

HONG KONG / JUDGMENT

# HKSAR v. LIU QIANQING

## COURT

Court of First Instance

## DECIDED

16 August 2007

## CASE / FILE NUMBER

HCMA103/2007

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bjbj RMRR \_\_ Before: Deputy High Court Judge E Toh in Court Date of Hearing: 16 August 2007  
Date of Judgment: 16 August 2007

## J U D G M E N T

The Appellant was originally 1 of 2 defendants who appeared before the Principal Magistrate in Shatin Court. The Appellant was charged with 6 counts of making a false representation to an Immigration Officer under Part II of the Immigration Ordinance, Cap. 115 and a joint charge of conspiracy to defraud which is the 7th charge. The other defendant in the case is the person with whom she entered into a bogus marriage. The Appellant pleaded guilty and after mitigation she was sentenced to a total term of 21 months imprisonment. She appeals against that sentence. The facts before the learned Magistrate showed that the Appellant had entered into the bogus marriage with the 2nd Defendant, who is a Hong Kong resident, in order that she could obtain 90 days permit to visit Hong Kong ostensibly to visit the 2nd Defendant, and, eventually, she could be entitled to a One Way Permit to settle in Hong Kong. The 1st Defendant (that is the Appellant) has paid RMB18,000 and registered the marriage in China with the 2nd Defendant in late May 2005. This was in relation to the 7th charge. After that, the Appellant had successfully applied for a T exit endorsement and was able to enter Hong Kong on 6 different occasions. Twice in July 2005, one in November 2005, and one in May 2006 and the last time was in July 2006. The learned Magistrate was told that she was ostensibly visiting the 2nd Defendant, but, in fact coming to Hong Kong to seek business opportunities. On the 14 November 2006, she tried using a T exit endorsement but on this occasion she was refused permission to land. The Appellant had a clear record in Hong Kong. In mitigation, the learned Magistrate, was told that she should be granted some leniency because she was a single parent. The learned Magistrate, after hearing mitigation, also considered the prevalence of this type of offences. He was in a very good position to know, being the Principal Magistrate in the immigration plea court, since March 2006. The learned Magistrate considered that this scheme which the Appellant had entered into to be wholly dishonest. She was able to secure 90 days permit to enter Hong Kong rather than the normal 7

days and that eventually if the Appellant wanted to she could settle in Hong Kong with the One Way Permit. And so the learned Magistrate decided that this is not the type of case where he could extend leniency. He considered other relevant cases and then decided to impose a starting points of 18 months reduced to 12 months because of the plea for the 1st to 6th charges and then he decided to make them concurrent, and he imposed a 12-month starting point on the 7th charge and sentenced the defendant to 9 months imprisonment and that 9 months to be consecutive to the 12-months imposed for charges 1 to 6. Mr Yeung on behalf of the Appellant sought on appeal to argue that the starting point adopted by the learned Magistrate was too high. Mr Yeung considered that this was not a serious case in comparison to other cases in the Immigration list and so therefore he argued that a correct total sentence should be 16 months. First of all, I do not agree that is not a serious offence. It is extremely serious because, not only had the Appellant come to Hong Kong previously on the strength of a bogus marriage, she had been in and out of Hong Kong for a total of 6 times. Whether she intended to settle in Hong Kong eventually is not the point. The point is that she would be able to eventually have that option. The bogus marriage was a fraud perpetrated on the government of Hong Kong. It is extremely serious and as the learned Magistrate had noted its prevalence in Hong Kong. The courts have tried to deter this kind of offence with strict sentences so as to deter others from acting in this way. These cases are hard to detect and the offender should be punished accordingly. I do not consider the sentence to be manifestly excessive or indeed excessive at all. The learned Magistrate had imposed correct sentences and so I consider that the sentences are not wrong in principle nor manifestly excessive and so the appeal is dismissed. (E Toh) Deputy High Court Judge Ms Teresa Kam, Government Counsel of Director of Public Prosecutions, for the Respondent Mr Y C Yeung instructed by Messrs T C Foo & Co., for the Appellant PAGE - 1udk 1udk H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V i\$&`G ,wC= ,wC= hcma.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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