Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11445/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 May 2017	**On 10 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

K A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:
For the Appellant: Ms A Broom, Solicitor from Duncan Lewis & Co Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Courtney (the judge), promulgated on 15 December 2016, in which she dismissed the Appellant's appeal on all grounds. The Appellant, a Moroccan national, had arrived in the United Kingdom in June 2012. Thereafter she made various applications in this country, all of which were unsuccessful. On 15 September 2015 she claimed asylum. Her claim was based in large part upon her marriage to an Italian national. It was asserted by the Appellant that this marriage had led to a desire by her father to harm her based on perceived undermining of the family's honour. The Respondent refused the claim by a decision of 9 October 2016.

The judge's decision

2. Overall the judge found the Appellant and her supporting witness to be credible (paragraph 41). Having considered the Appellant's particular circumstances and the country information the judge finds at paragraphs 50 and 54 that the Appellant was at risk in her home area. The risk emanated from her father, against whom there would be no sufficient protection by the Moroccan authorities.

3. The judge then goes on to consider the issue of internal relocation. She concludes that there was only a "remote" possibility of the Appellant's family being able to trace her outside of her home area of Casablanca. The judge considers relevant case law and country information and concludes that on the facts of the case before her internal relocation was a viable option. For this reason the protection claim failed.

4. Finally, the judge notes that by way of concession from the Appellant's representative Article 8 was not being pursued.

The grounds of appeal and grant of permission

5. There are three grounds. The first of these states in terms that material findings of the judge are irrational/perverse. In essence it is said that given a number of the judge's findings relating in particular to the risk in the home area, she was bound to conclude that this Appellant could not internally relocate. Particular reference is made to paragraph 59 in which the judge said that there was no need for the Appellant to expose her past history of marriage to the Italian national (who also happened to be a Christian). It is said that this finding was not rational in light of the country evidence, which showed that it was illegal for a Muslim woman to marry a non-Muslim man. The second ground relates to alleged procedural unfairness. It is said that the judge should have adjourned the case in order for the Appellant to be able to obtain an expert report. The third ground relates to Articles 2 and 3 of the ECHR and humanitarian protection. It is said that the judge has not dealt with these adequately or at all.

6. Permission to appeal was granted by First-tier Tribunal Judge Baker by a decision dated 16 March 2017. Particular reference is made in the grant to paragraph 59 of the judge's decision (referred to previously).

The hearing before me

7. At the outset Ms Broom confirmed that an adjournment application previously made in writing but refused by a judge at the Case Management Review hearing had not been renewed at the appeal hearing before the judge. In light of this she fairly acknowledged the difficulty in pursuing ground 2.

8. In respect of ground 1, she submitted that a "remote" possibility amounted to a sufficient basis to show risk in any other place within Morocco, but in any event the possibility was more than remote. Ms Broom submitted that the authorities could contact the Appellant's father wherever she may be once they found out from her that he was her father and/or that she had been married to a non-Muslim man. She could not hide these facts. She reiterated the point that it was illegal for a Muslim woman to marry a non-Muslim man. She referred me to pages 319 and 353 of the Appellant's bundle, a bundle that was in front of the judge.

9. Mr Whitwell submitted that the adjournment point had no merit because the application had not been renewed in front of the judge. In respect of paragraph 59 of the judge's decision, he reminded me of the higher threshold required where perversity is alleged. It was unclear as to what was or was not said to the judge about the Appellant's claim at the hearing. The faith of the Appellant's husband would not necessarily be determinable from his surname only. Even if such a marriage was illegal in Morocco there was no evidence about the effects of this on the Appellant in respect of internal relocation. There was a lack of evidence overall.

10. In reply Ms Broom submitted that the Appellant's father would find out about her whereabouts, that the authorities would find out about the marriage, and that there was a lack of support for women in the Appellant's position.

11. I reserved my decision on error of law.

Decision on error of law

12. After careful consideration I have concluded that there are no material errors of law in the judge's decision. My reasons for this conclusion are as follows.

13. On the adjournment issue, whilst I fully acknowledge that an application for an adjournment was made on the papers prior to the Case Management Review stage on the basis that expert evidence was sought, this application was refused by First-tier Tribunal Judge Grant at that initial point. The refusal was, I am satisfied, communicated to the Appellant and

her representatives. The adjournment application was not renewed before the judge at the oral hearing. Ms Broom has acknowledged this fact, and having looked at all the papers including the Record of Proceedings for myself I am fully satisfied that this is the case. That being so there was in fact no application to adjourn in order to seek any country evidence. The judge clearly cannot be criticised for proceeding in the absence of any such application. That disposes of ground 2 of the grounds of appeal.

14. In respect of ground 1, Mr Whitwell was right in pointing out the implications of mounting an irrationality challenge to the findings of the judge. There is an "elevated threshold" in such cases, in other words the Appellant has to show that the findings and conclusions reached by the judge were ones to which no reasonable judge could possibly have arrived at. In my view this elevated threshold simply has not been met by the Appellant in this case.

15. The assertion that a "remote" risk amounts to a serious possibility is misconceived. The judge was fully entitled to find that the risk was remote, and then that such a remote risk did not discharge the lower standard of proof.

16. The judge is to be commended in my view for a thorough consideration of all of the issues in the case before her including, importantly, relevant country information. She had fully in mind the problems faced by women, including matters relating to their legal standing, the attitude of the authorities, and the nature of institutional discrimination (see for example paragraphs 48 to 57). The judge was fully aware of the particular circumstances to be faced by this Appellant upon return including the absence of a male protector or of family support. Indeed, the judge had of course found that the Appellant was at risk from her father in the home area.

17. She then quite properly went on to consider in detail the issue of internal relocation. It did not necessarily follow that a risk in the home area would translate to a risk throughout Morocco. In my view the judge undertook a detailed exercise in the assessment of facts, law and background country information, and derived from this findings and conclusions which were entirely open to her. Certainly, in the context of a rationality challenge, the simple fact that Appellant was at risk in the home area, would not have had familial support elsewhere, and was a woman, did not of itself mean either that she had to be at risk everywhere or that internal relocation would necessarily be unduly harsh.

18. Paragraph 59 is an important passage and one that has given rise to particular thought when making my decision. The judge states: "There will be no need for [K A] to expose her past history of marriage to a Christian man to those with whom she comes into contact elsewhere in Morocco." I appreciate why the Appellant has sought to challenge this in light of the HJ (Iran) principle. However there is no material error. Ms Broom has sought to suggest that her status would inevitably be disclosed and that in some

way this would mean that her father would then be alerted to her location. He could then find her and harm her. Alternatively, she seemed to indicate that the Appellant would be at risk from the authorities themselves. However, having looked at the Appellant's skeleton argument before the First-tier Tribunal, the Record of Proceedings, and the papers as a whole, this is not the way in which the case appears to have been put to the judge. There was no evidence before her or indeed submissions made to her that the Appellant would be bound to reveal who her husband was (or at least what his religion was), no evidence that such information would inevitably come to light in any event, nor any evidence that she could be tracked down by her father through the Appellant's interaction with the authorities elsewhere in the country. Indeed, on this last point, at paragraph 57 the judge specifically finds that the family did not have power or influence such that it could obtain the assistance of the Moroccan authorities in tracking down the Appellant. There was clearly no expert evidence on the point. I see nothing in the country information to which the judge was referred, and there is nothing in the note of the oral submissions contained in the Record of Proceedings to indicate that such a submission was put to her at the hearing.

19. Having regard to the skeleton argument, in particular paragraphs 11 through to 15, the case was put very much on the basis that the marriage led to the risk of honour killing. There is also reference to the lack of state protection, but of course the judge has found that there was a risk in the home area. However, she then provides reasoned and rational findings and conclusions to support her view that the risk did not exist throughout Morocco. In respect of the illegality of a marriage between the Appellant and her husband (which I note was deemed to be a sham marriage by the judge: see paragraph 27), there was no evidence before the judge as far as I can tell as to what the consequences of that could be in respect of the Appellant's ability to internally relocate. There was no evidence about the attitude of the authorities to such a status. There was no evidence about prosecutions. There was no evidence about harm done to people in the Appellant's situation by either the authorities or society at large. There was certainly no evidence that the Appellant's father would as a matter of course be informed of her whereabouts by the authorities should they or anybody else discover that the Appellant was in fact married to a non-Muslim man.

20. In light of the above, I see no irrationality at all. Even if it were to be said that there was an error in approach in paragraph 59, it would not be material in light of the dearth of evidence before the judge.

21. Finally, I briefly address ground 3. It is quite clear that Articles 2 and 3 ECHR and humanitarian protection added nothing to the Appellant's overall protection claim. These issues stood or fell with the asylum claim.

Notice of Decision

There are no material errors of law in the First-tier Tribunal's decision.

The Appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands.

Signed Date: 9 May 2017

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date: 9 May 2017

Deputy Upper Tribunal Judge Norton-Taylor