



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-003778

First-tier Tribunal No: EA/00511/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 19<sup>th</sup> of November 2024

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**  
**DEPUTY UPPER TRIBUNAL JUDGE RAE-REEVES**

**Between**

**SHIJAS KOVVAPURATH PURAYIL**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No attendance

For the Respondent: Ms Ahmed, Senior Presenting Officer.

**Heard at Field House on 12 November 2024**

**DECISION AND REASONS**

1. The appellant appeals against the decision of First-tier Tribunal Judge Courtney promulgated on 4 July 2024. Judge Courtney dismissed his appeal against the respondent's refusal of his application for leave to remain under Appendix EU of the Immigration Rules. Permission to appeal was granted by Upper Tribunal Judge Neville on 4 September 2024.
2. There was no attendance by the Appellant. We are satisfied that the notice of the hearing was sent to the appellant on 15 October 2024 by post and email to the addresses held on record. No explanation has been given for this absence and no request has been received for an adjournment. Having satisfied ourselves that proper notice has been given we considered it in the interest of justice to proceed in the exercise of our power under rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

3. We are grateful to Ms Ahmed for her focused submissions.

### **Background**

4. The appellant is a national of India who was born on 14 October 1985. He married Ms Elena Dumitrache (the Sponsor) in Cyprus on 11 February 2020. She is a Romanian national with settled status in the UK.
5. On 18 May 2023, he applied for leave to remain under the EU Settlement Scheme, relying on his relationship with Ms Dumitrache. He and his wife were invited to attend interviews with the respondent on two occasions, but they did not attend. He accepts that he received one invitation but not the second. On 28 January 2024 the respondent refused the appellant's application for leave to remain. She did so because she had concluded that the marriage was one of convenience.

### **The Appeal to the First-tier Tribunal**

6. The appellant exercised his statutory appeal rights. He contended that the sole reason for refusal was the failure to attend interviews. In his Grounds of Appeal he submits that the couple received only one email invitation to which they responded by asking for an 'extension' because Ms Dumitrache was pregnant "on initial stage" and in hospital "OPD". He uploaded a scan of a foetus with the sponsor's name and dated 21 December 2023 as evidence of a pregnancy and attendance at hospital. He submits that the request for an extension was refused on 28 January 2024.
7. He was unrepresented and requested that his appeal proceed on the papers.

### **The decision of the First-tier Tribunal**

8. The judge first focuses on the reason why the respondent refused the application because he failed to attend two interviews and considers the appellant's explanation. At paragraphs 12 and 13 the judge analysed the evidence and gave reasons why she dismissed it. She makes a finding that OPD means the outpatients department indicating that Ms Dumitrache was not admitted to hospital but may have been there for a scan. She states that "Whilst it is apparent that Ms Dumitrache was pregnant in December 2023, there is nothing to show that Mr Purayil is the father of the child".
9. In paragraph 13 she makes a finding that if he received one invitation, "I consider it likely that the other invitation was also communicated to him". She notes that the appellant provides no evidence of his request or the refusal.
10. At paragraph 14 the judge states that in her opinion the respondent has satisfied the initial burden of proof "since the factors alluded to in the refusal letter are capable of supporting a conclusion that the marriage was one of convenience". The factors alluded to are referred to at paragraph 11 when the judge quotes the refusal letter which states that the invitation letters were both sent by email to the appellant's address. The respondent's refusal letter misquotes the appellant's email address by adding a letter to one of them (quoted in the appellant's grounds). The two invitation letters now provided by the respondent show the correct email address.

11. The judge considers the appellant's documentary evidence in paragraphs 15, 16 and 17. She notes that there is no witness statement from the sponsor. She refers to an HM Land Registry entry of a leasehold property held in joint names as well as bank statements and utility bills, also in joint names. She states that there is no reference to the sponsor in the appellant's sole bank statements, for example transfers between them.
12. She concludes that it is unclear why statements in 2019 and 2020 reflect their current address whilst other statements from 2020 and 2021 show a different one and yet more statements indicate a third address. She states, "Plainly this could not be explored further with Mr Purayil since he had elected for his appeal to be dealt with on the papers" and whilst they have purchased a property together "there is no indication that they have ever lived there together".
13. She states; "Having given careful consideration of all the information before me I do not consider that the appellant has discharged the evidential burden"

### **Grounds of Appeal**

14. We have carefully considered the grounds of appeal. They are generic without specific reference to the challenged decision save for an erroneous reference to "Judge Sill". This suggests to us that someone with limited legal knowledge has written the document. We observe that it is a criminal offence under s91 of the Immigration and Asylum Act 1999 to provide immigration advice in contravention of s84.
15. We are satisfied that there are three principal grounds. The first ground is that there has been an error of law due to the judge's approach because she failed to consider the documentary evidence of their relationship including the pregnancy test of the sponsor and birth certificate of their child (paragraphs 2 and 4). The appellant specifically refers to the birth certificate "of the Appellant and Sponsor's child" and to fresh evidence that was overlooked. There is no reference before us of the birth certificate being before the judge, nor have we seen it.
16. The second ground is that the judge sought to resolve an issue that was not relevant namely whether they attended an interview.
17. The third ground is that the judge failed to provide adequate reasons and failed to attach weight to unchallenged evidence (without setting out that evidence).
18. The respondent provides a rule 24 response to the grounds of appeal. She opposes the appeal on the basis that the grounds are merely a disagreement with the judge's findings and incorrectly state the law which the judge correctly sets out. It states that the judge provides adequate reasoning and that it was for the appellant to rebut the reasonable suspicions and chose to proceed on the papers. Whilst this fact should not prejudice the appellant's case, "against the backdrop of not attending any marriage interviews the judge rightly scrutinised the paperwork" including lack of sponsor's statement.

### **Discussion**

19. Judge Courtney provides a clear and well-constructed decision in which she sets out the law and details her findings based on the limited papers before her.
20. At paragraphs 7, 8 and 9 the judge sets out the correct legal test in respect of marriages of convenience. She notes that the legal burden is on the Secretary of State to show that any marriage is a marriage of convenience, and the burden is not discharged merely by showing reasonable suspicion. Having discharged that burden the evidential burden would shift to the appellant.
21. When considering whether the respondent had discharged her burden, the judge considers the evidence and was entitled to find that the appellant had been invited to interview twice and failed to attend. She correctly concludes that the burden was discharged. During this analysis she considers the scan and hospital attendance. She considers whether the appellant is the father but makes no finding. To make a finding either way is a very serious point because to find that he is not the father may have repercussion on his claim to be a parent. To find that he is, may be a significant factor in establishing whether the marriage is one of convenience. Arguably there is an implicit finding that he is not.
22. Having found that the burden shifts to the appellant, the judge considers the evidence before her and whether it amounts to a plausible explanation that supports a genuine marriage.
23. We have some sympathy with the judge because in a paper appeal from a litigant in person she has carefully considered his explanation and found it wanting. But, as she states, she could not explore her concerns with the appellant and sponsor. She finds that there was a lack of explanation, most notably in relation to the jointly owned property (for example it could be an investment or rental).
24. The decision of Mr Justice Green in *Shen (Paper appeals; proving dishonesty) [2014] UKUT 00236 (IAC) [2014] Imm AR 971*, provides us with guidance. Whilst that was a case of dishonestly involving an allegation that the appellant had failed to disclose convictions or criminal charges, we consider it applies because in the present appeal the accusation of a sham marriage is akin to deceit or dishonesty. (See for example *Saeed (Deception - knowledge - marriage of convenience) [2022] UKUT 00018 (IAC)* headnote (iv)).
25. Headnote 3 of *Shen* is instructive;  

(3) "The internal organisational decision by the Secretary of State not to engage with paper appeals means that the appellant's evidence goes unchallenged. In that regard, it must be remembered, that in the absence of evidence from the Secretary of State putting the appellant's prima facie plausible explanation into doubt, it would be wrong to find dishonesty. Thus, in view of the possible evidential difficulties confronting a judge when deciding a paper application, where the appellant's evidence is not met (see para (2) above), a tribunal should be slow to find dishonesty, particularly without hearing evidence and submissions on the point from the appellant and/or the Secretary of State".
26. The refusal letter is based on the failure to attend interviews. The fact that the incorrect email addresses were quoted in the letter and grounds is immaterial as the letters now produced by the respondent demonstrate that the correct addresses were used. In response, the appellant provides his explanation which

includes the provision of documents including land registry evidence of joint ownership and the scan of a baby.

27. As stated in *Shen*, this evidence is unchallenged. The respondent was entitled to consider it and respond but for its internal reasons has not done so. The significance is that this is case where the appellant is being accused of deceit which can have a grave impact on his reputation and serious consequences on his life. As stated in *Shen*:

“26. Where the appellant’s evidence is not met, a Tribunal should be slow indeed to find dishonesty, particularly without hearing evidence and submissions on the point from the Appellant and/or the SSHD”.

28. The judge considered this evidence but made no finding on the parentage of the baby (or made an implicit finding based on insufficient evidence) and expressly said she could not explore the joint property with the appellant.
29. Whilst we have sympathy expressed above, we consider that this appeal had particular markers that were unchallenged by the respondent and should have initiated further enquiry and the failure to do so or to dismiss the appeal in their absence amounts to a material error of law. In particular the reference to a baby relied upon by the couple and a joint property with no explanation. Again, citing *Shen*; “if the Judge entertained doubts as to the Appellant’s story, he should have sought to investigate further” (27). Whilst it may not be determinative of the appeal, the production of the birth certificate may have been very significant. We do not know if it was available at the time of the hearing. The grounds refer to it not being considered which may imply that it was. However, as stated above, we do not know if it was before, or available to, the judge.
30. Such enquiries could have involved directions for witness evidence, a Review by the respondent or production of the birth certificate (if available at the time of hearing) under rules 4(2) and (3) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Alternatively in a case involving allegations of dishonesty in respect of the bona fides of a marriage, an oral hearing could or should have been directed.
31. We conclude that the judge has made a material error of law in finding the appellant’s marriage to be one of convenience on the evidence available to her and the appeal is allowed.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of a material error on a point of law. That decision is set aside with no findings preserved.

The appeal is remitted to Hatton Cross to be heard afresh by a judge other than Judge Courtney.

**V S Rae-Reeves**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

14 November 2024