

THE HIGH COURT

JUDICIAL REVIEW

[2023] IEHC 642

[Record No. 2022/572JR]

BETWEEN:

S.M.A.

APPLICANT

AND

MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Ms. Justice Siobhán Phelan delivered on the 16th day of November, 2023

INTRODUCTION

1. In these proceedings the Applicant seeks to quash that part of the Respondent’s decision of the 7th of June, 2022 made under the European Communities (Free Movement of Persons) Regulations, 2015 (S.I. 548/2015) [hereinafter “the 2015 Regulations”] to the effect that the Applicant’s marriage was one of convenience.

BACKGROUND

2. The Applicant is a national of Pakistan. He has resided in Ireland since October, 2010. He originally arrived in Ireland illegally and in November, 2010 made an application for refugee status. This application was ultimately refused in September, 2016. After he arrived in the State he was prosecuted in the District Court in Dublin for use of a false UK passport to travel to the State. He was convicted of using a false instrument and sentenced to two years, which was suspended for four years.

3. In previous proceedings the Applicant challenged the lawfulness of a decision of the Refugee Appeals Tribunal dated the 15th of July, 2011. Those judicial review proceedings were compromised and struck out with no further order on the 5th of November, 2015.

4. In or around May, 2014 the Applicant states that he met his spouse in the State. He says they commenced a romantic relationship. The Respondent does not accept this. On the 5th of November, 2014 the Applicant and his spouse married in the State. The marriage certificate records that the EU spouse was “*of no occupation*” at the time of the marriage in November, 2014. It further notes the Applicant’s civil status as “*widowed*”. On the 18th of June, 2015 the Applicant was granted a five-year EU Residence Card on the basis of the said marriage. Amongst the documentation submitted in support of the application for an EU Residence Card is included a death certificate in respect of the Applicant’s wife. The certificate records that she died on the 5th of February, 2013. It records the entry and issue date of the certificate as the 24th of April, 2014. The certificate bears a stamp of the 29th of April, 2014. The EU1 residence application form confirms that the EU national spouse entered the State on the 27th of April, 2014, the same week the Applicant applied for a death certificate for his wife in Pakistan.

5. Several years subsequent to the grant of the Applicant’s residence card, on the 5th of February 2018, the Respondent sought evidence from the Applicant to confirm his and his EU national spouse’s residence and exercise of their EU Treaty rights (EUTR) in the State (under Article 7 of Directive 2004/38/EC). Evidence sought included evidence of identity in respect of both parties, evidence of current activities of both parties in the State referable to employment, study or involuntary unemployment together with evidence of resources and evidence of residence in the State.

6. On the 26th of February 2018, the Applicant’s solicitors informed the Respondent that the Union citizen was in Romania for the purposes of “*her*” pregnancy and submitted documents from University Maternity Hospital Limerick offering her an appointment at an ante natal clinic on the 31st of August, 2017 and from a Romanian obstetrician dated the 7th of February, 2018 confirming that the EU national spouse was then 36 weeks pregnant. Reference was made by the Applicant’s solicitor to Article 11 of Directive 2004/38 which provides that the validity of a residence card shall not be affected by temporary absences for important reasons such as pregnancy and childbirth.

7. Although the Applicant avers in these proceedings that the child born to his EU citizen spouse was not his child, no indication was given in the letter of the 26th of February, 2018, that the child was not his. On affidavit in these proceedings the Applicant says that his spouse

informed him following her return to Romania that she was pregnant and that her unborn child was not his child. He accepts that he should have informed the Respondent of his spouse's departure from the State. He says on affidavit grounding the within proceedings:

"I did not do so as I had hoped she may return at some point in the near future with her child."

8. The letter of the 26th of February, 2018 also enclosed a joint bank statement, current utility bills addressed to both the Applicant and the Union citizen at an address in County Limerick, a tenancy agreement in both of their names dating to May, 2017 in respect of the same address in County Limerick as appears on the utility bills (although it is not clear whether this was signed by both tenants), a letter dating to October, 2014 from a former landlord confirming that they were both tenants of his property, Revenue documents in respect of the Union citizen, and pay slips in respect of the Applicant's work in the State.

9. On the 5th of March 2018, the Respondent wrote to inform the Applicant that it was proposed to revoke his EUTR permission. As set out in the letter this was on the basis that information was available to the Respondent which suggested that the Union citizen had not exercised her EUTR in the State since 2014 and his derived permission lapsed on her departure. This letter addressed some of the documentation submitted by the Applicant in respect of the Union citizen's exercise of her EUTR in the State. It was stated that while information available to the Respondent confirmed the level of the Union citizen's earnings as submitted by the Applicant for the year 2014, that information demonstrated that she had no income for 2015 or 2016, contrary to the submissions of the Applicant. The Applicant was given the opportunity to make representations within 15 working days. No such representations were made.

10. On the 19th of February, 2019, the Respondent informed the Applicant that it was proposed to revoke his EUTR permission because of a concern that the marriage between the Union citizen and the Applicant was one of convenience. The Respondent set out reasons for this concern broadly as follows:

- i. The Applicant did not divulge in his initial application for EUTR that he had been charged under the Theft and Fraud Offences Act and sent forward for trial to the Circuit Court;
- ii. He made unsuccessful applications for asylum and subsidiary protection and had unpredictable immigration status at the time of his marriage;
- iii. He had acquired four different Pakistani passports, two from Lahore and two from the Pakistan embassy in Dublin and two of which were currently valid;
- iv. He did not provide a passport to ORAC and provided a new passport to the EUTR section even though his older passport remained valid;
- v. In the marriage certificate dated the 5th of November, 2014, the Union citizen stated that she was “*of no occupation*” even though the Applicant had submitted in his EUTR application that she had been employed as a trainee since October 2014;
- vi. The couple submitted the notification to marry (latest date for notification being the 5th of August, 2014) little more than three months after the Union citizen had entered the State on the 27th of April, 2014;
- vii. The Union citizen had no official recorded employment since 2014 according to information from the Department of Employment Affairs and Social Protection, at which time there were only six employment contributions.

11. The letter stated:

“As the employment records available to this office in respect of your spouse show her as having had these alleged employment contributions made on her behalf at the time of your EU Fam residence application and as there are no other records of employment or benefit claims made by your spouse in this State, the Minister has concerns that this employment was not genuine and was contrived in order to facilitate the successful completion of your EU residence application and your procurement of a permission to remain in the State.”

12. The letter proceeded to warn that the Minister was of the opinion that the documentation provided in support of the application to evidence residence was false and misleading as to a material fact. The Applicant was warned that if the Minister found this to be so that this constitutes a fraudulent act which would lead to the revocation of the Applicant’s permission

to remain in accordance with the provisions of Regulation 27(1) of the Regulations and Article 35 of the Directive. The letter went on to warn that if the marriage was found to be one of convenience in accordance with the Regulations (specifically Regulation 28) then the marriage would be disregarded for the purpose of the determination of this matter and the permission held from the 23rd of February, 2015 on the basis of the marriage would be deemed to have not been valid and would be revoked.

13. The Applicant was given a further opportunity to make representations within 21 days. The letter stated:

“You are now required to provide representations to the Minister stating why your permission to remain should not be revoked, to dismiss concerns that your marriage is a marriage of convenience in accordance with the provisions of Regulation 28(2) of the European Communities (Free Movement of Persons) Regulations, 2015 and to address the issue of your submission of false and misleading information to this office. Any representations should also include a detailed immigration history of the EU Citizen including travel dates to and from the State in the period from 2012 to present and state the purpose of such travel. A detailed relationship history should also be provided along with an explanation as to why you omitted to provide details of your arrest and any possible conviction for being found in possession of an altered UK passport at Dublin Airport. You should also provide an explanation as to why you possess two current Pakistani passports, this explanation should be accompanied by supporting documentation to evidence your submissions. You may provide any other information/documentary evidence you may wish to submit as to why your permission to remain in the State should not be revoked.”

14. No representations were made. In the absence of any representations, on the 30th March, 2019, the Respondent wrote to advise the Applicant of a decision to revoke the Residence Card on the basis, *inter alia*, that the Applicant had entered a marriage of convenience. This decision set out the same reasons as those set out in the proposal to revoke of 19th of February, 2019. In material part, the letter stated:

“...based on an assessment of your application to date, the Minister is satisfied that your marriage is one of convenience, contracted for the sole purpose of obtaining a

derived right of free movement and residence under EU law as a spouse who would not otherwise have such a right. To that end, in accordance with Regulation 28(1) of the Regulations, the Minister has disregarded this marriage for the purpose of the determination of this matter. Therefore, the Residence Card Permission (Stamp 4 EU Fam) held by you from 18/06/2015 on the basis of this marriage was never valid and is now revoked.”

15. The Applicant was advised that he could request a review of the decision to revoke his residence card. He was further advised that the decision to revoke the permission granted on the basis outlined did not interfere with any rights which he might have under the Constitution or under Article 8 of the European Convention on Human Rights.

16. On the 23rd of April, 2019, the Applicant’s solicitor submitted an application for a review of the decision to revoke. This letter made legal submissions but did not address any of the issues raised by the Respondent in the revocation decision. Instead, the letter focused on the burden of proof on national authorities to prove abuse contending that a finding that the EU spouse was not exercising Treaty Rights does not ground a finding of a marriage of convenience. It was submitted that the burden of proof had not been discharged and that findings were made based on speculation, conjecture, and the opinion of the decision maker. It was submitted that the Respondent had failed to establish, on the balance of probabilities, that the sole purpose of the marriage was to enable the Applicant to reside in the State. It was also noted that the Respondent was not seeking to speak to/interview the Applicant about his concerns. It was further contended that the Respondent had failed to have regard to those matters prescribed under Regulation 28(5) of the 2015 Regulations.

17. The Request for Review form was not signed by the EU spouse. No supporting documentation was submitted with the review request other than the Applicant’s solicitor’s letter. The matters that the Respondent had highlighted in the letter of the 19th of February, 2019 when the Applicant’s response was invited in respect of specifically identified concerns were addressed by or on behalf of the Applicant.

18. While the review was pending, further opportunities were available to the Applicant to submit additional information. By letter dated the 10th of March, 2021 the Applicant was invited to submit additional documentation evidencing the relationship, current activities in the

State, residence in the State. By letter in response dated the 1st of April, 2021, the Applicant's solicitor submitted a completed EUTR Review Current Activities Form confirming the Applicant's current employment. The response was addressed only to the Applicant's activities. Details regarding the EU citizen were left blank, and the form was not signed by the EU citizen. A statement from the Applicant's bank account was submitted but not up to date statement from the parties' joint account was provided. No updated information was provided in respect of the EU spouse's whereabouts or activities.

19. By review decision of 7th of June, 2022, the finding that the Applicant's marriage was one of convenience was upheld. The letter referred to previous correspondence observing:

“Although the Minister notes that you have submitted a number of documents pertaining to your own situation in the State, it is not considered that you have provided any additional information or documentation of particular relevance to the matters arising in this review.”

20. The letter also referred to the 3 months' notice requirement for a marriage and correctly recited the EU citizen's date of arrival in the State and the date of marriage stating, *“this is about three months after the Union citizen had entered the State”* before pointing out that the accelerated nature of the relationship and decision to marry is of some concern. Having repeated concerns previously communicated, the letter continued:

“...it is considered that you have provided little cogent documentation or information in respect of your relationship with the Union citizen in this case. That is to say, there is insufficient evidence on file that you and the EU citizen had any relationship prior to your marriage and there is nothing to suggest that you made any financial commitments to each other, had any joint assets or liabilities, travelled or lived together for any significant length of time outside the State, lived together for any significant period of time in the State, dealt to any great extent with other organs of the State as a married couple, or displayed a continuing commitment to mutual emotional and financial support. Nor is there any useful information or documentation on file in respect of your relationship prior to your marriage or, indeed, after your marriage.”

21. Of the seven reasons set out in the proposal to revoke and revocation decisions summarised above, the decision on review includes reasons (ii), (v), (vi) and (vii). In the review decision, the Respondent also found that there was insufficient evidence on file in respect of a number of the considerations under Regulation 28(5)(b) of the 2015 Regulations, namely their relationship prior to marriage, financial commitments to each other, residence together inside or outside the State, that they had dealt to any great extent with other organs of the State as a married couple, or displayed a continuing commitment to mutual emotional and financial support. This review decision set aside the finding of the first instance decision of fraud on the basis of the submission of documentation that was false or misleading stating that:

“although she considers that you have engaged in a marriage of convenience, the Minister does not find that you submitted information or documentation in support of your application that was false and/or misleading. The Minister is not of the view that there is sufficient evidence on file to support a finding under Regulation 27 of the Regulations. As such, this element of the decision maker’s decision should be set aside...”

22. This decision concluded that the *“marriage was never genuine, and it will be disregarded for the purposes of immigration”*. It is the lawfulness of this part of the said decision on review which is challenged in these proceedings.

ISSUES

23. A range of issues were identified in the Statement of Grounds on foot of which leave to proceed by way of judicial review was granted. These have been grouped under three broad headings on behalf of the Applicant in their written submissions and the presentation of argument as follows:

- (i) Whether the impugned finding of a marriage of convenience arrived at in respect of the Applicant arrived at in accordance with law?
- (ii) Whether fair procedures were employed by reason of absence of an oral hearing?
- (iii) Did the Respondent err in fact in the decision arrived at?

24. The Applicant accepts that his entitlement to a Residence Card lapsed once his spouse returned to Romania but he does not accept that he was never entitled to a Residence Card, i.e. that his marriage was one that was, for immigration purposes, of no legal effect. It is contended and not disputed that whether or not the Applicant entered into a marriage of convenience is a matter of significant continuing effect for the Applicant and his future position in the State. A submission in reliance on *Zalewski v Adjudication Officer* [2021] IESC 24 to the effect that a finding of a marriage of convenience was an administration of justice was not pursued in the hearing before me and no issue was taken with the effectiveness of judicial review as a remedy.

STATUTORY FRAMEWORK

25. As elaborated upon in the Applicant's written submissions the concept of a marriage of convenience was introduced by the Civil Registration (Amendment) Act, 2014 which allows marriage registrars to refuse to solemnise marriages which are perceived to be marriages of convenience. Such a marriage is defined in s.2 of the Civil Registration Act (as amended by s.3 of the 2014 Act) as being where one:

“enters into the marriage solely for the purpose of securing an immigration advantage for at least one of the parties to the marriage”.

26. The relevant authorities may refuse to solemnise a marriage if it is considered that it would amount to a marriage of convenience as it was deemed to be an impediment to marriage. An appeal lies to the Circuit Family Court.

27. The 2015 Regulations use similar language to the Act, and define a marriage of convenience in Regulation 28(6) as:-

“(6) For the purposes of these Regulations “marriage of convenience” means a marriage contracted, whether inside or outside the State, for the sole purpose of obtaining an entitlement under ... ”

28. The Applicant seeks to place emphasis on the fact that in common with the definition under the 2004 Act, the definition in the 2015 Regulations is strict and relies on the concept of “sole” purpose.

29. Regulation 28 of the 2015 Regulations allows the Minister to disregard any marriage as being one of convenience and provides for notice to a party of an intention to so decide and for a formal decision by the Minister deeming the marriage to be one of convenience for the purpose of those Regulations. The Regulations prescribe matters for consideration in deciding whether the marriage is one of convenience under Regulation 28(5) in the following terms:

“(5) The Minister shall determine whether a marriage referred to in paragraph (2) is a marriage of convenience having regard to—

(a) any information furnished under these Regulations, and

(b) such of the following matters as appear to the Minister to be relevant in the circumstances:

(i) the nature of the ceremony on the basis of which the parties assert that they are married;

(ii) whether the parties have been residing together as husband and wife, and, if so, the length of time during which they have so resided;

(iii) the extent to which the parties have been sharing income and outgoings;

(iv) the extent to which the parties have been dealing with other organs of the State or organs of any other state as a married couple;

(v) the nature of the relationship between the parties prior to the marriage;

(vi) whether the parties are familiar with the other’s personal details;

(vii) whether the parties speak a language that is understood by both of them;

(viii) whether a sum of money or other inducement was exchanged in order for the marriage to be contracted (and, if so, whether this represented a dowry given in the case of persons from a country or society where the provision of a dowry on the occasion of marriage is a common practice);

(ix) whether the parties have a continuing commitment to mutual emotional and financial support;

(x) the history of each of the parties including any evidence that either of them has previously entered into a marriage of convenience or a civil partnership of convenience;

(xi) whether any previous conduct of either of the parties indicates that either of them has previously arranged a marriage of convenience or otherwise attempted to circumvent the immigration laws of the State or any other state;

(xii) the immigration status of the parties in the State or in any other state;

(xiii) any information provided by an tArd-Chláraitheoir or registrar within the meaning of the Civil Registration Act 2004 ;

(xiv) any other matters which appear to the Minister to raise reasonable grounds for considering the marriage to be a marriage of convenience.”

DISCUSSION AND DECISION

Whether the impugned finding of a marriage of convenience arrived at in respect of the Applicant arrived at in accordance with law?

30. It is contended on behalf of the Applicant that the Respondent erred in law in determining that the Applicant was party to a marriage of convenience without due regard to the fact that such a finding may only be made where the “sole” purpose of the marriage is to secure an immigration advantage, without taking into account the matters prescribed in Regulation 28(5) of the 2015 Regulations and without providing any reason as to why those matters were of no application to her consideration. It is further contended that the decision is flawed as having reached findings on the basis of conjecture and speculation without due regard to the burden of proof in reliance on *Saneechur v Minister for Justice and Equality* [2021] IEHC 356.

“Sole” Purpose to secure Immigration Advantage

31. The Applicant points to the statement in the decision letter to the effect that the marriage was “*contracted in an attempt to obtain an immigration permission*”. It is contended, without dispute from the Respondent, that the correct test is that the marriage is contracted for the “*sole*” purpose of securing an immigration advantage and it is not sufficient that it be one of the consequences of the marriage.

32. I do not read the reference to “*an*” immigration advantage in the context in which it appears in the decision letter as a dilution of the legal test that for a marriage of convenience to exist it must be contracted for the sole purpose of securing an immigration advantage. While the letter does not repeat the word “*sole*” or say in express terms that the marriage was entered into “*only*” for the purpose of securing an immigration advantage, it is quite clear from the record of decision making as a whole that there was never a doubt but that the test for marriage of convenience is that it be entered into solely for immigration advantage. This was expressly stated in the decision under review as follows :

“ ...based on the assessment of your application to date, the Minister is satisfied that your marriage is one of convenience, contracted for the sole purpose of obtaining a derived right of free movement and residence under EU law as a spouse who would not otherwise have such a right”

33. The Applicant’s solicitor in his letter in support of a review reiterated that the test for a marriage of convenience was that an immigration advantage be the “*sole*” purpose of the marriage stating with regard to the decision under review :

“it is submitted that the sole purpose of the marriage was to enable our client to reside in the State and this is the test which is to be applied.”

34. It is striking that the only statement from the Applicant as regards meeting his spouse and their decision to marry is contained in the Affidavit grounding these proceedings in the barest of terms as follows:

“In or around May, 2014, I met my spouse in the State and we commenced a romantic relationship. On the 5th of November, 2014 we married in the State.”

35. Neither the Applicant nor his spouse ever provided any detail to the Respondent during the decision making process, notwithstanding being made aware that the Respondent was concerned that the marriage was a marriage of convenience, as to how they met, their courtship and/or their decision to marry. No suggestion was made by or on behalf of the Applicant of any reason for the marriage other than immigration advantage and there was no suggestion made, even in bare terms, of a “*romantic relationship*”.

36. As noted above, the request for review form was not signed by the EU spouse. No supporting documentation of personal nature which might tend to confirm the genuineness of their relationship (such as photographs of the couple together or evidence of jointly enjoyed activity) was submitted from the Applicant or his EU national spouse. No attempt whatsoever was made in the review process to address the matters that the Respondent had highlighted in the letter of the 19th of February, 2019 when the Applicant’s response was invited in respect of specifically identified concerns, which concerns were in turn relied upon to revoke the Applicant’s residence and find the marriage one of convenience. In the circumstances, the Applicant put nothing at all before the Respondent to demonstrate that the couple did anything other than conclude certain formalities in order to generate documents which would support an application for residency. For the Applicant to now suggest a “*romantic*” relationship having never said so at any stage during the Respondent’s decision-making process is not only too late but also very unconvincing.

37. Stating, as the Respondent does in the review decision, that the marriage was contracted to obtain an immigration advantage does not mean that the decision maker considered the immigration advantage as one factor amongst others for the marriage and to give the language used this meaning is a distortion of language. Nothing in the language of the review decision suggests that the decision maker misunderstood the test by finding that a marriage which had immigration advantage as an incidence of the marriage rather than its sole purpose was a marriage of convenience. The lack of engagement by the Applicant in the decision making process to address concerns raised about the purpose for the marriage meant that the Applicant did not present further information which might have caused the Respondent to question the legitimacy of her already communicated concern. It has not been established that the Respondent erred in law in the identification of the correct legal test.

Failure to have regard to Article 28 of 2015 Regulations and to Engage with the Evidence

38. The Applicant relies on *Saneechur v. Minister for Justice* [2021] IEHC 356 to claim that the impugned decision lacked a sufficiently solid evidential basis. In *Saneechur*, the Court (Barrett J.) could not be satisfied that factual findings to the effect that the applicant was not working in the State in the face of documentary evidence from his alleged employers and evidence of payments from the said entities into his bank account, had a “*sufficiently solid evidential basis*”. Barrett J. found that the Minister’s investigations lacked sufficient rigour in that no follow up enquiries were directed to the identified employers in circumstances where the Minister harboured concerns based on the documents available.

39. This case is entirely distinguishable from *Saneechur*. The Respondent first set out her concerns in the proposal to revoke letter of 19th of February 2019. Seven reasons were set out and each had some evidential basis: the Applicant’s criminal record, the Applicant’s international protection file, the Applicant’s passports, the marriage certificate, the Applicant’s initial application for EUTR permission and information from the Department of Employment Affairs and Social Protection.

40. The decision on review maintained four of the seven initial concerns. Beyond documents demonstrating the Applicant’s continuing work in the State, no other information or documents were submitted to suggest that the marriage was genuine. Further, the Applicant did not make any submissions on why he could not submit such information or documentation. The Respondent does not disbelieve that the parties entered into a joint tenancy and that utility bills issued in joint names. The essence of her decision is that these factors were not enough to address concerns which arose for the reasons she had identified. Unlike in *Saneechur*, no personal history or account was given by the Applicant which might suggest or give rise to a requirement for further investigation. In contrast with *Saneechur*, there was no obvious lack of rigour in the Respondent’s approach.

41. I do not accept that there was a failure to consider the evidence of relevant matters identified in Regulation 28(5)(b) of the 2015 Regulations. Having set out the reasons for her decision the Respondent further highlighted that there was “*insufficient evidence*” of the identified matters as follows:

“In this connection, it is considered that you have provided little cogent documentation or information in respect of your relationship with the Union citizen in this case. That is to say, there is insufficient evidence on file that you and the EU citizen had any relationship prior to your marriage and there is nothing to suggest that you made any financial commitments to each other, had any joint assets or liabilities, travelled or lived together for any significant length of time outside the State, lived together for any significant period of time in the State, dealt to any great extent with other organs of the State as a married couple, or displayed a continuing commitment to mutual emotional and financial support. Nor is there any useful information or documentation on file in respect of your relationship prior to your marriage or, indeed, after your marriage.

42. From this paragraph it clear that while the Respondent did not specifically identify the provisions of Regulation 28(5) when setting out evidential issues material to her decision. She nonetheless addressed her mind to the evidence of matters specifically identified under Regulation 28(5)(b) including whether the parties have been residing together as husband and wife and, if so, the length of time during which they have so resided (Regulation 28(5)(b)(ii)); the extent to which the parties have been sharing income and outgoings (Regulation 28(5)(b)(iii)); the extent to which the parties have been dealing with other organs of the State or organs of any other state as a married couple (Regulation 28(5)(b)(iv)); the nature of the relationship between the parties prior to the marriage (Regulation 28(5)(b)(v)) and whether the parties have a continuing commitment to mutual emotional and financial support (Regulation 28(5)(b)(ix)).

43. While it is true to say that there was evidence of the parties living together in the form of joint utility bills and joint tenancies, there was evidence of some financial commitment in that the parties had a joint bank account and there was some engagement with State authorities in the form of communications with the Revenue Commissioners, I cannot conclude that this evidence was ignored or overlooked. Looking at the terms of the decision the Respondent did not find that the couple had not made any financial commitments to one another or that they had not lived together in the State for any significant period. The Respondent found that there was insufficient evidence of these factors for the decision-maker to be able to consider them as suggesting a genuine marriage. A finding of insufficient evidence is not a finding of no evidence.

44. I am satisfied that a finding of insufficient evidence was a finding which was open to her to make based on the material before her and it has not been established that the Respondent failed to engage with the available evidence in making the impugned decision. Unlike the position in *Saneechur*, in this case there was a sufficiently solid evidential basis for a conclusion that the marriage was one of convenience due regard being had to evidence contained on file and the matters identified at Regulation 28(5)(b) as relevant considerations.

45. Although not pressed in argument, I am also satisfied that the Applicant's plea that the decision is unsustainable due to being unreasoned is not made out. I note that in *V.S. v. Minister for Justice* [2021] IEHC 63, the applicant claimed that there had been a failure to give adequate reasons for the decision of the Minister to revoke his EUTR permission on the ground of a finding of a marriage of convenience. On considering the principal authorities on the duty to provide adequate reasons, Burns J. held as follows:

"17. I have set out each decision of the Respondent which is under challenge extensively so that the details of the reasons why the Respondent determined that this marriage was one of convenience can be viewed. It is not the case, as is suggested by the Applicant, that the Respondent simply made the finding that this was a marriage of convenience but did not explain why she was of the view. The Respondent engaged in an analysis of the information which she had regarding the relationship between the Applicant and NS; the accelerated time in which they married; the periods of time they spent together; the fact that the Applicant did not inform the Respondent that AN was absent the jurisdiction for such an extended period of time; the fact that AN had a child to another man in Hungary since her marriage to the Applicant; the information which she had from the Hungarian authorities; and the representations made regarding that information from AN. She determined the import of that information and came to a conclusion, which was entirely open to her to make, that this marriage was not genuine but was one of convenience. It is also clear that submissions made on behalf of the Applicant were considered ... The reasons for the decision are quite apparent on the face of each decision."

46. There is some symmetry between this case and *V.S.*, particularly regarding the birth of a child in another country to a different man. It is clear that in *V.S.* these were factors weighed

in the decision-making process whereas they are noticeably absent in this case where the Respondent neither refers to the fact that the EU national spouse was pregnant nor queries the parentage of that child or its subsequent relationship with the Applicant. The failure to refer to the EU national spouse's pregnancy or the question of the parentage of the child might prompt a question in the mind as to the genuineness of the marriage, but this did not feature as part of the reasons offered for the decision and appear not to have been relied upon by the Respondent, perhaps because it would have required further enquiries when there was already adequate basis for concern demonstrated on the documents. Accordingly, unlike in *V.S.*, in this case, no question mark was drawn over the marriage by reason of the Applicant's absence from the State to have "*her*" baby. Instead, the Respondent set out a number of other reasons in the impugned decision for her finding that the marriage between the Applicant and the Union citizen was one of convenience: the fact that the applicant had made unsuccessful applications for asylum and subsidiary protection and thereafter had unpredictable immigration status (regulation 28(5)(b)(xii) of the 2015 Regulations); the fact that there was evidence that the Union citizen had not been economically active in the State since 2014 (though the marriage certificate was dated the 5th of November, 2014) (regulation 28(5)(b)(ii)); the fact that the couple submitted the notification to marry no more than three months after the Union citizen had entered the State on the 27th of April 2014 (regulation 28(5)(b)(v)). The Respondent also found that there was insufficient evidence available in respect of the considerations in Regulation 28(5)(b)(iii), (iv) and (ix) of the 2015 Regulations.

47. I am satisfied that in a similar manner to *V.S.*, the reasons for the impugned decision were apparent on the face of the decision. I do not find any want of reasons arising from the failure to detail the documentation submitted on behalf of the Applicant to demonstrate that the Respondent considered that evidence. Unlike in *K v. Minister for Justice* [2022] IEHC 582 where the Court (Bolger J.) found a requirement to explain why the information relied upon and submissions made did not assuage the Minister's opinions and concerns, the Applicant here failed to give information addressed to the notified concerns and made no real attempt to assuage those concerns. Crucially, in *K v. Minister for Justice*, the Minister considered material provided to be false and misleading without engaging with verifiable information submitted in explaining the conclusion arrived at. No similar error undermines the decision in this case. The stated reason for the decision was that there was insufficient evidence produced to assuage the Respondent's concerns, the evidence for which had been set out. The basis for the decision

was clearly discernible. There was no further necessity to explain why the documentation submitted was considered inadequate.

Burden of Proof

48. The Applicant maintains that it is for the Respondent to establish that the marriage is one of convenience such as to deprive it of effect. It is contended that the Respondent has erred by proceeding on the basis of a reversal of the burden by requiring the Applicant to prove that the marriage is not one of convenience. I am referred to *Kelly v Ireland* [1996] 2 IR 537 where Barron J. held at p. 547:

“The onus was on the respondents to establish that the marriage was a sham because the parties did not participate in the ceremony in order to become man and wife, but to prevent the applicant from being deported.”

49. I am further referred to the decision of Cooke J. in *El Menkari v Minister for Justice* [2011] IEHC 29 (para. 10) and *Sadovska v Home Secretary* [2017] 1 WLR 2926 where the UK Supreme Court held (at p.2935) in the context of EU treaty rights that he who asserts must prove and it was for the Respondent to establish that it was indeed a marriage of convenience. In addition both parties rely on the EU Commission’s ‘Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of EU law on free movement of EU citizens’ (2014, European Commission) (hereinafter “the Handbook”). The Handbook advises that the burden of proof rests on the national authorities to show that a marriage is one of convenience within the meaning of EU Law. At section 3.2 the Handbook provides:

“Burden of proof is on the national authorities to prove abuse || || Married couples cannot be obliged or required, as a rule, to present evidence that their marriage is not abusive. EU citizens and their family members enjoy the benefit of assumption, meaning that they do not need to provide evidence that their marriage is genuine. To require this would go beyond the requirement to present proof that their marriage is valid. This reflects the principle of law that the person who lays charges has to prove the charges ('semper necessitas probandi incumbit ei qui agit'). The burden of proof clearly rests on the national authorities who suspect that a non-EU national has entered into a

marriage of convenience with an EU citizen for the sole purpose of being granted an EU right to free movement to prove that the marriage is of convenience.”

50. The Handbook continues, however:

“However, if the national authorities have well-founded suspicions as to the genuineness of a particular marriage, which are supported by evidence (such as conflicting information provided by the spouses), they can invite the couple to produce further relevant documents or evidence.

Spouses have the obligation to co-operate with the authorities. This obligation should be communicated to the spouses.

Should the couple provide additional evidence that dispels the concerns the national authorities, the case can be closed and the marriage considered as genuine.

Should the couple fail to provide evidence that would dispel the suspicions which can reasonably be expected to be available to genuine couples or even should the couple decide not to provide any evidence at all, this cannot form the sole or decisive reason to conclude that the marriage is one of convenience.

It can however be taken into account by the authorities together with all other relevant circumstances in their assessment as regards the genuine or not nature of the marriage.”

51. At section 4.2.1.2 it provides:

“Free movement first || || Firstly, by a rigorous application of the principle that free movement is the primary rule which can be restricted only in individual cases where it is justified on the grounds of abuse. Taken together with the burden of proof, this translates into the "presumption of innocence" where EU citizens and their families are considered to have the right to move and reside freely unless proven guilty of abuse.”

52. It is clear from the foregoing and not disputed by the Respondent that the burden of proof lies on the Respondent when finding that a marriage of convenience has been entered into. It is also clear, however, that the Respondent may have regard to the responses received

when concerns are raised in determining whether the evidence in its totality supports the conclusion that on the balance of probabilities the marriage was one of convenience. It is not a reversal of proof to have regard to what is offered, if anything, by the Applicant in rebuttal of the Respondent's notified concerns. Considering the issue of the burden of proof in *S.K. v. Minister for Justice* [2022] IEHC 591 Ferriter J. stated:

“25. ... the contention that the Minister improperly imposed a burden of proof on the applicants is not borne out by the facts. The Minister conducted her own investigations into the applicants' marriage with a view to ascertaining whether the marriage was a genuine one. Having received a note of the interview conducted by the GNIB with the second applicant and having investigated further information relevant to his personal circumstances during the period of the applicants' marriage, the Minister ... squarely put forward a concern that the marriage was one of convenience, and the basis for that concern, and invited the first applicant to address that concern. Having considered the submissions received, the Minister ... then delivered a decision determining that the marriage was one of convenience and setting out a reasoned basis as to why that was said to be so. I do not see that there was any inappropriate attempt to transfer the burden of proof in the circumstances. Setting out of a preliminary view or concern, based on evidence, that the marriage was one of convenience with an invitation to make submissions on that view does not constitute a shifting of the burden of proof. Both the first instance decision and the decision following review involved the Minister seeking to discharge the burden of proof on her and being satisfied on the facts that such burden was met and I see no error of law in that approach.”

53. In this case, the Applicant was given several opportunities to rebut the evidence on which the Respondent's concerns were based but failed to do so. As found in *S.K.* an invitation to make submissions and provide further information such as that which occurred in this case does not constitute a shifting of the burden of proof. Indeed, it is recognised that it is an important feature of fair procedures that a person alleged to be guilty of fraud should be afforded a right of response in defense of an allegation of this nature. As stated in *C-359/16 Omer Altun and others*, the CJEU held (at para. 56):

“the persons who are alleged ... to have used posted workers ostensibly covered by fraudulently obtained certificates must, however, be given the opportunity to rebut the evidence on which those proceedings are based”.

54. Entirely in line with this principle, the Respondent properly set out the basis for her concerns and identified the type of information which might assist in dispelling her concerns. Inviting rebuttal evidence should not be confused with a shifting of the burden of proof. Similarly, there is nothing improper in regard being had to the absence of compelling rebuttal evidence. The response received, if any, forms part of the evidential matrix. It is recalled that there is a duty to co-operate on the Applicant from which it must logically follow that the Respondent was entitled to have regard to the response received and any lack of evidence of the type one would normally expect to see in a case involving a genuine marriage (such as evidence of the couple engaging in normal social and family activities together in the form of photographs or other documentary evidence and testimonials from friends and acquaintances).

55. In this case the Respondent’s proper application of the burden of proof is demonstrated by the fact that she reached a different decision on review with regard to the question of false and misleading documentation. In concluding that there was insufficient evidence on file to support a finding under Regulation 27 of the Regulations in relation to the submission of false and misleading documents thereby reversing the first instance decision even though the Applicant had not responded to address these concerns, the Respondent was clearly alive to the fact that the burden of proof lay on her. The fact that the Applicant did not respond to address these concerns was not relied upon by the Respondent to find the concerns substantiated. The Respondent was clearly alert to the need for a finding under Regulation 27 to be adequately supported by evidence before she could conclude that her notified concerns had been substantiated and she was not so satisfied. While the evidence was considered inadequate to support a finding of false and misleading evidence, the evidence was considered sufficient to substantiate a finding of a marriage of convenience.

56. In response to the Applicant’s contention that the Respondent did not properly invoke the doctrine of abuse of rights in EU law, relying on Case C-359/16, *Omer Altun*, the Respondent submits that the ratio of *Omer Altun* was that in order to make a finding of fraud, evidence must exist that satisfies both an objective and subjective factor. In that case, these elements were identified as follows:

“51. The objective factor consists in the fact that the conditions for obtaining and relying on [a posted-worker certificate] are not met.

52. The subjective factor corresponds to the intention of the parties concerned to evade or circumvent the conditions for the issue of that certificate, with a view to obtaining the advantage attached to it.”

57. I agree with the Respondent’s contention that both objective and subjective factors are established in this case. Regarding a marriage of convenience, the objective element may be satisfied by entering into a marriage which has the effect of creating an entitlement to an immigration advantage for one party to the marriage. The subjective element may be satisfied where there is evidence of an intention to enter such a marriage for the sole purpose of obtaining such an advantage. Sufficient evidential basis exists to satisfy a decision maker that both elements are present in this case.

58. It has not been established that the approach of the Respondent was other than a lawful application of the burden of proof in line with this caselaw and guidance of the Commission as contained in the Handbook.

Whether fair procedures were employed by reason of absence of an oral hearing?

59. By letter dated the 23rd of April, 2019 the Applicant’s solicitors were critical of the Respondent’s failure to interview the Applicant to resolve the perceived issues with his Residence Card. It is contended on behalf of the Applicant in these proceedings that the Respondent breached the principles of fair procedures and natural and constitutional justice in determining that the Applicant was party to a marriage of convenience without convening of an interview/oral hearing at which the Applicant’s personal credibility could be assessed. The case made is that the convening of an interview/oral hearing was necessary and required in accordance with law in circumstances where the Respondent’s findings were, for the most part based on the rejection of the personal credibility of the Applicant. It is submitted that a marriage of convenience finding carries significant consequences and is one that must be made on a sound basis and is one that, where based on an assessment of personal credibility, should be fairly put. It is submitted that as this has not occurred, the decision is unlawful.

60. The Applicants relied in submission on my decision in *Z.K. v. Minister for Justice & Equality & Ors* [2022] IEHC 278 (presently under appeal) where I found on the facts of that case that fair procedures required an opportunity be afforded for the Applicant and his EU national spouse to be assessed as to the plausibility of their account and the genuineness of their marriage through the process of a face-to-face meeting or hearing. *Z.K.* has been distinguished on the facts in a number of cases, notably in *S.K. v. Minister for Justice* [2022] IEHC 591 and *H v. Minister for Justice* [2022] IEHC 721. In the latter, O'Regan J. found that *Z.K.* was distinguishable on the facts in light of the following:

“16. ...

(1) In ZK there were substantive submissions whereas in the instant matter there was bare assertion only.

(2) In ZK substantial documents were submitted whereas in the instant matter minimal documents were submitted and none at all to address the respondent's concerns identified. In Pervaiz v. Minister for Justice [2020] IESC 27 Baker J in the Supreme Court at para. 91 stated that:-

“It is almost inconceivable in the modern world that a couple would not have many examples which can be established by documentary proof, whether from social media, correspondence, utility bills, photographs, text or email messages, financial transactions, etc., which might establish the closeness of the interconnectedness and the nexus within which the relationship operates.”

(3) There was no language issue arising in the instant circumstances.

(4) There was no engagement in the process by the applicant in the instant circumstances.

(5) There was an oral interview with the applicant at Dublin Airport and there were two oral conversations with the EU citizen by an official albeit by phone.

17. In addition to the foregoing:-

(a) The applicant was on full notice of the Minister's concerns as outlined in the letter of 16 December 2019 and the response was at best minimal.

(b) There was no identification of matters which might be dealt with in an oral hearing that could not be dealt with in written submissions.”

61. While my decision in *Z.K.* is under appeal and judgment is awaited from the Court of Appeal, it is important to recall that my decision in *Z.K.* was not that an oral hearing is required

in every EU Treaty rights case. There were particular features in that case as identified in my judgment which led me to the conclusion that an oral process was necessary in that case. The Respondent identified distinguishing features in submissions before me as between this case and *Z.K.* as follows:

- a) The Applicant did not engage in the initial process when the proposal to revoke issued, despite being legally represented throughout.
- b) At review stage he merely provided documentation to evidence his own position in the State.
- c) No information or documentation was submitted to address the concerns of the Respondent set out in the proposal to revoke letter and in the first instance revocation decision.
- d) While it is acknowledged that his legal representative stated that the Applicant was entitled to an interview or oral hearing at review stage, there was no identification of matters which might be dealt with in an oral hearing that could not be dealt with in written submissions.
- e) The Applicant's legal representative sent the Respondent a pre-litigation letter on 20th of April 2022 seeking a decision on review within 14 days, while aware that no oral process had taken place.

62. To my mind the most material difference between this case and *Z.K.* is the fact that in *Z.K.* a personal account was given by both the Applicant and his EU national spouse which was disbelieved. No personal account of any kind was given in this case. Furthermore in *Z.K.* the EU national spouse continued to engage in the process and was available to support the genuineness of the marriage, notwithstanding that the couple had separated which made the potential utility of an oral process more apparent. In this case the EU national spouse has taken no step to support the genuineness of the marriage. Accordingly, while no oral hearing was ever convened in this case (unlike in *S.K.* and *H.*), neither the Applicant nor his EU spouse have given a contrary account in statements as part of the revocation process to support the genuineness of the marriage. In contrast with *Z.K.*, this is not a case where the personal credibility of the Applicant and/or his EU national spouse is drawn into question in relation to issues of fact which the married couple have sought to stand over during the revocation process. Whether or not an oral hearing is required depends on the facts of a case and whether a decision can be fairly made without one.

63. I am satisfied that in this case the process was fair. The Applicant did not provide any personal testimony in support of the genuineness of his marriage and made no submissions at all when revocation was first proposed on grounds that were clearly set out and included a concern that the marriage was a marriage of convenience. The Applicant did not avail of the several opportunities afforded him to do so by providing any personal statement or testimony in support of the genuineness of the marriage in a manner which might have dictated a requirement that he be afforded an opportunity to participate in an oral process before determinations of personal credibility were made against him. As emphasized by the Court of Appeal in *A.R. v. Minister for Justice* [2019] IECA 328 (Baker J.) those who seek to challenge a process as unfair should have engaged fully with the statutory opportunity to clarify the matters which had given rise to the concerns articulated by the Minister. When there is a failure to do so then applicants are precluded from advancing a challenge on grounds of unfairness. The failure to convene an oral hearing cannot be challenged as unfair on the facts of this case given that the Applicant did not provide the Respondent with information that might either have clarified the factual concerns raised thereby utilizing the opportunity to achieve fairness within the process provided or alternatively demonstrate the need for an oral process in order to achieve substantive fairness.

64. Having failed to engage with the process by responding to the concerns notified in a manner addressed to responding to those concerns, the Applicant and his EU national spouse are precluded from advancing a challenge in these proceedings that an oral hearing was warranted as an incident of the requirements of fair procedures. While allegations akin to the allegations of fraud and abuse of rights considered in Case C-359/16 *Ömer Altun* [EU:C:2018:63] underpin the Respondent's decision in this case such that it was necessary for the Respondent to be satisfied that both objective and subjective factors were present, it seems to me that adequate opportunity to rebut the Respondent's concerns and the basis for them has been afforded to the Applicant. He has elected not to participate directly in the process. Although the burden to establish evidence of objective and subjective evidence that the marriage is one of convenience being a marriage entered into solely for immigration advantage is on the Respondent, this does not mean that for the process to be fair an oral hearing is a necessary ingredient.

65. Each case turns on its own facts and circumstances and the nature of the evidence underpinning the findings made. The duty of the Applicant to engage in the process and

attempt to address the concerns of the Respondent as part of the process is relevant. It is only when it is apparent that the process is inadequate to fairly address all issues that an oral hearing is necessary. The contention that the facts and circumstances of this case mandated an oral process of some kind is not made out. In the circumstances of this case the Respondent was entitled to rationally decide the question of whether the marriage was one of convenience on the basis of the material before her as the process involved a reasonable opportunity to the Applicant of effectively addressing the issues raised.

Did the Respondent err in fact in the decision arrived at?

66. It is contended that the Respondent erred in fact in determining that:

- (a) the Applicant was a party to a marriage of convenience on account of the fact that he and his spouse had not made “*any financial commitments*” to one another and had no joint assets or liabilities ignoring the fact that the Applicant and his spouse had provided evidence of a joint bank account held together in the State;
- (b) the Applicant was a party to a marriage of convenience on account of the fact that he and his spouse had not lived together in the State for “*any significant period of time*” ignoring evidence submitted of residing together for a significant period at two separate addresses in the State namely, letter from the landlord of the 20th October, 2014 confirming cohabitation at a flat in Limerick; letters to the Applicant and his spouse from the Private Residential Tenancies Board regarding this tenancy; Joint utility bill for a second address in County Limerick and a letting agreement in joint names for the said County Limerick property; Bank statements addressed to Applicant and his spouse at the aforementioned addresses and other correspondence, to include medical correspondence and correspondence from the Revenue Commissioners at the aforementioned addresses.

67. The Respondent does not accept that the decision is flawed by reason of an error of fact but submits that the Applicant misreads the impugned decision. Having set out the reasons for his decision, the decision-maker then further highlighted that there was “*insufficient evidence*”

of the matters identified, being matters listed in Regulation 28(5)(b) of the 2015 Regulations as relevant considerations. As set out in full above, this paragraph goes on to state “*you have provided little cogent documentation or information in respect of your relationship with the Union citizen in this case*”. The Respondent does not say you have provided “*no evidence*”.

68. I agree with the Respondent that the central thrust of the decision is that there was insufficient evidence of the factors identified for the decision-maker to be able to consider them as suggesting a genuine marriage. Findings based on a conclusion that there was a lack of sufficient evidence, were findings which it was open to the Respondent to make. I do not consider it necessary, for example, for the Respondent to expressly address the joint tenancy agreements and joint utility bills when making a finding that there is “*insufficient evidence*” of residence together because manifestly better and further evidence could have been provided. The language used does not suggest that the evidence provided has been overlooked or ignored.

69. I am reflected carefully on the more blanket statement contained in the decision letter that “*there is nothing to suggest that you made any financial commitment to each other, had any joint assets or liabilities.*” This statement is made in the face of evidence of a joint bank account and joint assessment by the Revenue Commissioners. While the existence of a joint bank account may not evidence any significant financial commitment, absent something in the transactions recorded, it is nevertheless some evidence. It seems to me that the Respondent could only assert that there was nothing to suggest joint assets or liabilities by ignoring the existence of the joint bank account altogether. Accordingly, I consider this conclusion to be based on an error of fact as it is incorrect to say that there was “*nothing to suggest*” joint assets and liabilities or any financial commitment to each other. While joint assessment by the Revenue Commissioners is not evidence of much financial commitment where one spouse is not working for most of the period, as appears to be the case here, it is nonetheless some evidence of financial commitment.

70. Even though there was therefore some evidence of financial commitment, the language used suggests an error of fact underpinning the decision. In the overall scheme of the decision and the complete lack of information from the parties as to how they managed their joint finances, I am not satisfied that any error of fact, such as it was, is as to a fact which is sufficiently material to render the decision unsustainable. The evidence of the joint bank account or Revenue assessment, without more, is not such compelling evidence as might have

led to a different conclusion in this case. In the circumstances, I am not satisfied that there has been any material error of fact in this case such as would undermine the sustainability of the decision reached in judicial review proceedings.

Proportionality

71. For completeness, I should reflect that the Applicant obtained leave to challenge the decision to revoke the residence permission on the basis that it was never valid because it was obtained by reason of a marriage of convenience as disproportionate. It is pleaded in general terms that the decision is disproportionate because it was made without adequate regard to Regulation 28(5) of the 2015 Regulations and in circumstances where the finding of marriage of convenience was based on conjecture and speculation. Accordingly, the plea of disproportionality is not advanced on the basis of a failure to weigh competing interests in a proportionate manner but is included in an omnibus-type plea. Passing reference was made in oral submissions to my decision in *A.K.S. v. Minister for Justice* [2023] IEHC 1 and this case is mentioned under the “*error of fact*” heading in the Applicant’s written submissions as supporting an argument that the Respondent had erred in approaching the exercise of her power under the 2015 Regulations by proceeding as if the Regulations mandated a finding of a marriage of convenience. This argument is not reflected in terms in the Statement of Grounds and this argument was not developed in any meaningful way in submissions having regard to the decision in this case.

72. In *A.K.S.* I was particularly concerned with the potential effect on the Irish citizen child whose entitlement to citizenship in turn derived from the lawful residence of the third country national spouse of an EU citizen. If the permission of the third country national was revoked with retrospective effect, that would have nullified the child’s entitlement to Irish citizenship without consideration of that child’s rights in the decision-making process. In this case there is no basis for contending that rights have not been considered. The Applicant’s own circumstances were considered in the decision to the extent that they had been advanced on his behalf. The Applicant has no *locus standi* to argue for consideration of the rights of a child who he accepts is not his and in respect of whom no relationship is identified at any stage in the decision-making process. Further, in the decision letter it was stated that the decision does not interfere with the Applicant’s rights under the Constitution or Article 8 of the European

Convention on Human Rights. It was stated that in any subsequent proposed decision where such interference may arise, full and proper consideration “*will be given to these rights*”.

73. Unlike the position in *A.K.S.*, the only rights affected by the decision impugned in these proceedings are those deriving from EU Treaty Rights. These rights were entirely predicated on the Applicant’s marriage which it has been concluded for reasons given not to have been a genuine marriage. No basis has been identified on behalf of the Applicant in submissions before the Respondent or before me for contending that a revocation of his residence permission deriving from a marriage which has been found to be non-genuine was other than a proportionate exercise of discretion. To properly ground a challenge on grounds of proportionality by way of judicial review in the circumstances of this case it would have been necessary for the Applicant to have first advanced a substantive basis for contending that revocation and disregard of previous residence on foot of it would be a disproportionate exercise of power. No case was made to this effect and no basis for such a case is discernible from the information available to the Respondent.

CONCLUSION

74. It is apparent from the terms of the decision that the Respondent was satisfied on the facts and information available to her that on the balance of probabilities the Applicant’s marriage was one of convenience. The basis for this conclusion was clearly set out. For the reasons set out above, this decision has not been shown to be unsustainable in these proceedings. Accordingly, I refuse the relief sought and dismiss the proceedings. Where agreement cannot be reached in relation to costs or the form of the order or any consequential matter, I will list this case for mention ten days from the date of delivery of the electronic judgment to deal with any matters outstanding.