



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

Appeal Number: UI-2021-001173
(HU/01366/2021)

THE IMMIGRATION ACTS

**Heard at: Manchester Civil Justice
Centre
On: 10th June 2022**

**Decision & Reasons Promulgated
On: 29th July 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Entry Clearance Officer, China

Appellant

And

**Yali Luo
(no anonymity direction made)**

Respondent

**For the Appellant: Mr Tan, Senior Home Office Presenting Officer
For the Respondent: no appearance**

DECISION AND REASONS

1. The Respondent Ms Luo is a national of China born in 1988. She seeks entry clearance to the United Kingdom in order that she may settle here with her British partner, Sponsor Mr Louis Lok Fat Chik. Having been refused such entry clearance on the 21st December 2021, Ms Luo brought an appeal on human rights grounds to the First-tier Tribunal. The First-tier Tribunal (Judge J. Austin) allowed her appeal on the 28th September 2021. The Secretary of State now has permission to appeal against the decision of Judge Austin.

2. My task is to decide whether the decision of Judge Austin contains errors of law such that it should be set aside.

The First-tier Tribunal Decision

3. There was only one matter in issue before the First-tier Tribunal. That was whether Ms Luo was in a genuine and subsisting relationship with her husband. The refusal notice expressed the ECO's concerns like this:

In support of your application you have provided a marriage certificate that record the date of your marriage as 18/10/2019. However, your application contains minimal evidence of contact between yourself and your sponsor pre and post marriage. Evidence to demonstrate the relationship, may take the form of exchange of cards at important events, corroborative chat records, emails, post marriage photographs. This is not an exhaustive list and there is no specified evidence that must be submitted, however what must be demonstrated is an ongoing and genuine relationship.

I note you state in your application form that you usually meet you sponsor twice a year, I acknowledge you have provided photographs in your application however these appear to all be from one event, namely your wedding. These photographs in isolation do not demonstrate that you regularly see your sponsor. Whilst I also acknowledge that you have your provided your sponsor's passport which 62 demonstrate he visited China from 16/10/2019 - 26/10/2019. I also note this visit was for the purpose of your wedding and no other evidence of travelling to China has been provided. Furthermore I note you state that you met your sponsor in May 2018 and your relationship began in August 2018, however documents you have submitted to not demonstrate any relationship between you and your sponsor before the date of your marriage. Therefore, I am not satisfied your relationship with your sponsor is genuine and subsisting or that you intend to live together permanently in the UK. Your application is refused under paragraph EC-P.1.1(d) of Appendix FM of the Immigration Rules. (E-ECP.2.6 & 2.10)

4. When the matter came before Judge Austin the Sponsor Mr Chik attended to give live evidence. Mr Chik stated, as part of his evidence, that neither he or his wife had been invited for interview prior to the refusal being issued, and that there was standing invitation to the ECO/SSHD to conduct any checks they deemed appropriate.
5. Having heard from Mr Chik the Tribunal finds that on the balance of probabilities the marriage is a genuine and subsisting one and the appeal is allowed.

The ECO's Appeal

6. The grounds of appeal are that the decision below should be set aside for a failure to provide reasons and/or a failure to resolve matters in issue. At the hearing the HOPO had made submissions as to why the scant evidence that had been provided was not credible but the judge does not engage with those submissions at all. There were inconsistencies in the evidence which required some explanation, yet the Judge does not apparently consider this.
7. It is appropriate to add that in granting permission to this Tribunal that First-tier Tribunal Judge Mills found an additional basis upon which to grant: he thought that the Tribunal may have been "misled" by the representative who suggested in the course of submissions that this was a marriage of convenience case. It was no part of the ECOs case that this was a marriage of convenience and as such paragraph 17 of the decision is arguably flawed for misdirection.

Discussion and Findings

8. The first thing to note is that this was a case which was simply refused for a lack of evidence of 'intervening devotion'. The second thing to note is that in her skeleton argument for the First-tier Tribunal Ms Luo's representative makes furious complaint about that fact. The skeleton points out that in addition to completely failing to comply with directions since the appeal was issued, the ECO had in refusing this claim failed to comply with the UKVIs own guidance which *specifically prohibits* applicants from providing lots of evidence with such applications. The guidance *Important Information - Documents to Support Your Appendix FM Application* (produced in Ms Luo's bundle) states that the following documents will not be accepted: WhatsApp and other social media chat history; Money Transfers; Greeting Cards; Phone Cards; Letters from friends; Call Logs; Wedding Receipts/Invitations; USB/DVD's; Newspaper Clippings. The policy goes on the state "We will only accept a limited number of photographs. You are strongly advised to submit no more than a total of 10 photographs." and that "These are the documents that customers most commonly send us. It is not compulsory for you to provide any of these documents. If we need any further information, in relation to your application in order to make a decision, we will contact you direct by telephone or email". It was submitted on Ms Luo's behalf that all she did was follow that guidance. As her husband was to explain at the hearing, no telephone call or email was forthcoming. The first that the couple knew of the ECOs concerns was when they received the refusal letter.

9. As to the fact that the couple had not seen much of each other since the wedding Ms Luo's representative made the very good point that a global pandemic and successive travel bans and lockdowns had been the main feature of life in the period since the wedding in late 2019.
10. It was against that background that Judge Austin set about making his decision.
11. It is a brief decision, but it is one that I am quite satisfied he was entitled to make. The substance of the grounds are that there was a chat room transcript produced at hearing which the judge failed to scrutinise in the manner hoped by the HOPO. The HOPO had made submissions that the document "told a tale" and "read like a marriage interview" with the implication that it had been contrived. Judge Austin records the submission being made [at his paragraph 13] but does not specifically consider and discount the ECOs concern about that document. What he does do, at his paragraph 16, is place positive weight on the 'chat room log'. It can be inferred from this that Judge Austin obviously did not agree with the HOPOs reading of that document. Judge Austin was entitled to his own reading of the log, and weighing this is the balance with Mr Chik's oral evidence, the photographs and the passport entries of Mr Chik, he was entitled to find the burden discharged. For the avoidance of doubt I have read the chat log myself and find it indicative of nothing other than a young couple getting to know one another. It contains mundane exchanges about noodles and details more pertinent to the matter in hand such as Ms Luo telling her husband that she likes "generous" rings. It was Mr Chik's oral evidence - which the Judge was obviously entitled to accept - that during the pandemic he and his wife had kept in daily contact by direct video and audio calls: there is surely nothing inherently suspicious in that. It's what we all did.
12. Before me Mr Tan argued that there may be arguable merit in Judge Mills' reading of the decision. Ms Luo's representative had for some reason made submissions about the caselaw on marriages of convenience and the Tribunal did, at least fleetingly in its paragraph 17, find that the ECO had produced no evidence that this was anything other than a genuine marriage. Mr Tan argued that it could be deduced from this that the appeal was allowed for that failure to discharge a burden that was not, in this instance, the ECOs burden to discharge. I do not read the decision that way. As is clear from paragraph 16 the Tribunal squarely found that Ms Luo had shown her marriage to be genuine and subsisting. That finding is not predicated on any failure by the ECO. It was based on the evidence that *she* produced, not least the credible oral evidence of her husband.
13. This appeal is entirely without merit. Ms Luo did nothing other than follow the published guidance of UKVI. That she was then refused for having done so, without the opportunity to provide more evidence in

support of her assertions, is unfortunate in the extreme. That the ECO has added to that injury by failing to comply with directions and then pursuing this unmeritorious appeal is even worse.

Decisions

14. The determination of the First-tier Tribunal contains no error of law and it is upheld. The appeal is dismissed.
15. There is no order for anonymity.

A handwritten signature in black ink, appearing to read 'CBE', is positioned above the typed name of the Upper Tribunal Judge.

Upper Tribunal Judge Bruce
10th June 2022