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*(subject to editorial corrections)\**

**IN THE CROWN COURT IN NORTHERN IRELAND**

**LONDONDERRY CROWN COURT  
(SITTING AT BELFAST)**

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**THE QUEEN**

**v**

**ALEXANDER SUCCESS, WENDY ALLEN, CAROL MULDOON,  
LEANNE MELAUGH, AKEEM SHITTU, SABRINA COLE,  
KIERAN McCAFFERTY, EAMON JOHNSTON, PAMELA O'DONNELL,  
LISA MARIE PALMER, MELISSA McSHANE, CORRINA MURRAY,  
KAREN RYAN AND CHARLENE O'HAGAN**

**ICOS No: 07/058639**

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**HART J**

[1] The defendants on this Bill of Indictment are charged with various offences relating to alleged breaches of Section 25 of the Immigration Act, 1971 ("the 1971 Act"), and under the Forgery and Counterfeiting Act, 1981, as well as conspiracy to defraud the Home Secretary into doing an act contrary to his duty, namely to issue residence documents. In all 14 defendants face a total of 54 counts and most have pleaded not guilty upon arraignment. Success, Shittu and O'Hagan applied for No Bills on the charges against them.

[2] Under the Immigration (European Economic Area) Regulations 2000 (SI 2000 No 2326) ("the 2000 Regulations") which applied at the time of these alleged offences, provision was made whereby nationals of the European Economic Area ("EEA") could claim a right of entry into, or residence in, the United Kingdom. For the purpose of the present application it is sufficient to say that a non-EEA national could obtain a residence document from the Home Secretary if he or she was a "family member" of "a qualified person". A qualified person was an EEA national who was in the United Kingdom as, inter alia, a worker or a self-sufficient person. A family member of a qualified person was entitled to a residence document upon application, and upon

production of a valid passport and proof that he or she was a family member of a qualified person.

[3] The form used to apply for a residence permit (in the case of an EEA national) and/or a residence document (in the case of non-EEA family members of EEA nationals) was an EEC1. This was completed by the EEA national who had to submit various documents, including his or her passport. In particular, if they claimed to be economically self-sufficient by virtue of their spouse's employment they had to supply wage slips or other evidence of their spouse's employment. Spouses who were non-EEA nationals also had to submit their passports and evidence of marriage in the form of a marriage certificate.

[4] Regulation 2 of the 2000 Regulations provided that a spouse did not include a party to a marriage of convenience. The allegations against the defendants are that fraudulent applications were made to the Home Office for residence documents by EEA nationals on the basis that they were married to a non-EEA national and shared an intention to live together as husband and wife, when in reality they had simply gone through a marriage of convenience, that is a "sham" marriage, with the non-EEA national in order to enable the non-EEA national to thereby obtain residence documents entitling them to live in the United Kingdom. Success and Shittu are alleged to have been involved in arranging several of these sham marriages.

[5] Mr Barry McDonald QC, who appears on behalf of Shittu with Mr Tom MacCreanor, made a submission which was common to all of the counts against his client in relation to the alleged inability of the prosecution to establish that the persons named in the individual counts were non EEA nationals. This application was adopted by Mr Brian McCartney QC, who appears with Mr Boyd, on behalf of Shittu, and Mr McNeill on behalf of O'Hagan. Whilst there were a number of discrete points made on behalf of each defendant which I shall deal with in turn, the point advanced by Mr McDonald QC can conveniently be taken first.

[6] As will become apparent Section 25 of the 1971 Act has been amended and is now in quite different terms to the original provision. Section 25 now provides:

- “(1) A person commits an offence if he –
- (a) does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union?
  - (b) knows or has reasonable cause for believing that the act facilitates the

commission of a breach of immigration law by the individual, and

(c) knows or has reasonable cause for believing that the individual is not a citizen of the European Union.

(2) In subsection (1) 'immigration law' means a law which has effect in a member State and which controls, in respect of some or all persons who are not nationals of the state, entitlement to -

- (a) enter the State,
- (b) transit across the State, or
- (c) be in the State.

(3) A document issued by the government of a member State certifying a matter of law in that State -

- (a) shall be admissible in proceedings for an offence under this section, and
- (b) shall be conclusive as to the matter certified.

(4) Subsection (1) applies to anything done -

- (a) in the United Kingdom,
- (b) outside the United Kingdom by an individual to whom subsection (5) applies, or
- (c) outside the United Kingdom by a body incorporated under the law of a part of the United Kingdom.

(5) This subsection applies to -

- (a) a British citizen,
- (b) a British overseas territories citizen,
- (c) a British National (Overseas),"

[7] Mr McDonald's arguments were set out at paragraphs 8, 9 and 10 of his skeleton argument as follows.

"8. It is respectfully submitted that, whether or not the Defendant committed the particular acts in

question, there is no evidence upon which a reasonable jury properly directed could conclude:

- (i) that the named individual is not a citizen of the European Union; or
- (ii) that the named individual was guilty of committing a breach of Immigration Law; or
- (iii) that the act in question facilitated the commission of any such breach; or
- (iv) that the Defendant knew or had reasonable cause for believing that the act in question facilitated the commission of a breach of Immigration Law by the named individual; or
- (v) that he knew or had reasonable cause for believing that the named individual was not a citizen of the European Union.

9. The evidence against the Defendant on these counts consists essentially of

- (i) the presence in a house occupied by him and others of documentation including passports, marriage certificates, birth certificates and correspondence relating to some of those allegedly involved in the alleged sham marriages;
- (ii) fingerprint evidence that this Defendant handled some, of that and other documentation relevant to the inquiry;
- (iii) hand-writing evidence to the effect that parts of some of the documents relied upon by the Crown, such EEC1 and EEAI forms, are in his hand-writing;
- (iv) evidence that he may have forged or obtained false supporting documentation in relation to residence applications; and
- (v) the presence on a computer found in the house of references to marriages, names of persons involved and money made.

10. Conspicuous by its absence is evidence that the named individuals were not citizens of the European Union and/or that they have committed a breach of immigration law. Evidence that shows

that such an individual had a passport from a country outside the European Union does not mean that s/he is not also a citizen of the European Union. Even if s/he was not a citizen of the European Union, it does not follow that s/he was not entitled to be in the UK or that s/he has committed any breach of immigration law. Significantly, the Crown have not specified the nature of the alleged breach of immigration law in any of the cases before the Court.”

[8] In his oral submissions he argued that there was nothing to show that Success had breached any part of the Regulations and, in addition, that there was no evidence in the committal papers showing that any of the parties named in relation to the offences with which Success is charged demonstrated any intention to live together as husband and wife, nor was there any evidence that this constituted a breach of the Regulations. The nub of his argument may be said to be that there was nothing to show that any of the individuals named as parties to the sham marriages who were alleged to be non-EEA nationals were non-EEA nationals.

[9] For the prosecution, Mr O’Donoghue QC counted this by arguing that it meant in effect that the prosecution should check with every European Union state to show that the person named in the count and who it was submitted was a non-EEA national was not entitled to be in that state. He submitted that on the contrary the jury was entitled to infer from the evidence in each case that the person named had no right of residence in the United Kingdom, and that the intended beneficiaries of the married ceremonies and applications were non-EEA nationals.

[10] I should perhaps make it clear that the European Economic Area includes a number of states, such as Norway, which are not members of the European Union. However no point arises in relation to this in the circumstances of the present case and therefore for the purposes of this case the EEA may be taken as being coterminous with the European Union.

[11] It is clear from the wording of Section 25(1) that the prosecution must establish, and therefore there must be evidence that would justify a properly directed jury in concluding, that the person named in the count as being assisted was not a citizen of the EU. The prosecution must also prove that the defendant knew, or had reasonable cause for believing, that the individual whom the defendant is alleged to have assisted to commit a breach of immigration law was not a citizen of the EU. However, Section 25 does not prescribe how these matters are to be proved. It is correct that Section 25(3) provides that a document issued by the Government of a member state of the European Union is both admissible and conclusive as to certain matters of law

in that member state. However, were Mr McDonald correct it would have the practical effect of requiring the prosecution to provide evidence in some form from every State in the EU that the individual charged was not a citizen of that State.

[12] I can see no reason why the prosecution should be required to take such a step in order to prove the charge where there is evidence from which the jury would be entitled to infer that the person named was not a citizen of the European Union, and that the defendant charged with assisting unlawful immigration to the United Kingdom by that person knew or had reasonable cause for believing that the act which the defendant did facilitated the commission of a breach of immigration law by the individual named in the charge.

[13] It may, of course, be the position in a particular case that the prosecution seek to prove the charge by relying on evidence of the type that Mr McDonald submitted was necessary, and if they chose to do so that is a matter for them. However, in principle I can see no reason why the prosecution should be required to prove a charge such as this in this fashion, and there is some authority which lends support to that conclusion.

[14] I stated earlier that the 1971 Act has been amended and when it was first enacted the relevant portion of Section 25(1) stated:

“Any person knowingly concerned in making or carrying out arrangements for securing or facilitating the entry into the United Kingdom of anyone whom he knows or has reasonable cause for believing to be an illegal entrant shall be guilty of an offence ...”

In R v Patel [1981] 73 CAR 117 the Court of Appeal had to consider counts of assisting the illegal entry of a number of individuals into the United Kingdom brought under the original wording of s. 25(1). The prosecution sought to prove one of the counts on the basis of evidence from the Chief Immigration Officer at Manchester Airport who had examined the Home Office records which showed that the illegal entrant was not entitled to a certificate of registration in the United Kingdom, and was therefore an illegal entrant at the material time. The Court of Appeal took the view that this evidence was hearsay and was therefore inadmissible because it did not comply with the provisions of the Criminal Evidence Act 1965.

[15] It is, however, significant that the evidence put forward in support of two remaining counts, and in particular count 8, was of a circumstantial nature. The Court of Appeal, whilst it quashed count 8 for other reasons, clearly accepted that the circumstantial evidence was evidence upon which

the jury, had it been properly directed, could have found the charge proved, as may be seen from the following quotation from page 120.

“In respect of count 8, Masoud Akhtar, the position is very different. When Patel’s house was searched on July 17 the police found taped to the back of a picture in the fireplace, a completed application form bearing two photographs in the name of Akhtar. Patel said he knew nothing about it. But Akhtar was called, and gave evidence that Patel agreed to get a British passport for him for a fee of £200 plus £11, the passport office fee; that he could go out on his Pakistan passport, and return on the bogus British passport and stay permanently. On his own story, Akhtar was a party to a deal intended to get him into the United Kingdom as an illegal entrant, and so an accomplice at whose evidence the jury ought to look for corroboration, without which it would be dangerous to convict. The learned trial judge, taking the view, in our judgment erroneously, that Akhtar was not an accomplice, did not give the jury the classic direction on corroboration, although he warned them that Akhtar might have an axe to grind. Had he done so, the jury would no doubt have concluded that the finding of the passport application corroborated Akhtar’s story up to the hilt.”

[16] It is therefore clear that the Court of Appeal took the view that circumstantial evidence of this type was evidence from which the jury could conclude that Akhtar was an illegal immigrant, even though there was no evidence of a documentary nature by the prosecution to indicate that Akhtar was an illegal immigrant. Whilst this decision was made under the original wording of s. 25(1), in my opinion it illustrates that it is perfectly proper in principle for the prosecution to lead evidence of the type relied upon in the present case, evidence which is conveniently summarised at para. 9 of Mr McDonald’s submissions at [7] above, and from which the jury could conclude that the defendant assisted a named person to contravene the immigration laws, and it is a matter for the jury to consider in relation to each count whether there is such evidence. I therefore reject Mr McDonald’s submission in relation to this point. In due course I will consider his submissions in relation to the individual counts.

[17] Before doing so I turn to an additional submission which he made in relation to the form of indictment itself. This was that the indictment was

defective in that the counts relating to his client do not specify the breach of immigration law relied upon. I can deal with this shortly. The nature of the evidence relied upon in relation to each count is clear from the committal papers, and from the prosecution submissions in the present case, and from the documents relied upon, and from the nature of the interviews. It is that what occurred in each case was that Success assisted various individuals to go through sham marriages and make applications for residence documents which were based on false information and documents. That this was capable of being an offence under s. 25 is perfectly clear, and in my view it is not necessary for the prosecution to be required to specify more exactly what the breach of immigration law relied upon is. If it were necessary, then the defence would have the option of seeking further particulars of each count, but I am satisfied that this is not necessary as the counts make it clear what it is that the accused is alleged to have done in each instance and how that is a breach of the 1971 Act.

[18] I now turn to consider the individual submissions made on behalf of each defendant. These have been set out in detail in the comprehensive written submissions on behalf of the prosecution and the defence and I do not propose to recite either the submissions or much of the evidence relating to the specific counts. Each of these applications has to be viewed against the background of the evidence linking Success and others to these offences and which was conveniently summarised, in part at least, by Mr McDonald in paragraph 9 of his skeleton argument in relation to Success which I have already quoted. In addition I simply wish to add that Success lived at 126 Waterfoot Park, Londonderry which was searched on 25 May 2006. A very substantial quantity and variety of documents were seized which the prosecution rely upon as linking him to these offences, and in particular to other defendants who were married to allegedly non-EEA nationals and who made applications for residence documents to the Home Office. There were also found two laptop computers. Success admitted owning one, and in respect of the second there is evidence of entries on it which link him to it. Finally, a large number of passports and other material of a type useful to support applications for residence documents were found in the house. When considering the applications I propose to group the respective allegations in relation to the individuals concerned.

#### **Counts 2-7 and 30 (Jiawein Tan and Wendy Allen)**

[19] Application has been made for no bill in relation to each of these counts which relate to an application involving one Jiawein Tan (Tan) and Wendy Allen. Counts 2, 3 and 4 relate to the use of allegedly false payslips regarding the employment of Wendy Allen at "Jean Paul's Tanning and Health Saloon". Counts 5, 6 and 7 relate to the use of a false letter purportedly written by Emma Byrne of "The Hairshop". These documents were submitted to the Home Office in support of an application relating to



Tan and are relied upon in support of counts 2 and 5, assisting unlawful immigration, counts 3 and 6, using a false instrument, and counts 4 and 7, making a false instrument. Payslips identical to those submitted on behalf of Tan in support of his application were found in the suitcase found in the master bedroom during the search of 126 Waterfoot Park. That identical documents, which the prosecution seek to show were false, were found in 126 Waterfoot Park and in the Home Office file in my view provides sufficient evidence which would entitle the jury to conclude that Success made, or was involved in the making of, the payslips, using them in support of the application, and in forwarding them to the Home Office. I therefore refuse the applications on counts 2, 3 and 4.

[20] The evidence of Mr Craythorne to the effect that his examination of Form EEC 1 in the name of Wendy Allen which was submitted to the Home Office in support of the application for Mr Tan strongly supports the conclusion that Success was the writer, is, in my view, sufficient evidence to entitle the jury to conclude that Success was responsible for making that document, using it and forwarding it in support of the application made by Wendy Allen. The applications on counts 5, 6 and 7 are refused.

[21] Count 30 relates to an alleged conspiracy to obtain from the Registrar of Marriages at Coleraine a certificate of marriage between Wendy Allen and Tan. I am satisfied that the evidence of Mr Craythorne in relation to the authorship of the letter written by Emma Byrne, when taken with the payslips relating to Wendy Allen, is sufficient to enable a jury to conclude that Success was party to a conspiracy involving an application by Wendy Allen based upon a sham marriage, and supported by the false documents which are the subject of counts 2 to 7. I refuse the application on count 30.

#### **Counts 20-21 (Kieran McCafferty)**

[22] McCafferty is charged on counts 20 and 21 with using and making a false instrument, namely a letter confirming the employment of Kieran McCafferty by Millennium Cleaning Services. This letter was submitted in support of an application to issue a residence document in the name of Bei Guo. The terms of the Millennium Cleaning Services letter purported to be from a firm based in London confirming McCafferty's employment in London. The black IBM laptop computer found in 126 Waterfoot Park can be linked to Success in two ways. First of all he admitted using the laptop, when he said at page 22 of his interviews "we all use them together". Secondly, numerous documents have been retrieved from the laptop which were plainly either created by, or which relate to, Success. There is ample evidence to show that he made use of this computer. A number of these entries relate to Kieran McCafferty, for example his name and address is listed five times at page 2017, and page 2013 is a letter in identical terms to that submitted in support of McCafferty's application. The conjunction of this document on a

computer which contains so many documents apparently created by Success, is, in my opinion, sufficient evidence upon which the jury could conclude that he created this document, and made use of it in support of an application intended to obtain the issue of a residence document in the name of Bei Guo. I therefore refuse the application on counts 20 and 21.

### **Counts 23 to 26 (Susan Ayinde)**

[23] The defendant is charged with using a Halifax bank statement dated 25 March 2005 in the name of Susan Ayinde, and at count 24 with making it. The Halifax documents were used in support of an application relating to Susan Ayinde (see page 2160). A substantial quantity of documentation relating to Susan Flavin (otherwise Susan Ayinde) was recovered from the suitcase found at 126 Waterfoot Park. Counts 25 and 26 relate to making a payslip issued to Susan Ayinde by Harkin's Hairdressers and using the payslips to support Susan Ayinde's application. The conjunction of all of these documents, and the use to which they were put is such that, in my view, would justify the jury concluding that the accused was responsible for their production and use. I therefore refuse the applications on counts 23 to 26.

### **Count 33 (Carol Muldoon and Chen Liang)**

[24] Count 33 alleges that the defendant was party to a conspiracy to obtain a marriage certificate between Carol Muldoon and Chen Liang, having reasonable cause for believing that this would facilitate the commission of a breach of immigration law by Chen Liang. There is considerable evidence that Carol Muldoon married Chen Liang at the registrar's office in Londonderry on 16 June 2004 and that various documents were submitted to the Home Office in support of an application ostensibly from Muldoon seeking a residence document for her husband. The Home Office found the initial application unsatisfactory and there was correspondence between the Home Office and 60 Lisneal, Londonderry which was the defendant's address before he moved to Waterfoot Park.

[25] Part of the correspondence with the Home Office took the form of a handwritten letter dated 6 November 2004 purportedly written by Carol Muldoon saying that her husband's passport had been lost (page 1229). The statement of Brian Craythorne (page 64) is to the effect that the handwriting evidence strongly supports the proposition that the defendant wrote this letter.

[26] A search of 126 Waterfoot Park led to the discovery of Muldoon's passport, two passports for Liang, copies of the marriage certificate, Muldoon's birth certificate, and various payslips ostensibly issued by Strand Express in favour of Carol Muldoon. One of these was dated 5 November 2004 and is identical to one sent to the Home Office.

[27] The finding of these documents relating to Muldoon and Liang's application at 126 Waterfoot Park; the correspondence sent to the defendant's earlier address in relation to this application, and the evidence of Mr Craythorne to the effect that the defendant wrote the letter of 6 November 2004, in my opinion provides sufficient evidence from which the jury could properly conclude that the defendant was party to a conspiracy involving himself, Muldoon and Liang. The application on count 34 is refused.

[28] Although a general submission was made in respect of Success in respect of count 36 amongst a number of other counts, there were no submissions specifically in respect of count 36, and I refuse a No Bill on this count for the reasons already given at [12]-[16] above.

### **Count 39 (Sabrina Cole and Bo Wang)**

[29] The defendant is charged with being party to a conspiracy to obtain a marriage certificate relating to the marriage between Sabrina Cole and Bo Wang to facilitate the commission of a breach of immigration law by Bo Wang. At paragraph 19 of the written submissions on behalf of Success it is conceded that there is evidence connecting him to an application for a residence permit and to Sabrina Cole's passport, but it is said that there is no, or no sufficient, evidence to connect the accused to a conspiracy to obtain a certificate of marriage between them. There is ample evidence that Sabrina Cole and Bo Wang went through a ceremony of marriage, see for example the document at p. 1261. Mr Craythorne at p. 65 provides evidence linking the defendant to the compilation of Sabrina Cole's form EEC 1 which appears at p. 1273. Given the nature of the evidence against the defendant in relation to the documents and other items found at 126 Waterfoot Park, I am satisfied that the evidence of Mr Craythorne linking the accused to the preparation of form EEC 1 is sufficient to enable the jury to infer that the accused was party to a conspiracy which involved Cole and Bo Wang going through a sham marriage, and later applying for a residence document on a form EEC 1. I refuse the application on count 39.

### **Count 42 (Kieran McCafferty and Bei Guo)**

[30] At para. 20 of the defendant's written submissions it is conceded that there is evidence connecting him for a form EEA 2 in respect of Guo and to a form EEA 1 in respect of McCafferty. It is argued that nevertheless there is insufficient evidence to connect him to a conspiracy to obtain a certificate of marriage. However, the nature of the forms EEA 1 and EEA 2 is such that, particularly when taken in conjunction with the evidence already referred to at counts 20 and 21 relating to the documents purportedly emanating from Millennium Cleaning Services, there is in my opinion sufficient evidence to enable the jury to conclude that the obtaining of a marriage certificate as a

result of a sham marriage was an integral part of the overall conspiracy to obtain residence documents for Bei Guo, part of which was the submission of forms EEA 1 and EEA 2 to which the defendant is linked. I therefore refuse the application on count 42.

#### **Count 45 (Eamon Johnston and Man Su)**

[31] Count 45 alleges a conspiracy between the defendant and Eamon Johnston to obtain from the registrar of marriages in Stranorlar, County Donegal a certificate of marriage between Eamon Johnston and Man Su to facilitate a breach of immigration law by Man Su. A passport in the name of Man Su, and a marriage certificate in the name of Man Su and Eamon Johnston were found in the suitcase discovered during the search of 126 Waterfoot Park. These documents in themselves suggest that the defendant was involved with this sham marriage as the documents cannot be viewed in isolation from the other documents found in the suitcase and in the house. These included a large number of passports in the names of other people, together with marriage certificates and what appear to be false pay documents such as payslips. I consider that the jury would be entitled to have regard to all of the evidence relating to these matters when considering count 45 and would be entitled to conclude that the defendant was party to a conspiracy of the nature alleged in count 45. The application on count 45 is accordingly refused.

#### **Count 46 (Pamela O'Donnell and Wang Ye)**

[33] It is submitted on behalf of the defence that there is no evidence to support the charge of conspiracy alleged in count 46, which alleges that the defendant and Pamela O'Donnell conspired together to obtain from the registrar of marriages at Letterkenny, County Donegal the certificate of marriage between Pamela O'Donnell and Wang Ye. Other than a generalised response at paragraph 22 of the Crown's written submissions, no reference has been made to any evidence of the involvement of the defendant with Pamela O'Donnell in this sham marriage. Whilst there is the admission by Pamela O'Donnell in her interview that she was involved in this at the instigation of the defendant Success, this not admissible against him at this stage. Therefore there is no evidence that connects Success to this episode, although there may be considerable suspicion that he was involved because of his involvement in the other matters with which he has been charged, and because of the documentation found at his house. That suspicion does not provide a basis upon which this charge can be maintained, and I grant the application for a No Bill against Success on count 46.

#### **Count 47 (Lisa Marie Palmer and Soudiq Adedayo Hamzat)**

[34] The evidence that the defendant conspired with Lisa Marie Palmer to facilitate the commission of a breach of immigration law by Souidiq Adedayo Hamzat by obtaining a certificate of marriage from the registrar of marriages at Letterkenny appears to rest solely upon the discovery of Lisa Palmer's passport in the suitcase which was found in the defendant's home during the search of 126 Waterfoot Park. Although the evidence is somewhat tenuous, I am satisfied that it is sufficient to justify a jury concluding, when viewed in the light of the evidence relating to the other documents that were found, that this was evidence of a conspiracy to commit a breach of immigration law, and that part of that conspiracy would necessarily therefore involve the obtaining of a certificate of marriage between Lisa Marie Palmer and Souidiq Adedayo Hamzat. Where it the case that the defendant had been found in possession only of one passport, that might not be the case but, given the multiplicity of passports and other documents, the jury would, in my opinion, be entitled to infer that this piece of evidence was indicative of a similar conspiracy. I therefore refuse the application for a No Bill on count 47.

#### **Count 48 (Melissa McShane and Zhang Zhao)**

[35] Count 48 alleges that the defendant and Melissa McShane conspired to obtain a certificate of marriage between Melissa McShane and Shang Zhao from the registrar of marriages at Letterkenny. As the defendant's written submissions at paragraph 24 concedes, Melissa McShane's birth certificate and correspondence from the Social Security Agency (p. 1417) were found in the defendant's house. These documents were found in the suitcase to which reference has already been made, and I am satisfied that the possession by the defendant of a birth certificate and this correspondence is sufficient evidence to justify a jury concluding that the accused was engaged in a conspiracy that Zhang Zhao and Melissa McShane would go through a sham marriage. The application on count 48 is accordingly refused.

#### **Count 49 (Corrina Murray and Yan Liu)**

[36] Count 49 alleges that the defendant conspired with Corrina Murray to obtain a marriage certificate from the registrar of marriages at Letterkenny in relation to a marriage between Corrina Murray and Yan Liu. Corrina Murray's Irish passport and birth certificate were both found in the suitcase recovered from 126 Waterfoot Park. Given the nature of these documents, the fact that the defendant had no apparent legitimate reason for possession of them, and that they were found in conjunction with a large number of other passports and documents relating to applications to the Home Office, in my view amounts to sufficient evidence which would justify the jury concluding that the defendant was party to a conspiracy as alleged, and the application in relation to count 49 is accordingly refused.

#### **Count 50 (Karen Ryan and Bin Yan)**

[37] Count 50 alleges a conspiracy between the defendant and Karen Ryan to obtain a certificate of marriage from the registrar of marriages at Letterkenny of a marriage between Karen Ryan and Bin Yan. It is suggested in paragraph 26 of the defendant's written submissions that evidence suggesting that a letter from the Halifax to Bin Yan was forged by the defendant does not amount to evidence of a conspiracy. The documents comprising Item IH 60 (A) found beside a scanner in the living room at 126 Waterfoot Park were examined by Mr Craythorne. At pages 65-67 he deals in detail with his analysis of the results of his examination of the documents, and concludes that an original letter to the defendant from the Halifax was used to produce a quite different document purporting to come from the Halifax to Mr Bin Yan. See p. 1423. I am satisfied that the jury would be entitled to conclude that this was evidence of an action to which the defendant was party and which was part of a sophisticated operation involving the alteration of documents sent to him in order to support an application for a residence document on behalf of Bin Yan, and therefore evidence that he was party to a conspiracy that a sham marriage take place between Karen Ryan and Bin Yan. I refuse the application on count 50.

#### **Count 51 (Charlene O'Hagan and Xihua Chan)**

[38] Count 51 alleges that the defendant was party to a conspiracy with Charlene O'Hagan involving her obtaining from the registrar of marriages at Letterkenny a certificate of marriage between herself and Xihua Chan. The discovery of Mr Chan's passport in the defendant's house is relied upon in support of the charge. The evidence is therefore the same as that relied upon in support of count 47, and for the reasons I have already given in relation to count 47 I consider there is sufficient evidence of a conspiracy to justify a jury so concluding. I refuse the application on count 51.

#### **Possession of a passport in the name Yetunde Juliana Success**

[39] Count 29 alleges that the defendant had possession of a Nigerian passport in the name of Yetunde Juliana Success. It seems from his explanation that he says this passport belongs to his mother. However, as the statement of offence makes clear, the offence with which he is charged is one of possessing a listed false instrument, contrary to Section 5(2) of the Act of 1981. This provides:-

“(2) It is an offence for a person to have in his custody or under his control, without lawful authority or excuse, an instrument to which this Section applies which is, and which he knows or believes to be, false.”

[40] Although the defence submission was made on the basis that the defendant was entitled to have his mother's passport in his possession, a more fundamental difficulty is there is no evidence that this passport is false and therefore no evidence upon which the jury could convict the accused of this offence. I therefore grant a No Bill in relation to count 29.

#### **Counts 36 to 39 (Akeem Shittu and Chen Liang)**

[41] Mr McCartney QC, on behalf of Shittu, adopted Mr McDonald's submissions in relation to counts 36, 38 and 39. That being the case, the evidence relied upon in relation to his client falls within the discussion at [12] to [16] above. I therefore refuse the applications for a No Bill on counts 36, 38 and 39, each of which relies upon the same point.

[42] So far as count 37 is concerned, it is submitted that there was no evidence of a conspiracy between Shittu and Success to defraud the Home Secretary into issuing a residence document in the name of Chen Liang.

[43] At p. 65 Mr Craythorne expresses the opinion that Shittu wrote the details contained in Section 1 of the form EEC1 in the name of Carol Muldoon which he refers to as being "in TMcC5-CM". Parveen Akhtar produced the application for a UK residence permit as exhibit PA 18 which is to be found at page 2211. Although this is not identified as exhibit TMcC5-CM, it was removed from the Home Office file relating to Carol Muldoon by Detective Constable Timothy McCullough (see p. 104), and appears to be the item at p. 2211. That being the case, the evidence of Mr Craythorne that the handwriting in Section 1 of this document is attributable to Shittu, when taken with the other evidence relating to Shittu's residence with Success at 126 Waterfoot Park, is in my opinion sufficient to justify the jury inferring that Shittu and Success were parties to a conspiracy to defraud the Home Secretary by obtaining a residence document in the name of Chen Liang. I therefore refuse the application for a No Bill on count 37.

#### **Counts 51, 52 and 53 (Charlene O'Hagan and Xihua Chan)**

[44] On behalf O'Hagan Mr McNeill adopted the submissions of Mr McDonald, and for the reasons that I have given in relation to the general submissions I am satisfied that in so far as the application for a No Bill rests upon the alleged lack of evidence that Xihua Chan was not a citizen of the EU, there is evidence from which a jury might infer that this was the case. The description she gave of her journey to Letterkenny with Success and a Chinese individual is such that there is evidence that she was well aware that she was taking part in a sham marriage. In particular, she accepted that the man she was to be married to was Xihua Chan, that she was to be paid £2,000-£2,500 to go through with the wedding, and did so.

[45] A further point made on behalf of O'Hagan is that as the holder of an Irish passport she is an Irish citizen. That may be the case, but that does not mean that she may not also be a British citizen. During interview she gave her date of birth as 27 July 1979 and her address as 52 Marianus Park, Hazelbank. As can be seen from her recognizance that is an address in Londonderry. As she was born between 1949 and 1982 then, provided she was born in the United Kingdom, she automatically acquired citizenship of the United Kingdom and Colonies. See Halsbury's Laws of England, Fourth Edition, 2002 Reissue at paragraph 19(1). She gives an address in Londonderry, and in the absence of evidence to the contrary a jury would in my opinion be entitled to conclude that she is a native of Londonderry, and accordingly a British citizen. That being so, subsections 4 and 5 of Section 25 prima facie apply to her. On that ground the defendant's arguments in relation to count 51 and 52 fail.

[46] It is said in relation to counts 51 and 52 that there is no admissible evidence that she was party to a conspiracy within the United Kingdom. However, there is ample evidence that she was party to a conspiracy either in Londonderry or in County Donegal, and therefore as a British citizen by virtue of Section 25(4) (b) and 5(a) she is subject to the Crown Court. So far as both counts are concerned the following admissions which she made during interview are relevant.

- She travelled back to Derry with a friend after the second journey to the courthouse at Letterkenny.
- She purchased wage slips in Bishop Street which she fabricated.

It would be a reasonable deduction for the jury to make from the general tenor of her responses to questions in interview that she was living in Londonderry at the time. I therefore refuse the applications for a No Bill on counts 51 and 52.

[47] It is asserted in relation to count 53 that there is no evidence that she actually made any false instruments within the jurisdiction of the Crown Court. However, she admitted at p. 1063 that she had purchased the wage slips at Bishop Street, wage slips which she referred to as being "just made up ones" and at p. 1064 she said, "So Alex is doing this for all the girls anyway so I thought for an extra £1,000 why not just write them out". These admissions are prima facie evidence that she was responsible for compiling the false payslips and made the payslips. That she made them in Northern Ireland would be a proper inference for the jury to make. Accordingly I refuse the application for No Bill on count 53.

[48] Therefore so far as each of the present applicants is concerned, with the exception of those counts where I have indicated that a No Bill will be allowed, each of the applications for No Bills are refused, and the accused must be arraigned accordingly.



