



are illegitimate under Moroccan law; and, giving birth to the children is evidence of having had sex outside marriage which is a criminal offence in Morocco. The Secretary of State did not accept her claim.

2. The judge found that the appellant and her partner appeared to be living in Northern Ireland without any adverse comment from within her own community and that he did not know whether they were married according to Islamic law [35]. He concluded also that the material relating to the problems that illegitimate children face in Morocco related to those coming from poor families; and, a clear distinction was to be made between people in those circumstances and the appellant who was a graduate with a degree in economics and who had been employed as a bank manager. The judge, considered material regarding the Moroccan family law but stated he was not in a position to make findings with regard to foreign law. He stated also that the issues raised were the same as those raised in a previous appeal before him in which he had dismissed the appellant's asylum claim. The judge concluded [35] that his decision in 2018 still held good.
3. The appellant sought permission to appeal on the grounds that the judge had erred:-
  - (i) in failing to consider whether there was a risk to the appellant of being imprisoned on return to Morocco given that Article 490 of the Moroccan Penal Code criminalised extramarital relations, as, in order to register her children she would have to declare they were conceived outside of marriage, effectively a confession to an extramarital relationship;
  - (ii) in making findings in respect of documents which were inconsistent, specifically finding that there was no prospect of the appellant's partner returning to Morocco voluntarily and concluding the appellant was not a single woman;
  - (iii) in failing to consider paragraph 276ADE(vi) in respect of the appellant's children which had been highlighted in the appellant's skeleton argument as a central issue;
  - (iv) in failing properly to consider Section 55 of the UK Borders, Citizenship and Immigration Act 2009;
  - (v) in failing to put aside his preconceived notions of the case having had a previous decision on an asylum claim for the appellant dismissed on 2 February 2018.
4. On 26 May 2021 Upper Tribunal Judge Jackson granted permission to appeal on all grounds.
5. At the hearing, Mr Jebb submitted that the judge had failed to note that it was not in issue between the parties that extramarital relations were

punishable by imprisonment, although the court seldom convicted unmarried mothers.

6. Ms Cunha accepted that there were errors of law in the decision which were material and that, given that they went to the core of the claim, the appeal should be set aside and remitted to the First-tier Tribunal for a fresh decision.
7. I consider that Ms Cunha's concession was correct on the facts of this case. The judge appears not to have what was not in dispute between the parties as was evident from the refusal letter. He has therefore not adequately explained why he did not accept the appellant might be at risk of conviction on return to Morocco, nor does he appear properly to have engaged with the difficulties that there may or may not be in registering the children and the consequences that would flow from that given that much of the law which he refers to as confusing was not in issue between the parties. I accept that that is why, as Mr Jebb explained during the course of submissions, expert evidence on the point had not been sought.
8. It is equally clear that the judge did not make proper findings with respect to paragraph 276ADE(vi) which, on the facts of this case may well have been relevant given the extent to which it would be possible for the children to be registered and thus have status to integrate in Morocco.
9. Finally, the judge did not engage with Section 55 of the UK Borders Act 2009. Whether, and to what extent that that is material, will be a matter for the First-tier Tribunal when reconsidering this matter after remittal.
10. Whilst it has not been necessary for me to make a finding on this, I do find it somewhat surprising that the judge took into account findings made in his previous decision on the appellant's earlier asylum appeal. It would, in the circumstances, have been better for the judge not to have heard this appeal.

### **Notice of Decision**

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remit the appeal to the First-tier Tribunal for a fresh decision on all issues.

### **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.

Signed

Date 21 February 2022

Jeremy K H Rintoul  
Upper Tribunal Judge Rintoul