

LIRA'S IMMIGRATION CORNER

Sham Marriages or Marriage of Convenience

FOR MOST people (and sometimes the Home Office) a “sham marriage” or a “marriage of convenience” are terms often used interchangeably. The very recent case of **Saeed (Deception - knowledge - marriage of convenience) [2022] UKUT 18 (IAC)** distinguished a “sham marriage” from that of a “marriage of convenience”.

ii) The terms “sham marriage” and “marriage of convenience” are **not mutually exclusive**. The absence of a genuine relationship at the time of the marriage being entered into would render the marriage one of convenience (and a “sham”); however, if there is a genuine relationship at the time of the marriage, while it could not be categorised as a “sham” marriage, it may still amount to a marriage of convenience (depending on the predominant purpose).

The above makes clear that the main issue is the “absence of a genuine relationship at the time of the marriage.” In this event, the application will be refused as Saeed goes on to say that there “is deception deployed by a person who knowingly enters into a marriage of convenience with another in the absence of a genuine relationship.” Many may say, fair enough, but what is of concern is the second part of the above paragraph which states:

however, if there is a **genuine relationship** at the time of the marriage, while it could not be categorised as a “sham” marriage, it may still amount to a marriage of

convenience (depending on the predominant purpose).

To conclude that a genuine marriage may still be considered a marriage of convenience is confusing at best. Fortunately, the earlier **Court of Appeal case of R (Molina) v SSHD (2018)** affords some explanation. Whilst the case also accepted that there is a legal distinction between a sham marriage and a marriage of convenience, the Court of Appeal helpfully provided some clarity. It explains, for example, that if, for immigration reasons, a genuine couple decide that they would marry sooner than planned, this may not amount to a marriage of convenience.

A couple looking to apply for leave to remain in the UK worried about how the Home Office will perceive their relationship should look at the **Family Policy: Partners, divorce, and dissolution Version 2.0**. The policy was published for Home Office staff on 8 December 2021. It is a 44-page document that provide guidance for Home Office staff when considering Spouse/Partner applications. I have listed some noteworthy points (in Italics) below.

Where any Home Office marriage investigation has already de-



BY LIRA
SIMON
CABATBAT

terminated the relationship as a sham,, it is expected that you will refuse the immigration application that relies on it on genuineness grounds (in addition to any other reasons that the relevant requirements of the Immigration Rules or the Immigration (European Economic Area) Regulations, as saved, have not been met) without further investigation, that is unless any new and significant information has come to light since the investigation took place.

What does it mean?

Where you have received a Home Office decision concluding that they believe that your marriage is a sham, but later obtain further / new evidence against this and in support of the genuineness of your relationship the Home Office have a duty to investigate further. This may then lead to a different decision.

Marriage investigation: relationships previously found to be genuine: If new, significant or

compelling information comes to light, in cases where the Home Office strongly suspected that the relationship was a sham or one of convenience at the time of the referral, decision-makers may need to arrange an interview or make further enquiries with regards to the genuineness of the relationship. All information submitted with the application for leave or residence on the grounds that the relationship is genuine together with the disclosable information obtained as part of the referral scheme, and any other information, must be considered and referenced in the consideration/decision letter.

What does it mean?

The Home Office may carry out further investigations on relationships previously granted and considered to be genuine where new evidence comes to light pointing to the marriage being a sham marriage. There is no time limit for them to do so. An adverse conclusion may lead to the revocation of a person's visa.

The Guidance also provide factors which may be considered evidence of a genuine and subsisting relationship. They include:

- the couple are in a current, long-term relationship and provide satisfactory evidence of this
- the couple have been or are co-habiting and provide satisfactory evidence of this the couple have children together (biological, adopted or step-children) and shared responsibility for them

- the couple share financial responsibilities, for example a joint mortgage or tenancy agreement, a joint bank account, savings, utility bills in both their names



What does it mean?

It is crucial that you provide evidence with your application. Letters from the couple simply reciting their love for each other will simply not cut it. Formal evidence such as joint bank statements are always preferred by the Home Office, but informal evidence may also be helpful. This can be letters or statements from friends and family BUT avoid sending template letters. Your case is not advanced by 100 identical / general letters. The letters should detail how the writer knows you and your partner, their relationship to you and why they would say that your relationship is genuine. A top tip to remember is “**quality rather than quantity**”.

For any application, not least where one party has an adverse immigration background, prepare your case well and do not assume that the Home Office will contact you for further evidence as the likelihood is that they will not, but will simply refuse your application. ■

Disclaimer: This information is not designed to provide legal or other advice or create a lawyer-client relationship. You should not take, or refrain from taking action based on its content. Douglass Simon accept no responsibility for any loss or damage that may result from accessing or reliance on content of this Article and disclaim, to the fullest extent permitted by applicable law, any and all liability with respect to acts or omissions made by clients or readers on the basis of content of the Article. You are encouraged to confirm the information contained herein.

Article written by Ms Lira Simon Cabatbat. Lira has been in practice as an Immigration and Family solicitor for over 26 years and is the principal of Douglass Simon Solicitors. She is an accredited Resolution (First for Family) specialist and is a fluent Tagalog speaker. Douglass Simon (tel. 0203 375 0555 • email: cabatbat@douglass-simon.com) has been established for over two decades and has been a centre of excellence, especially in the areas of Immigration, Family and Probate. We have received commendations from judges and clients alike. Please refer to our website for more details.