to appeal.

5. At the hearing before me, Mr Tufan acknowledged on behalf of the Secretary of State that it was difficult to see where in the decision the Judge had addressed her mind to the purpose for which the parties had entered into their marriage. This was a sensible concession. While referring to the paragraph numbers of the correct provisions of the Immigration Rules, in her self-direction at [8] the Judge explicitly described the issue before the Tribunal as whether "this is not a genuine marriage". The same phrase is used at [28] to describe the respondent's case. This continues in the Judge's treatment of the evidence. The couple had claimed to have a child together. After observing that their was no DNA evidence to prove parentage, the Judge held as follows:

> 42. …However, it is clear that they both have children from previous partners and so it may well be that he is the father of this child and sees him but that does not mean they are in a genuine relationship now or are living together.

6. Then, after setting out numerous reasons for rejecting the credibility of the appellant's evidence, the Judge concluded:

> 52. In this appeal I find that the Appellant has not shown to the required standard that she is in a genuine marriage and relationship with the Sponsor.

7. As argued by the appellant, this was neither the issue raised by the relevant Immigration Rules nor does it mean that, if the correct issue had been addressed, a negative outcome would still be inevitable. The Judge's decision must be set aside.

8. The parties were agreed that the appeal should be remitted to the First-tier Tribunal for re-hearing with no findings of fact preserved. Applying the principles set out in the Practice Direction and the Practice Statement, according to the guidance given in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC), I agree: the appellant has not yet had the benefit of a first-instance decision on her appeal, and new evidence concerning parentage has now come into being that ought to be considered as part of the overall evidential picture.

Notice of Decision

(i) The decision of the First-tier Tribunal contains a material error of law and is set aside.

(ii) The case is remitted to the First-tier Tribunal at Hatton Cross for re-hearing with no findings of fact preserved, to be heard by any judge other than Judge Suffield-Thompson.

J. Neville
Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 September 2024