



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002819
First-tier Tribunal No: EA/50208/2021
IA/01389/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 23 December 2023**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**Mariama Diallo
(NO ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr S Hingora, instructed by Queenscourt Law Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 20 November 2023

DECISION AND REASONS

1. The appellant is appealing against the decision of Judge of the First-tier Tribunal Browne (“the judge”) dated 21 April 2022. The central issue in dispute before the judge was whether the marriage between the appellant and her husband (“the sponsor”) was a marriage of convenience; that is, a marriage whose predominant purpose was to gain an immigration advantage. The issue before me is whether the judge erred in her approach to assessing this question.

Decision of the First-tier Tribunal

2. The sponsor and the appellant were interviewed about their marriage. The judge found – and it was not disputed before me – that the interview records (of which there are three) indicate that there were substantial discrepancies in the accounts given by the appellant and sponsor at the interviews.
3. The judge found, in the light of the interviews as well as the oral evidence before her, that the marriage was contrived in order to facilitate entry to the UK and that there was not a genuine, subsisting relationship between the appellant and sponsor.

Grounds of Appeal

4. The grounds of appeal advance three arguments.
5. Ground 1, relying on *Sadovska & Anor v Secretary of State for the Home Department* [2017] UKSC 54, argues that it was not open to the judge to find that the respondent had discharged the burden of proof because (two of) the interview records are unsigned and (two of) the interviews were conducted in an inappropriate language. The grounds submit that the appellant is fluent only in Wolof, but the first interview was conducted in French and the second interview was conducted in Fula.
6. It is also submitted that reliance on an unsigned interview record was inconsistent with the respondent's guidance (Marriage Investigations, version 6, dated 30 December 2021), where it is stated that a marriage interview record must be signed and dated by the official who made the record and the interviewee, unless the interviewee refuses to sign, in which case this must be noted.
7. Ground 2 submits that the judge erred by using the term "sham marriage" and "marriage of convenience" interchangeably and applying the test of sham marriage rather than test of marriage of convenience.
8. It is also submitted that the judge erred by, when making a finding about the appellant and sponsor not living together prior to marriage, failing to take into account the cultural and religious practice of Muslims to not cohabit prior to marriage. It is submitted that this amounts to "applying western norms to cultural and religious traditions".
9. Ground 3 submits that the judge erred by failing to give adequate reasons to explain why weight could be attached to an unsigned interview record and an interview conducted in a language in which the appellant is not fluent.

Grounds 1 and 3: reliance on an unsigned interview record and interviews conducted in French and Fula rather the Wolof

10. There are three interview records in question.
11. The first interview, dated 30 October 2020, is an interview with the appellant conducted in French. On the interview record cover sheet, next to the typed sentence "Do you understand the interpreter?" is written "Yes". The appellant has signed this interview record, both on the front sheet and on every page. The interview record consists of a series of questions and answers. The answers are detailed and there is nothing to indicate in the questions and answers a difficulty with understanding or interpretation.
12. The second interview is with the sponsor. The cover sheet of the interview record is undated and unsigned. It states that the language of interview is Portuguese and next to the sentence "do you understand interpreter" the answer "yes" is given. After question 6 of the interview record it is stated that the sponsor was struggling with the language and that a Wolof interpreter was needed. There is then a gap in the interview, which then continues with a Wolof interpreter. It is recorded in the interview record that the sponsor confirmed he understood the Wolof interpreter. There is nothing in the interview record

indicating a difficulty with understanding after the Wolof interpreter began. The interview record is not signed on any page.

13. The third interview, which is dated 31 October 2020, is with the appellant. The interview record indicates it was conducted in Fula. Next to the sentence “do you understand the interpreter” the answer “yes” is given. The appellant has signed the interview record on the front page, but not at the bottom of the other pages. Detailed answers are recorded and there is nothing recorded that indicates difficulty with understanding the language in which the interview was conducted.
14. Mr Hingora argued that, in accordance with *Sadovska*, the burden of proof lay with the respondent and the respondent had not discharged the burden because she relied on interviews with the appellant and the sponsor that are undermined by fundamental deficiencies: the interviews with the appellant were not carried out in Wolof, and two of the three interview records were not properly signed. He submitted that the judge fell into error by failing to engage with the fact that the interview records could not be treated as reliable evidence and by attaching weight to them despite their obvious shortcomings.
15. Mr Terrell argued, in response, that the judge took into account that the interviews with the appellant were not conducted in Wolof and was entitled to find that this was immaterial. He also argued that the absence of a signature on the other interviews made no difference because the first interview, which was signed by the appellant, provided ample reasons to find that the appellant’s evidence was inconsistent.
16. The most significant interview record, in terms of showing inconsistencies and discrepancies, is the record of the appellant’s first interview. This interview record has been signed, on every page, by the appellant. Therefore there is no basis to contend that the interview is undermined by a lack of signature. The interview was carried out in French. There are multiple reasons why this does not make the interview record unreliable evidence. First, on the front page, which has been signed by the appellant, the word “yes” has been written next to the question “do you understand the interpreter”. Second, there is nothing within the interview record, where detailed answers are recorded, indicating any difficulty with understanding. This contrasts to the interview record of the interview with the sponsor where a difficulty in understanding was observed and acted upon. Third, as observed by the judge in paragraph 35 of the decision, in another context (a medical patient summary) the appellant’s main language is recorded as French and at the First-tier Tribunal hearing, despite using a Wolof interpreter, the appellant referred to numbers in French. For these reasons, I am not persuaded that appellant has identified any material deficiency with the first interview. It follows that it was not legally erroneous for the judge to treat the first interview as reliable evidence.
17. The interview with the sponsor lacks a signature by the sponsor. This is inconsistent with the respondent’s policy, and it is a factor which could be considered to undermine the reliability of the interview as evidence. However, it does not follow from the lack of a signature that the interview record has no evidential value and the judge was entitled to take the interview into account alongside other evidence notwithstanding the missing signature. This is what the judge did, when in paragraph 74 she stated:

“I acknowledge the claim that any inconsistencies can or should be accounted for by language issues and the respondent’s failure in signature but I find that a volume

of evidence has still been given in answer to questions and this tends to go against the submission that this was an appellant who simply did not understand the question or whose answers have been mistranslated throughout a detailed interview.”

18. My view that the judge was entitled to rely on the interview with the sponsor despite the absence of a signature is reinforced by observing that it was not argued by Mr Hingora that the interview with the sponsor did not occur or that the content of the interview record does not accurately reflect what the sponsor said at the interview.
19. I am also satisfied that it was open to the judge to rely on the third interview, given that the appellant signed the cover sheet just a few lines below where the answer “yes” is given to the question of whether she understood the (Fula) interpreter. In any event, even if reliance could not properly be placed on this interview, that would be immaterial given the discrepancies between the first and second interviews.
20. For these reasons, the judge was entitled to rely (and place weight on) the interview records when assessing whether the respondent had discharged the burden of proof. It is also clear that the judge gave adequate reasons to explain why she relied, and placed weight, on the interview records. I therefore am not persuaded that there is merit to the first and third grounds of appeal.

Ground 2: finding there was a “sham marriage” instead of a “marriage of convenience”

21. “Marriage of convenience” is a different term, and has a different meaning, to the term “sham marriage”. The main difference between the two terms is that a sham marriage is one where there is an absence of a genuine relationship whereas a marriage of convenience is concerned only with the intentions of those entering into the marriage at the time it was entered into.
22. The issue for the judge to determine was whether the marriage between the appellant and sponsor was one of convenience. It was wrong that the judge used the term “sham marriage”, which had no relevance to the appeal. However, the error is immaterial because the judge made clear findings of fact that the marriage had been entered into for the purpose of gaining an immigration advantage. Indeed, based on the findings of fact, no conclusion about the marriage could have been reached other than that it was a marriage of convenience and a sham marriage. Nothing therefore turns on the judge mistakenly using the term sham marriage in parts of the decision.
23. A further argument made in ground 2 is that the judge applied western norms when considering the issue of the appellant and sponsor not living together. This submission is meritless because, as observed by Mr Terrell, it is based on a misunderstanding of the findings. The point made by the judge was not about the plausibility of the appellant and sponsor not living together but that there was an inconsistency about when they had lived together. This has nothing to do with western norms.

Notice of decision

24. The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

D. Sheridan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
19.12.2023