



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09814/2017

THE IMMIGRATION ACTS

Heard at: Bradford
On: 6th July 2018

Decision & Reasons Promulgated
On: 17th July 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

KQ

(anonymity direction made)

Respondent

For the Appellant:
For the Respondent:

Mr McVeety, Senior Home Office Presenting Officer
Mr Holmes, Counsel instructed by Duncan Lewis & Co Sols

DECISION AND REASONS

1. The Respondent (KQ) to this appeal is a female national of Morocco born in 1977. On the 1st December 2017 the First-tier Tribunal (Judge Head-Rapson) allowed her appeal on protection and human rights grounds. The Secretary of State now has permission to appeal to this Tribunal against that decision.

2. The following matters of fact were agreed between the parties.
3. KQ is Moroccan, and she is now 41 years old. In 2015 she was working in a coffee shop in her home town when she was approached by a man who asked her if she would like a job working abroad. He told her that he was recruiting domestic staff for a Saudi princess staying in London and that KQ could earn good money. The initial contract was for 6 months. KQ agreed and the man made all the necessary arrangements for her travel. She left Morocco on the 7th December 2015 and flew to the United Kingdom. Upon arrival she went to the address she had been given. From there a man took her to a large house in London where she was required to work for a Moroccan family. There were no breaks, no pay, and no Saudi princess. She was required to perform domestic labour for long hours and was even woken in the night to undertake chores. If she enquired about when she would be paid she was threatened and beaten. On one occasion the mother in the house burnt her hands with a hot spoon. On another, whilst serving at a party, KQ was raped by two men. The family made it clear to her that she could not leave them and return to Morocco. They had 'connections' and they would report her to the police in Morocco as a criminal. Similarly, they said that if she tried anything whilst in this country they would tell the police that she stole from them. On the 11th April 2016 another member of staff working for the family helped KQ to escape. She did so, proceeding directly to the Home Office where she claimed asylum.
4. On the 17th January 2017 the 'Competent Authority' decided that there were conclusive grounds for believing that KQ is a victim of trafficking. The Secretary of State accepts this conclusion. It is further accepted that KQ has been prescribed anti-depressant medication and that she is accessing support from specialist organisations who offer assistance to victims of trafficking. The Secretary of State accepted that the claim was capable of engaging the Refugee Convention in that 'victims of trafficking' are, in the context of Moroccan society, a 'particular social group'.
5. This much being accepted, as the case came before the First-tier Tribunal there were only two matters in issue:
 - (i) Would that factual background give rise to a current risk of harm in Morocco?
 - (ii) Is there a sufficiency of protection offered by the Moroccan authorities?
6. The First-tier Tribunal heard live evidence from KQ, who was cross-examined. Since she had been interviewed by the Home Office there had been two factual developments in her case.
7. KQ asserted that the traffickers had made good on their word to cause problems for her in Morocco. Since she reported her exploitation to the authorities in this

country, her brother in her home town has been arrested on four occasions. He has been brought in for questioning. KQ had learnt, whilst living in the house in London, that the family were related to a government minister in Morocco. She does not know his name but she understood that he was involved in planning. She also knows that the police in Morocco are corrupt and could easily have been bribed to harass her brother. Of this the Tribunal noted [at its §51] that KQ's evidence about police corruption is supported in the country background material cited in the refusal letter; on that basis it accepted her evidence on this point to be true.

8. The second matter related to KQ's life here. In July 2016 she met a British Arab man (M) living in Leeds and started a relationship with him. He was in the process of obtaining a divorce, and he and KQ could not live together as they were not yet married, but in March 2017 KQ fell pregnant with M's child. In May 2017 he demonstrated his good intentions towards her by telephoning her family in Morocco to introduce himself. KQ's mother was furious and rejected M as a suitor. KQ explained that her family are Amazigh and have very traditional attitudes towards marriage. They regard a woman who has fallen pregnant outside of wedlock as being "tarnished forever" and as a matter of honour have rejected KQ. This has caused her much anxiety, grief and pain. The pregnancy ended in miscarriage.
9. The Tribunal accepts this evidence and considers it in the round. The Tribunal concludes that there is not a sufficiency of protection for KQ in Morocco and that she is unable to internally relocate "due to her situation". The appeal was allowed.
10. The Secretary of State for the Home Department has appealed against the decision of the First-tier Tribunal on one central ground. The written grounds submit that the determination does not contain sufficiently clear reasoning. It is submitted that the Judge has failed to make any findings. Paragraphs 32 to 52 of the evidence amount to a recitation of the evidence, and do not amount to a resolution of matters in issue. Before me Mr McVeety refined the written grounds. He accepted that paragraphs 32-43 and 45-46 of the determination could not reasonably be criticised, since they amount to a recitation of accepted facts. There were, as far as the historical facts were concerned, no issues to resolve. Mr McVeety however maintained the challenge as it related to paragraphs 44 and 47-52. Insofar as the Tribunal attempted to resolve matters in issue in these paragraphs, the Secretary of State does not understand its reasoning. There was no explanation in the determination of why KQ might be at current risk of harm in Morocco, or why there is a failure of state protection.
11. For KQ Mr Holmes defended the determination. He pointed out that the factual account was disputed. The matters in issue – risk and protection – turned on interpretation of the objective evidence. The evidence in the Secretary of State's refusal letter did not all point one way. There was plenty of material cited in that

letter that supported KQ's case, and the First-tier Tribunal was plainly entitled to rely upon it.

Discussion and Findings

12. That the First-tier Tribunal has followed a logical structure in its determination is made apparent from its use of clear subheadings: "relevant law", "evidence", "preliminary issues", "submissions" and so on. Under the subheading "findings of fact" we find paragraphs 32-52.
13. As Mr McVeety very properly agreed, most of these paragraphs are uncontentious, relating as they do to evidence that was expressly accepted by the Secretary of State and the Competent Authority.
14. The first paragraph that causes the Secretary of State concern is 44 which is couched in the following terms:

"The Appellant stated that she cannot return to Morocco because the police are looking for her. The Appellant explained that her brother has been taken in for questioning by the police in Morocco on four separate occasions. The police on each occasion interrogated her brother about the Appellant's whereabouts and asked if she had been in contact with her family.....the Appellant fears that she will be arrested upon return and the police will press false charges against her."

The determination returns to this issue at paragraphs 48-50 where KQ's response to the 'reasons for refusal' letter are set out.

15. Mr McVeety submits that these paragraphs would appear to be no more than a recitation of the KQ's evidence. Since the availability of protection from the police - as opposed to their complicity in her persecution - was a matter in issue, the First-tier Tribunal should have made reasoned findings on this point.
16. I have read the 'reasons for refusal letter'. No issue is taken anywhere with any of KQ's evidence. The crux of the Secretary of State case is at paragraph 31 of that letter: "for the reasons given below it is considered that your fear is not objectively well-founded because there is a sufficiency of protection provided by the authorities". Nowhere in the letter does the Secretary of State reject the KQ's evidence about why she afraid of the police in Morocco; his case is put on the basis that any such fear is not well-founded. I have further had regard to paragraphs 26-31 of the First-tier Tribunal determination in which the Secretary of State's submissions at the hearing are recorded. It is clear from this that following her cross-examination the HOPO made no submissions attacking the credibility of KG's evidence. I am therefore driven to the conclusion that the

First-tier Tribunal was entitled to recite the Appellant's evidence about her brother without further comment. If both parties accepted her evidence to be proven, a formal finding ("I accept this evidence to be true") was entirely superfluous. The evidence that her brother had been arrested and questioned about her whereabouts was not, contrary to the suggestion in the grounds, in issue.

17. The only matter that *was* in issue was whether those facts were capable of establishing, to the lower standard, a real risk of harm upon return to Morocco. The Secretary of State had, at paragraph 22 of the 'reasons for refusal' letter accepted that unidentified victims among vulnerable populations remained at risk of penalization and re-trafficking. At paragraph 35 it notes that despite significant efforts the government of Morocco does not fully meet the minimum standards for the elimination of trafficking; it enacted a new trafficking law but made limited efforts to identify and prosecute offenders. In respect of the Moroccan police force the Secretary of State acknowledges evidence of brutality and the ill-treatment of detainees and says this:

"The law provides criminal penalties for corruption by officials, but the government generally did not implement the law effectively. Officials often engaged in corrupt practices with impunity. Corruption was a serious problem in the executive branch, including police, as well as in the legislative and judicial branches.

The CIG further states observers noted widespread corruption among police."

This information leads to the conclusion:

"...Although bribery and corruption do exist within the police force, the country information above shows that there is an effective level of sufficiency of protection available to you upon return to Morocco".

The refusal letter goes on to state that KQ's fear about what might happen to her, and the traffickers' 'connections' is vague and unsubstantiated. That was the Secretary of State's case on the question of risk.

18. When the First-tier Tribunal came to draw its conclusions, as we know, it had before it unchallenged and credible evidence that the Appellant's brother had been taken in and questioned on four occasions by – it must be inferred – corrupt police officers who were asking about the Appellant's whereabouts. The First-tier Tribunal also had before it evidence presented by the Secretary of State to the effect that officials in Morocco – including police officers – "often engaged in corrupt practices with impunity". In other words, the fears expressed by KQ were no longer vague and unsubstantiated.

19. The First-tier Tribunal drew its conclusions at paragraphs 50-52. I accept that the conclusions could have been more definitely expressed. For instance at §50 where it says this:

“At paragraph 43 of the Reasons for Refusal letter the Secretary of State argues that the Appellant can seek the protection of the police in Morocco. The Appellant fears the police in Morocco and therefore she cannot seek their protection...”

It could also have said:

“And in light of what has happened to her brother her fears are well-founded”

20. I cannot however be satisfied that any material error arises. KQ’s evidence had been accepted. She had been trafficked across international borders, apparently by a trafficking network; she had been told that the family she worked for “had connections” including a relative who was a minister; she was expressly threatened that these connections would be used against her if she tried to leave; she had left and sought the protection of the British authorities; her brother had subsequently been arrested on four occasions by the Moroccan police. In light of the objective evidence presented to the First-tier Tribunal about pervasive corruption in Morocco, and the ill-treatment of detainees by the police, it is difficult to see what other conclusion it could have reached.

21. The second area of complain concerns the Tribunal’s conclusions on internal flight. At paragraph 57 the determination concludes that the KQ would be unable to relocate “due to her situation”. I accept that this finding is not clearly reasoned. I re-make the finding on internal flight based on the unchallenged findings of fact and the evidence before the First-tier Tribunal.

22. The salient facts are:

- i) That at least some police officers in her home area have – it is reasonable to assume – been paid by her former traffickers to locate her;
- ii) Corruption in the police service in Morocco is a “serious problem” [para 37 RFRL];
- iii) KQ is extremely fearful of the consequences should she be caught by the trafficking gang. She was expressly threatened about what would happen to her if she tried to escape and has already been subjected by them to serious harm;

- iv) At paragraphs 54-56 the First-tier Tribunal determination sets out the unchallenged medical evidence provided by KQ's GP, midwifery team and an organisation called SOLACE, who work with asylum seekers suffering from trauma. Her outreach worker from SOLACE reported that KQ had been attending support sessions on a weekly/fortnightly basis for seven months at the date that she wrote her report for the Tribunal and that they assessed her as "very vulnerable". She often shows signs of having anxiety attacks when discussing her experiences and is often tearful. She is depressed and has symptoms associated with PTSD. She continues to suffer from "significant distress and physical pain". SOLACE referred KQ to a psychotherapist who advised that her trauma was complex and that she needed long-term support for her mental health. She has been prescribed Sertraline while she is on the waiting list for therapy;
- v) She has been rejected by her traditional and conservative Amazigh family who have been angered by her relationship with a man in the United Kingdom, and the fact that she fell pregnant before she was married. They have threatened, and she is fearful, of 'honour' based violence;
- vi) She has some work experience in the hospitality industry in Morocco. I note from her interview that she also completed her baccalaureate and has a diploma in beauty and hairdressing.

23. The country background material before the First-tier Tribunal included the US State Department Report for 2016 (published in March 2017). This states that domestic violence against women in families is widespread and that police are reluctant to intervene, regarding it as a social rather than a criminal matter. The law did not adequately protect vulnerable women: until as recently as 2014 rapists could avoid punishment by agreeing to marry their victims. There are however a small number of groups, such as the Democratic League for Women's Rights who provide assistance to victims. Their centres are exclusively found in cities. In the workplace sexual harassment of women workers is widespread but the reporting rate is low because women are afraid of losing their jobs. Numerous problems relating to discrimination against women remain. The bundle also contains a report by Amnesty International dated 20th May 2016 which cites a 2009 study by the Moroccan government which concluded that 62.8% of women surveyed had suffered some form of violence in the preceding year. There are substantial legal and societal obstacles to women seeking redress.

24. I assess first the question of risk. The First-tier Tribunal accepted that at least some police officers in her local area have arrested her brother. He has not been questioned about any crime, rather he is asked about where KQ might be. The

strong inference arising is that they are in the employ of the gang who trafficked KQ, the family in London, or both. The reason for the pursuit of KQ is either because she has not yet repaid her trafficking 'debt', and/or there are concerns that she will provide information to the British authorities or has already done so. The evidence on police corruption in Morocco appears fairly clear: it is widespread and despite attempts by legislators to deal with it, persists. I cannot however be satisfied that the 'reach' of this gang is such that they would be able - or indeed willing - to bribe officers all over Morocco to look for KQ. Whilst it makes sense that they have done so in her local area, where she could be expected to return, it seems unlikely that they would expend resources in bribing officers throughout the country. I was not directed to any evidence about what information systems the police service in Morocco use: for instance I have no idea whether an officer in Fez, entering KQs name into a computer, would be alerted to officers in Khumaisat looking for her. I cannot therefore be satisfied that there is a well-founded fear of serious harm wherever she were to go in Morocco.

25. What I can be sure about is that she is very afraid. Her counsellor at SOLACE reports that in their regular meetings over a seven-month period KQ has consistently presented as extremely fearful, depressed and vulnerable. That is not, given her experiences, surprising. She has been subjected to very serious harm. The officer who interviewed KQ noted at numerous places in her interview that she became "very emotional" when describing that harm: how she was threatened and abused, held down and burned (leaving her hand scarred), and how she was raped by two men. At Q144 of that interview she is asked whether she had seen anyone associated with her trafficking experience since she escaped. She said:

"No, but I keep imagining them walking behind me. I don't know what is happening to me. I am in Cardiff now and far away from them but I feel they are following me".

She also reiterates, at several points, that her family in Morocco are very conservative and that she could be killed if they find out that she was raped (the interview predates her relationship in the United Kingdom). She repeatedly asks the officer to ensure that this information remains private.

26. I am quite satisfied, having regard to the totality of the evidence before me, that it would be extremely damaging to KQ's mental well-being should she be asked to relocate within Morocco. We know that it is the *modus operandi* of traffickers to instil fear into their victims. Victims are made to believe that they cannot get away, and that if they do they will be found. In the case of KQ, they have done their job well. She is afraid that they are behind her, even in this country, where she can rely on the police and where she has received regular support from organisations such as SOLACE.

27. Absent the issue of her mental well-being KQ might be expected to return to working in the hotel or beauty industry somewhere in Morocco, and to fend for herself. Absent the fact that she has been raped (at a party whilst serving as a waitress) she might be expected to endure the pervasive sexual harassment that the vast majority of Moroccan women report suffering in the workplace. Absent the fact that she now fears them, she might be able to turn to her family for support. That is not however the situation she faces. She would be on her own in a strange town with no family. With no friends or family to support her she would be extremely vulnerable to sexual harassment or exploitation by employers or colleagues. Given her experiences thus far, and her vulnerable mental condition, I am satisfied that this would be 'unduly harsh'. KQ would not be able to lead a relatively normal life living on her own in Morocco and for that reason the appeal must be allowed.

Decisions

28. The decision of the First-tier Tribunal is set aside to the limited extent identified above.
29. I remake the decision in the appeal as follows: the appeal is allowed on protection grounds.
30. This case concerns trafficking, sexual abuse and a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

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

Upper Tribunal Judge Bruce
13th July 2018