Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07665/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 14 August 2015	**On 19 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

S E Y
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Hawkin, Counsel
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Morocco. She has appealed with the permission of the Upper Tribunal against a decision of Judge of the First-tier Tribunal Callow, dated 24 January 2015, dismissing her appeal against a decision of the respondent to remove her to Morocco, having refused her asylum application.

2. The core of the appellant's asylum claim is that she was to be forced into marriage by her father and, having left the country to escape the marriage, she fears that on return her father would seriously ill-treat her or even kill her by way of so-called “honour killing”. None of this was accepted by the respondent. The appellant’s appeal was heard on 5 December 2014. The appellant gave evidence, as did her brother and her former immigration advisor. The judge’s

key findings are set out in paragraph 29 as follows:

> "29. The appellant, despite the fact that she unduly delayed in making her claim for asylum, impressed me as being a plausible witness. In the round it has been established that the appellant's father agreed to her marriage to M without her consent. Throughout the asylum process the appellant has given a consistent explanation of her claims. Her evidence as to having to undergo an unwanted marriage has been corroborated by her brother. Such a finding lends weight to the general credibility of her claim, the consequences of which however have not been established. It has not been established that her refusal to marry M would result in an honour killing, an assault or other harm. No threats have been made to kill the appellant. While it is recognised that an appellant's asylum claim does not require corroboration, the country information reports in this appeal and the opinion of the appellant's expert, Dr Seddon do not assist the appellant. Recognising that the reports relied on by the respondent are dated, it is noteworthy that Dr Seddon in his expert report with many years of experience of life in Morocco is unable to point to any evidence, beyond that of addressing honour killings in instances of adultery. As the father allowed the appellant to be educated and to proceed overseas when promised in marriage it has not been shown that he is an autocratic Muslim with extreme views. On the contrary it might be said that he holds enlightened views consistent with a slow emancipation of women. Accordingly it has not been shown that her father would seek to kill or have her killed or subject her to any persecutory treatment founded on a refusal to undergo an arranged marriage. Accordingly the appellant would not be at risk in her home area. However if she was to be at risk the question of internal relocation arises."

3. The judge then considered internal flight in the alternative and concluded this was another reason the appellant could not succeed in her asylum claim.

4. The appellant had raised a discrete ground of appeal concerning her mental health problems and suicide risk if removed to Morocco. The judge considered the medical evidence and directed himself in accordance with the leading authorities on the issue. He then concluded as follows:

> "40. The appellant's fear of ill treatment founded on the claimed risk of an honour killing or such other treatment does not amount to persecution. This is a foreign case and the Article 3 threshold in relation to the claimed suicide risk on return is therefore high. As to the first proposition outlined in *J* the claimed severity of treatment has not been established. There is no causal link between the threatened act of removal and the inhuman treatment relied on as violating the appellant's Article 3 right. As the appellant's case is a foreign case the particularly high threshold has not been established. It has not been shown that she is at risk of persecutory treatment founded on a claim of being forced by her father to marry a man. It has not been shown that she has a genuine fear creating a risk of suicide. Both Morocco and the UK, in answer to the sixth proposition, have effective mechanisms to reduce the risk of suicide. It has not been shown that she would be destitute on return.
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> 41. While Morocco has mechanisms to reduce the risk of suicide (although not free) the Tribunal should assume that the respondent will provide appropriately qualified escorts on return. The appellant's fear is not so

extreme as to lead to sufficiently adverse consequences for her mental health on removal."

5. Permission to appeal was refused by the First-tier Tribunal. The renewed grounds of appeal suggested there were three material errors in Judge Callow's decision. Firstly, in determining whether the appellant would be at risk of harm from her father, the judge had failed to take into account the evidence of her brother regarding the character of their father. Secondly, in reaching his findings on internal relocation, the judge had not taken into account the evidence of the expert. Thirdly, the judge had misdirected himself in relation to his assessment of the risk of suicide.

6. Permission to appeal was granted by Upper Tribunal Judge Goldstein. He was persuaded the judge may have made an error of law in failing to give adequate reasons for his findings on material matters. Permission to appeal was granted on all the grounds.

7. The respondent filed a response opposing the appeal. This argued the judge had produced a detailed and comprehensive decision which assessed all the evidence in the round.

8. I heard submissions on whether the judge made a material error of law.

9. Mr Hawkin's submissions followed the grounds seeking permission to appeal to the First-tier Tribunal. On the first ground, he suggested that paragraph 29 of the judge's decision contained contradictory findings. The judge said he regarded the appellant as a plausible witness and found her marriage had been agreed without her consent. However, in concluding that it had not been established that the appellant was at risk on return, the judge had erred. The judge did not appear to have given any weight to the appellant's evidence that her father had physically disciplined her and her siblings as children and she was afraid of him. She had given an example of this when, having come home late from school, her father had beaten her. She had also described her brother being beaten by her father with a belt. The appellant's brother had given evidence, which the judge appeared to have found credible, that his father was a violent and that people in the area were also afraid of him.

10. The other error by the judge in relation to this evidence was his treatment of the expert evidence. Dr Seddon had said that violence was common within the family in Morocco and that it was not well documented. The judge placed undue weight on the fact that there had not been threats to kill because the appellant's father's past behaviour, coupled with the expert evidence, should have been sufficient. The judge had failed to appreciate the distinction between allowing the appellant to study abroad and wanting her to go through with an arranged marriage.

11. Mr Hawkin then argued that, if the risk had been shown, his findings on internal flight were also defective because the issue was always fact-sensitive. In terms of the risk of suicide, the judge had failed to deal with the issue properly because he had ignored the fact the appellant had attempted suicide in Morocco.

12. Ms Fijiwala argued the grounds were no more than mere disagreement with the outcome of the appeal. It was open to the judge to infer from the fact the appellant had been allowed to study in the UK that her father was more liberal than described. The judge was correct to note there had been no threats made to the appellant. The judge had fully taken into account Dr Seddon's report. The judge's conclusion on internal flight was also sustainable on the evidence. In terms of suicide risk, this was not even mentioned by the appellant in her statement. There was no error.

13. Mr Hawkin replied that the judge's findings were not reconcilable with the evidence. In particular, he had failed to consider the expert evidence properly.

14. I reserved my decision on error of law.

15. The first ground was considered the weakest by Upper Tribunal Judge Goldstein. However, Mr Hawkin placed emphasis on it because he argued it affected the assessment of the issues of internal flight and suicide risk as well. The Upper Tribunal will be slow to set aside a decision unless it is shown the First-tier Tribunal judge misunderstood, misapplied or ignored evidence which could have made a difference to the outcome of the appeal. Decisions will not be set aside if the grounds are in reality a mere disagreement with the judge's findings.

16. Judge Callow's findings are condensed into paragraph 29. In my judgment, it is critical that he found the appellant credible ("plausible") and he made no adverse findings in respect of any of her evidence. He simply found her fears for the future unfounded. The judge noted the appellant had given "consistent" evidence regarding her account of being force into marriage by her father and that her evidence was "corroborated" by her brother. It is then difficult to understand why he did not apparently take into account the appellant's evidence and also that of her brother regarding the violent nature of the appellant's father.

17. The judge relied on the absence from Dr Seddon's report of examples of honour killing. However, this does not accurately reflect the report. In paragraph 4.11 of his report, Dr Seddon said there was little reliable information on the incidence of violence against women who go against their father's wishes with regard to marriage. However, he continued as follows:

> "This is, of course, not surprising, given the fact that violence against women in the family is generally in Morocco not regarded as a matter of concern except for those within the family and is generally not pursued actively by the police, and thus not well documented in the official statistics. Violence against women within the family is, however extremely common in Morocco, particularly in families where the father or senior male members generally are more traditional, conservative and religious."

18. Dr Seddon went on to note the absence of legal provisions to protect victims. At paragraph 4.12 he continued,

> "In the light of this it should not, in my opinion, be assumed – just because 'no information on whether women who refuse to go through with an arranged marriage may be subject to an 'honour killing'' could be found among the sources consulted' – that such instances do not occur. They may not be common but the risk is always there."

19. I do not think the judge was obliged to come to the conclusion the appellant was at risk based on this report. In fairness to the judge, he set out the above passages in his recitation of the evidence. However, I do think the judge erred in apparently ignoring expert evidence which cautioned against leaping to the conclusion which the judge reached. The judge was obliged to explain why he reached the conclusion he reached notwithstanding Dr Seddon's remarks. This is the failure to give adequate reasons which troubled Judge Goldstein.

20. The judge inferred from the fact the appellant was permitted to study abroad (he believed in France where she would be chaperoned by her brother) that her father was not an "autocratic Muslim with extreme views." That inference might be entirely legitimately drawn. However, the judge must deal with the evidence relied on by the appellant before so concluding. The appellant's brother had dealt with this point in his evidence and had explained that there was no inherent contradiction in the father's outlook as education was acceptable. What was never acceptable was disobedience. The judge was entitled to reject this evidence but he did not refer to it at all. He simply made a generally positive credibility finding with regard to the brother's evidence.

21. For these reasons I find there was a possibility that, had the judge paid closer attention to the evidence of the appellant, her brother and Dr Seddon, he might have come to a different conclusion on risk on return. I therefore set aside his decision for material error of law.

22. It is not necessary to consider the other issues of internal flight and suicide risk. The case will have to be re-heard in the First-tier Tribunal by any judge other than Judge Callow. None of his findings are preserved save that the appellant was required by her father to enter into marriage with a man whom she did not wish to marry. Fairness to the appellant demands that this finding is preserved. However, the judge hearing the appeal will have to consider and make findings on the risk to the appellant on return to Morocco by reference to all the evidence.

NOTICE OF DECISION

The Judge of the First-tier Tribunal made a material error of law and his decision dismissing the appeal is set aside.

The appeal shall be heard in the First-tier Tribunal subject to the following directions:

1) The appeal will be heard at Taylor House on a date to be notified, not before Judge Callow;

2) If either party wishes to adduce additional evidence, it must be filed and served no later than 10 days before the hearing.

Signed Date 17 August 2015

Judge Froom,
sitting as a Deputy Judge of the Upper Tribunal