

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **02/12/13**

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

LILY BRAID & ORS

HORNER J

(A) Lily Braid

[1] Lily Braid you have been found guilty of assisting unlawful immigration to a Member State, that is the United Kingdom, contrary to Section 25(1) of the Immigration Act 1971. Between 1 September 2007 and 23 October 2007 within the jurisdiction of the Crown Court knowing or having reasonable cause for believing that Xiu Hua Wei was not a citizen of the European Union, you did an act which would facilitate the commission of a breach of immigration law by the said Xiu Hua Wei, an individual who as not a citizen of the European Union, namely arranging the marriage between Tadeusz Juscik and the said Xiu Hua Wei thereby obtaining from the Registrar at the Registrar's Office, Dundalk, a Certificate of Marriage between Tadeusz Juscik and Xiu Hua Wei knowing there was reasonable cause for believing that the said act facilitated the commission of breach of immigration law by the said Xiu Hua Wei.

[2] In short form you helped organise the sham marriage between these two persons as an immigration advisor for reward in order to allow the Chinese gentleman to remain in Northern Ireland. You deny that you are guilty and you still maintain your innocence but after a trial the jury has found you guilty of this offence. You should understand that the maximum penalty which that offence is capable of attracting is 14 years' imprisonment, or a fine, or both. This is not a victimless crime. This is a very serious offence. Such a crime attacks the roots of this country's system of properly regulated and controlled immigration into the UK. Every citizen has the potential to be harmed if the immigration laws are not enforced. Furthermore, it seeks to attack the institution of marriage which has both

been honoured and respected in this society and is protected by the laws of this jurisdiction.

[3] I have been referred to a number of authorities including R v Lee & Stark, R v Olusanya & Anor, R v Oliverira & Ors, R v Lacko and Husar and Attorney General Ref (No 2 of 1993). I have read all the authorities including those referred to above together with the pre-sentence report, the medical report from Dr Bownes, the testimonials and references and the petition.

[4] You are a 55 year old widow whose husband died in 2004. You have a 24 year old son who is at university in Birmingham. You have three brothers in Northern Ireland and you, like them, originally came from Hong Kong. You set up business in 2000 here and you registered with the Office of Immigration Services Commission in 2001. From that time you have operated a business which, among other things, gives advice to members of the Chinese community about matters relating to immigration law.

[5] I am told by the prosecution that the broad range for offences of this nature is 3-7½ years in prison and that you fall at the lower end. The defence takes no real issue with that submission. It is clear from the authorities to which I have been referred that in the normal course the appropriate penalty for all but the most minor offences under Section 25(1) of the Immigration Act 1971 is one of immediate custody. This is an offence which in almost all the cases calls out for a deterrent sentence of a custodial nature.

[6] I consider that in your case and given your role the appropriate starting point is 3½ years. The aggravating features are:

- (a) This was a well organised attempt to hoodwink the authorities.
- (b) It was for gain, £1,200, albeit of a modest nature. You did not have any ties of kinship nor were you friends with either of the participants.
- (c) You were in a position of trust at the relevant time. You were a registered Immigration Advisor.
- (d) You display no remorse and persist in proclaiming your innocence despite a jury finding you guilty.

[7] The mitigating factors are:

- (i) You do not just have a clear record but you have a good character. You come to this court garlanded with the very most impressive of testimonials and references. You have had to deal with exceptionally difficult circumstances in your personal life, bringing up your son

following the death of your husband. You have been a hardworking, contributing member of society and a good mother and wife.

- (ii) You have suffered a loss of face and a loss of reputation by your conviction for this criminal offence. Your standing in the community has been severely and permanently undermined, if not destroyed.
- (iii) The business which you built up has been destroyed. Your hard work and endeavour has come to nought.
- (iv) This charge has been hanging over your head for quite some time and will have caused you considerable upset and disturbance. I note from the report of Dr Bownes that you have suffered an adjustment reaction and that you are liable to require psychiatric treatment if required to serve a custodial sentence. I also note from the pre-sentence report that the likelihood of you re-offending is low. In the circumstances I consider that the starting point is 3½, that is 42 months in custody. This offence was committed before 1 April 2009 and the Court, therefore, has to apply the provisions of the Criminal Justice (Northern Ireland) Order 1996 ("1996 Order").

[8] The minimum sentence which I can impose taking into account the aggravating and mitigating factors is 18 months. I have been asked to suspend this sentence of imprisonment on the basis of, inter alia, your personal circumstances. Given that this is a deterrent sentence, there would need to be highly exceptional circumstances as a matter of good sentencing policy before I could suspend any sentence of employment; see R v McKeown & Others [2013] para 11. However, I do not consider that this is such a case in which I should suspend the sentence of imprisonment. It must be clear to those involved in organising sham marriages or participating in sham marriages that an immediate custodial sentence is almost inevitable. In the circumstances I consider this the most lenient sentence I can impose. Accordingly, I impose a sentence of 18 months.

[9] I note that the advice of the Court of Appeal in England which goes back to the late 1990s was that immediate custodial sentences were called for in these type of sentences. Mr Gibson said that in R v Lee and Stark, this was done so after the Court of Appeal had considered statistical information which was not before this court. However, that statement has been reiterated on a number of occasions in different cases most recently in R v Lasco and Hussar. I do not understand there was any statistical information before the Court of Appeal in England when it concluded that an "appropriate and indeed deterrent sentencing is called for in this particular context". It is clear that the problem of sham marriages is a growing one which is reflected in the increasing number of cases that have been dealt with by the courts in Northern Ireland over the past few years. Only last week, His Honour Judge Devlin passed sentence on two participants of a sham marriage, one being a party to the

marriage and the other being a witness see (R v Kobus & Other). These remarks apply to all the defendants being sentenced today for immigration offences.

R v Graham

[10] You have pleaded guilty to assisting unlawful immigration to a Member State, the United Kingdom, contrary to Section 25(1) of the Immigration Act 1971. You should understand that the maximum penalty is 14 years in prison or a fine, or both. Between 1 September 2008 and 31 October 2008 in the County Court Division of Belfast or elsewhere knowing or having reasonable cause for believing that Hong Taou Yu was not a citizen of the European Union, you did an act which would facilitate the commission of a breach of immigration law by the said Hong Taou Yu, an individual who is not a citizen of the European Union, namely entering into a marriage with the said Hong Taou Yu thereby obtaining from the Registrar at the Registrar's Office, Dundalk a certificate of marriage between her and the same Hong Taou Yu, knowing or having reasonable cause for believing the said act facilitated commission of a breach of immigration law by the same Hong Taou Yu. As this offence was committed before 1 April 2009, the Court will pass sentence pursuant to the 1996 Order.

[11] The facts are that you agreed to take part in a sham marriage to Hong Taou Yu in order to allow him to hoodwink the immigration authorities and remain in Northern Ireland. You posed for photographs after the ceremony in order to try and fool the authorities that this was a lawful marriage.

[12] You are 28 years old. You have a clear record and are of good character. You have pleaded guilty and have made a full and unqualified admission of your role. It is accepted that you were a reluctant participant who might be described as naive.

[13] This is a case involving section 25 of the Immigration Act which carries with it a maximum sentence of 14 years in prison or a fine or both. I am told by the Prosecution that the range for an offence of this nature is 18 months to 3 years given the role that you have played. I have read the authorities and agree that this is the position. I consider you are very much at the lower end of the scale of wrongdoing and that you were in no way involved in the organisation of this sham marriage. I consider that the appropriate starting point in your case is 18 months which I discount to 12 months on account of your plea of guilty.

[14] It is alleged that it was an aggravating feature of this case that what you did was not to help a family member or friend but as part of a commercial operation. Against that however, although you did it in the expectation of receiving money, you never actually received any money.

[15] There are however a number of mitigating factors which have been set out by counsel and which are contained in your pre-sentence report. These include:

- (a) A clear record and good character.
- (b) You are in full-time employment. You have recently earned promotion to senior care assistant.
- (c) You were young, foolish and naïve when the offence was committed.
- (d) There is a degree of exploitation arising out of the alleged abusive relationship you had with your stepmother.
- (e) You have had this hanging over your head for some years.

[16] I accept that there is no significant risk of you re-offending. In the circumstances, I consider the proper sentence is 6 months in custody. I have been asked to suspend this. I do not consider that it is appropriate to do so because it is intended to be a deterrent sentence. A message must go out that those involved in organising sham marriages or in taking part in sham marriages even if they have been organised by others, so as to allow illegal immigrants to enter or remain in Northern Ireland that such behaviour will almost certainly result in a custodial sentence if they are convicted. This offence falls to be dealt with under the 1996 Order and in my understanding it is not necessary for me to make a further order.

R v Kwok Yin Ho

[17] You have pleaded guilty to assisting unlawful immigration to a Member State, that is the United Kingdom, contrary to Section 25(1) of the Immigration Act 1971, in that between 21 September 1978 and 29 September 2009 in the County Court Division of Belfast or elsewhere knowing or having reasonable cause for believing that Hong Taou Yu was not a citizen of the European Union, you did an act which would facilitate the commission of a breach of immigration law by the said Hong Taou Yu, an individual who is not a citizen of the European Union, namely providing documentation in the support of the UK residency application for the said Hong Taou Yu knowing or having reasonable cause to believe that the said act facilitated the commission of breach of immigration law by the said Hong Taou Yu.

[18] You provided false payslips for Mr Yu and a signed letter. You have a conviction for a previous offence in respect of doing the same thing for Mr Juscik for which you received 6 months in prison. I accept that it is through no fault of yours that the two offences were heard separately.

[19] I have read all the relevant authorities. I have considered the submissions made by your counsel and in particular the pre-sentence report. I note that Mr Connolly on your behalf has said that although you may have acted in expectation of commercial gain you did not gain anything and that the person who

you assisted was not a stranger. He also said that there was no great sophistication in what happened and that there was not a large number of persons helped.

[20] I consider that the starting point is 18 months. This should be discounted by one third because of your early plea and full co-operation.

[21] I consider that the mitigating factors are:

- (a) Your clear record, apart from the offence mentioned above which I will deal with shortly and for which you received a custodial sentence.
- (b) Your family circumstances which are outlined in the pre-sentence report.
- (c) The delay in this case being prosecuted and the fact that it has been hanging over your head for a considerable period of time.
- (d) That there was some degree of exploitation of yourself.

[22] In the circumstances I consider that the appropriate sentence is 6 months. I stand back and consider this sentence on the totality principle. This would mean that you would have served 12 months for the separate offences in total. I consider this to be fair and reasonable. If the two offences had been heard together you would almost certainly have received consecutive sentences. I do not consider that the circumstances are such that I should suspend the sentence.