Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/02739/2020**

THE IMMIGRATION ACTS

Heard remotely via video (Skype for Business) **Decision & Reasons Promulgated**
On 25 March 2021 **On 28 April 2021**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

OG
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr M Moriarty, counsel, instructed by Dylan Conrad Kreolle Solicitors
For the respondent: Ms A Everett, Senior Home Office Presenting Officer

This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Skype for Business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Although neither party requested an anonymity direction, given the issues relating to the appellant's partner and her background, I consider it appropriate to make such a direction.

DECISION AND REASONS

Background

1. This is an appeal against the decision of Judge of the First-tier Tribunal Dempster ("the judge") promulgated on 8 October 2020 in which she dismissed the human rights appeal of OG ("the appellant") against a decision of the respondent dated 6 February 2020 refusing the appellant's human rights claim.

2. The appellant is a national of Morocco who was born in 1995. He entered the UK as an accompanied child visitor on 1 July 2008. Applications made by him as a child of a settled person were refused, but the appellant was granted Discretionary Leave from 15 March 2010 to 15 March 2013. The appellant made subsequent human rights applications, but these were refused and an appeal before judge of the First-tier Tribunal Adio was dismissed on 25 June 2016.

3. The human rights application giving rise to the decision under appeal in the present proceedings was made on 15 November 2019 and was based on the appellant's relationship with RH, a British citizen. The respondent did not accept that the appellant was in a genuine and subsisting relationship with RH, or that RH met the definition of 'partner' in Appendix FM of the Immigration Rules because they had not lived together for at least two years at the date of the appellant's application. The respondent also initially relied on the Suitability requirements in refusing the application, although no reliance was placed on this at the appeal hearing. The appellant appealed the respondent's decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002.

The Decision of the First-tier Tribunal

4. The judge had before her a 145-page appellant's bundle and a supplementary bundle containing, *inter alia*, a Mental Health Assessment conducted by an NHS Foundation Trust on 9 July 2020 in respect of RH. The judge heard oral evidence from both the appellant and RH.

5. Having set out the relevant legal framework and principles applying to human rights appeals, and having directed herself in respect of the Devaseelan guidelines (**Devaseelan v SSHD** [2002] UKIAT 00702) in respect of the 2016 decision of Judge Adio, the judge concluded that the appellant would not face 'very significant obstacles' to his integration in Morocco, with reference to paragraph 276ADE(1)(vi) of the Immigration Rules. Using Judge Adio's findings as a starting point, and based on the further evidence before her, the judge found that the appellant could speak Arabic, that some of his half-siblings retained property in Morocco that could be used by the appellant, that the appellant would receive financial support from his family in the UK if removed to Morocco (at least in the short term), that the appellant retained contact with people in Morocco, and that there would be no problems preventing him from integrating back into Moroccan society. No challenge had been raised in respect of these findings.

6. The judge then considered the relationship between the appellant and RH. The judge was satisfied that the appellant and RH were in a genuine and subsisting relationship and that they had been cohabiting since at least June 2018.

7. From [45] to [54] the judge considered whether there were 'insurmountable obstacles' preventing the appellant and RH from living in Morocco. The judge set out RH's disturbing history noting, *inter alia*, that her parents, who at that time were residing in the UK, separated in 2006 (when RH was 6 years old), that she was taken to Morocco by her father, that she had been physically abused by her father and step-mother, that she was forced to give up her schooling at the age of 12 and, having refused to marry a much older man, ran away from her father's home when she was 14 years old. She had been homeless and had been raped on several occasions when living on the streets. She managed to find work in a factory and slept on the factory floor. She eventually obtained the assistance of the British Embassy wo arranged for her return to the UK in October 2016 when she was 16 years old. She was placed in foster care on her return and then later in supported accommodation until she reached the age of 18.

8. At [47] the judge summarised part of an assessment completed by social services on 9 November 2016 in respect of RH, and noted RH's evidence that she had attempted suicide on three occasions, although only two were documented. The judge noted that one suicide attempt resulted in RH's attendance at hospital on 27 October 2017 and that she had been referred to Child and Adolescent Mental Health Services (CAHMS) as she had been struggling and needed additional support, although RH failed to attend a number of appointments and her case was closed (the judge quoted from a letter sent to RH dated 31 January 2018 noting how the author was struck by RH's resilience and focus).

9. At [48] the judge referred to RH's most recent overdose on 11 February 2020 when she ingested 48 paracetamol tablets. RH's evidence was that she had taken the overdose after the appellant had been told that he had been refused leave to remain. The judge recorded the medical records which stated that RH "was emotionally stressed, denied any intentions for suicide." At [49] the judge noted that RH was not currently receiving any medication or counselling (she had been referred for some therapies in the past but found they had not helped, and had previously been prescribed medication). The judge noted RH's evidence that her relationship with the appellant provided her with the stability and support she needed and that she relied on him emotionally. The judge noted that, when asked what she would do if the appellant had to return to Morocco, RH became too distressed to answer.

10. At [50] the judge noted RH's evidence that she could never, because of her experiences in Morocco, return to live there, and at [51] the judge noted RH's response, when asked if she would feel safe if she returned to Morocco with the appellant, that the police do not do anything and would not assist if there was a dispute between her and her step-mother, and that RH could not put her foot in

Morocco, "not even for one second." At [52] the judge recorded further evidence from RH relating to a report entitled "Looked after Children Health Recommendations and Action Plan" dated 19 December 2017 which stated, under the heading "Enjoy and Achieve/Education", "[RH] would like to be a vet, or something to do with animals, especially dogs, [RH] also stated that if things do not work out for her in the UK, she will return to Morocco, where she was certain she would do really well at work." The judge rejected RH's explanation that she had told this to her social worker in a "threatening way" as this did not fit contextually with the rest of the document. The judge found that RH "was not, at least in December 2017, expressing the view that she could never return to Morocco."

11. At [54] the judge stated:

> "I have considered whether there are insurmountable obstacles to the family life continuing between the sponsor [RH] and the appellant if the latter was to return to Morocco when it is said, on behalf of the appellant that the sponsor simply could not go to that country. I have had regard to the case of **Lal v SSHD [2019] EWCA Civ 1925**. Whilst I have huge sympathy for the sponsor, on the evidence, I do not accept her evidence that she can never return to Morocco for the reason she has stated in evidence. I accept that her previous observation about returning to Morocco was said almost two years prior to the date of the appellant's application but there was nothing that I have seen in the evidence provided to me that the sponsor had previously adopted the position in respect of a return to Morocco that she now urges in her evidence before the Tribunal and in support of the appellant's claim. In the absence of any other evidence, such as psychological or medical which I would anticipate would have been readily available, whilst I accept that a return to Morocco could be difficult and would require a period of readjustment, and indeed that she might prefer to continue her relationship in the UK, I do not find, on balance, that there would be very significant difficulties faced by the appellant and the sponsor in continuing their family life together outside the UK. Accordingly, I do not find that insurmountable obstacles exist."

12. The judge then proceeded to consider whether the respondent's decision would constitute a disproportionate interference with the appellant's Article 8 private and family life outside of the Immigration Rules. Adopting the approach set out in **Razgar** [2004] UKHL 27, the judge considered the public interest factors in s.117B of the Nationality, Immigration and Asylum Act 2002, noting that the appellant's relationship with RH commenced when he was unlawfully present in the UK. At [65] the judge reiterated her finding that the relationship between the appellant and RH could continue in Morocco as both were fluent Arab speakers and both had knowledge of the country and culture. The judge again indicated, for reasons that she had already given, that there were no insurmountable obstacles to the relationship continuing outside the UK. At [66] and [67] the judge noted that the appellant's removal would disrupt the private life relationship between the appellant and his family in the UK, and that if RH chose not to return to Morocco with the appellant, this could bring to an end

this relationship as there would be difficulties in maintaining it for any time. At [68] the judge noted that if RH refused to accompany the appellant to Morocco it would remove her from the support that he provided to her.

13. At [70] the judge concluded:

> "Balancing these competing factors, I find those in favour of the appellant's removal, and the disruption of his family and private life in the United Kingdom that would involve, outweigh those in favour of him maintaining his private and family life in the UK. I do not find that there are compelling reasons to offset the considerable public interest in the removal of the appellant for all the reasons stated above. He cannot meet the requirements of the Rules. The appellant is a fluent Arabic speaker who spent the first 13 years of his life in Morocco. His family retained property there and there was nothing to suggest that he is ill-equipped to cope in that country and culture. I find he will be returning with the support of his family. He will be able to maintain contact with his family in the United Kingdom. I find, on the evidence, that there is no reason why the relationship with the sponsor cannot continue in Morocco and whereas I accept that re-location might be difficult, and may take a period of readjustment, I do not find any exceptional circumstances such that maintenance of the respondent's decision would lead to unjustifiably harsh consequences."

14. The judge dismissed the appeal.

The challenge to the judge's decision

15. The grounds of appeal contend that the judge failed to consider the appellant's Article 8 rights in conjunction with RH's Article 3 ECHR rights. There did not seem to be any correlation between the 19 July 2020 Mental Health Assessment to the assessment of the "objective" assertions made by RH concerning her suicidal ideation and attempts. There were little or no findings in relation to RH's assertions, detailed at [45] and [46] of the decision, that went to her vulnerability and suicidal ideations. The judge was said to have failed to place weight on RH's evidence that she would feel unsafe in Morocco, and the judge took into account an irrelevant consideration by placing weight on the 2017 report which, it was claimed, "could not possibly override the most updated medical evidence dated 9 July 2020." It was additionally claimed that the judge failed to take account of the seriousness of the overdose of 48 paracetamol tablets.

16. In granting permission to appeal Upper Tribunal Judge Jackson stated,

> "Whilst the weight to be attached to the evidence is primarily a matter for the First-tier Tribunal, it is arguable in this case that the Judge has placed too much weight on the evidence from 2017 in contrast to the evidence from 2020; has failed to consider the likely impact on the sponsor of the Appellant's removal (on the accepted basis that she will not return to Morocco) and overall it is arguable that the findings are not in accordance with the weight of the evidence, in particular as to the sponsor's vulnerability."

17. In his oral submissions at the 'error of law' hearing Mr Moriarty submitted that there was a paucity of findings in respect of evidence that post-dated the 2017 report, and that, although the judge referred to the July 2020 Mental Health Assessment and the overdose in January 2020, there was no subsequent reasoning in respect of either of them. The inference from [54] of the decision was that there was nothing after the 2017 report that could lead to a contrary conclusion in respect of RH's suicidal ideation, and that the judge failed to take account of the July 2020 Assessment. The judge therefore failed to 'factor in' these considerations into her Article 8 assessment. At the very least the judge needed to show a reasoned engagement with the consequences of the overdose in January in 2020 and the observations in the July 2020 Mental Health assessment.

Discussion

18. Contrary to the assertion by Upper Tribunal Jackson in the grant of leave to appeal, whilst it was RH's evidence that she did not wish to return to Morocco, there was no accepted basis that she would not return to Morocco. The judge's assessment at [52] makes this quite clear. In that paragraph the judge considered a "Looked after Children Health Recommendations and Action Plan" dated 19 December 2017 and made a factual finding that RH had not, at least in December 2017, expressed the view that she could never return to Morocco. During that assessment RH stated that if things did not work out for her in the UK she would return to Morocco. The judge gave clear and cogent reasons for rejecting as incredible RH's explanation for what she said in the 19 December 2017 document. This finding has not been challenged.

19. The grounds contend that the judge relied on the 2017 report and did not consider the July 2020 Mental Health Assessment which post-dated the 2017 report. It is important however to appreciate that the judge relied on the 2017 document, which was not a mental health assessment, for what RH told her social workers about returning to Morocco. The Mental Health Assessment dated 9 July 2020 noted that RH had been referred for the Assessment by Hillingdon Talking Therapies on 8 June 2020. RH reported that she had a "hard past" and that she was more settled with the appellant, and that she requested a report from mental health services as she claimed she could not survive without the appellant. Under a sub-heading "Risks" reference was made to RH's previous overdoses and her claim that, although she did not presently have any suicidal thoughts or plans, this would change if the appellant had to leave the UK. In the section headed "Discussion of care, support & treatment options with RH and their views and goals", it was observed that RH wanted a letter to provide to the Home Office to support the appellant's application to remain in the UK. It was noted that the appointment with RH was a "one off assessment" and that it was "not possible to address all the issues requested as this would require a much longer period of engagement." It was suggested to RH that once her current stressor had been resolved and she was feeling less emotional she should engage in counselling regarding her past. Under the heading "Care

Plan" it was noted that RH could self-refer to Hillingdon Talking Therapies or LINK should she require counselling, that she had been provided with relevant phone numbers of a community mental health resource centre, that she was not on any medication, and that there were no plans for another review. The initial assessment did not indicate that RH had any social care needs that required further assessment. Under the heading "Full Assessment" it was noted, with reference to RH's mental state, that she had bad dreams and woke thinking about bad experiences in Morocco, that her mood was subjectively and objectively distressed and emotional, and that she did not like meeting new people as she thought they may do bad things to her. The "impression" of RH referred to her history and that she was currently very emotional at the prospect of the appellant being returned to Morocco and that she would harm herself if this happens. "No immediate risks identified but ongoing risk to self in the face of personal stressors." The July 2020 assessment did not give any diagnosis for RH, it did not assess any risk she had of suicide or self-harm, and it did not consider the impact on RH if she had to choose to relocate to Morocco in order to maintain her relationship with the appellant.

20. A holistic assessment of the decision shows that the judge was demonstrably aware of RH's traumatic history and the reasons why it would be difficult for her to return to Morocco. The judge's reference at [54] to the absence of psychological or medical evidence must be considered in its specific context. The paragraphs from [45] to [54] of the judge's decision fall under the heading "Insurmountable Obstacles" and focus on whether the appellant's relationship with RH could continue in Morocco in light of her previous experiences in that country [45]. The specific focus was therefore on whether there was evidence of insurmountable obstacles preventing RH from accompanying the appellant to Morocco. Properly understood, the judge's assertion as to the absence of psychological or medical evidence was by reference to RH's claim that she would not wish to return to Morocco. In this sense the judge's observation was accurate. There was no psychological or medical evidence that specifically considered how returning to Morocco would impact on RH's mental wellbeing. The judge had already found that, at least in December 2017, RH had expressed a positive view about returning to Morocco. As I have already indicated, this factual finding was not challenged and was one rationally open to the judge for the reasons given by her at [52]. At [54] the judge specifically factored in the length of time that passed from RH's assertion as recorded in the 'Looked After Children Health Recommendations and Action Plan' in reaching her conclusion that there were no insurmountable obstacles.

21. Although there was no further specific reference to RH's most recent overdose in February 2020 after [48], the decision, read as a whole, does not indicate that the judge failed to take the overdose into consideration or that she ignored the consequences of the overdose. She specifically mentioned it at [48], under the "Insurmountable Obstacles" heading, when considering the possibility of RH relocating to Morocco, and the evidence of the overdose itself does not indicate that it occurred because RH feared returning to Morocco (the In-patient

Discharge Summary dated 12 February 2020 indicated that RH "denied any intentions for suicide" and that there were no safeguarding concerns and no community support arranged by the hospital). The 9 July 2020 report is framed by reference to RH being separated from the appellant and does not consider or mention the possibility of her accompanying him to or joining him in Morocco. The judge was demonstrably aware of the circumstances of the overdose as she made specific reference to the medical notes and she took account of RH's explanation for the comment in the Discharge Summary that RH "denied any intentions for suicide" (that she was too scared to tell the hospital staff that she wanted to die). The judge also noted that, at the date of the hearing, RH was not receiving any counselling or medication.

22. As acknowledged by Mr Moriarty, the July 2020 Mental Health Assessment was relatively limited. It did not consider or comment on the possible consequences for RH should she choose to relocate to Morocco in order to maintain her relationship with the appellant, and it did not give any detailed assessment of any level of risk of suicide or self-harm facing RH. The judge took full account of RH's traumatic history and the judge was entitled to rely on what RH said in December 2017 together with the absence of any medical evidence that RH would be at high risk of suicide if she accompanied the appellant back to Morocco, to conclude that there would be no insurmountable obstacles to the family life relationship continuing in Morocco. The judge was entitled to take this finding into account in her Article 8 proportionality assessment. The decision does not disclose an error on a point of law requiring the decision to be set aside.

Notice of Decision

The human rights appeal is dismissed.

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

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

D.Blum 19 April 2021

Signed Date
Upper Tribunal Judge Blum