**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/13683/2017

**THE IMMIGRATION ACTS**

| **Heard at The Royal Courts of Justice, Belfast** | **Decision & Reasons Promulgated** |
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| **On 9 December 2021** | **On 12 January 2022** |

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SH**
**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**
For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Mr M Brennan, Solicitor

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Farrelly, promulgated on 31 December 2020 in that she allowed SH's appeal on asylum grounds.

**The Respondent's Case**

2. SH is a citizen of Egypt, and a Coptic Christian by birth. She and her husband and their four children lived in Alexandria. Her husband was associated with a conversion from the Muslim religion to Christianity. The

woman was from the Salafi tradition and who tried on several occasions to attack the respondent and her family. Her husband was arrested in August 2016 because of his involvement and two days later the appellant and her children were beaten. An attempt was made to abduct the daughter on 17 October 2016 and in December 2016 she was subjected to an acid attack. The family then fled to Cairo where they rented a flat but in January 2017 were traced and an attempt was made to abduct their son. The family then fled to the United Kingdom arriving using visit visas on 24 July 2017; they claimed asylum on 29 August 2017. Since being in the United Kingdom the respondent has separated from her husband.

3. The respondent fears that if removed to Egypt she would be at risk from those who attacked her in the past, that she would not be in receipt of protection from the state.

## The Secretary of State's Case

4. The Secretary of State did not accept, for the reasons set out in the refusal letter at 15 December 2017, that the respondent's account was credible, given inconsistencies and implausibilities and in any event there would be a sufficiency of protection for her.

## Procedural History

5. The respondent's appeal was first heard in the First-tier Tribunal on 19 October 2018 and was refused for the reasons set out in the decision of 24 April 2019. That decision was set out aside in its entirety for the reasons I gave in my decision of 19 December 2019 and was remitted to the First-tier. It was on that basis that the decision came before the First-tier Tribunal on 22 December 2020.

6. Although I had previously made a decision in this case neither party made any objection to me determining this appeal, nor did I consider that there was any basis on which I should recuse myself from doing so.

## Findings of the First-Tier Tribunal

7. The judge heard evidence from the appellant as well as submissions from Mr Brennan. The Secretary of State was not represented at the hearing and accordingly the respondent was not cross-examined. The judge in addition to the oral evidence took into account the bundle produced by the Secretary of State, inventories of productions and skeleton argument from the respondent. The judge directed himself [17] in line with the **Surendran** Guidelines, noting that he had asked Mr Brennan to put questions to the respondent and noting that there was an obligation on the appellant to deal with the obvious points which relate to credibility and to comment on them. The judge noted also [32] the country guidance decision and [33] that when an individual appellant can establish a real risk of serious harm by virtue of some characteristics additional to be a

Coptic Christian, it is quite unlikely he or she will have available protection. The judge found that:

(i) there were instances of vagueness and inconsistencies in the respondent's evidence but having heard her, it was his conclusion that some of this could be explained by her personality whereby she tended to ramble and not focus on the question;

(ii) little weight could be attached to the respondent's suggestion it was incredible the appellant and her children could escape the attempts made on them [40];

(iii) the respondent was not seeking to mislead them saying she had only ever lived in one place, the move to Cairo being short-term and her claim that the authorities did not act was credible [42];

(iv) it is credible the respondent could leave the country without difficulties [44];

(v) some parts of the claim gave him concerns but these had either not been pursued or raised by the respondent and he was mindful the proceedings were essentially adversarial [45];

(vi) the respondent's explanation for her husband's return to Egypt was unsatisfactory and he did not find it credible that he would simply leave and fail to contact the respondent or his children in the interval, this giving rise to a suspicion that he was waiting to see how she fares in her claim, with a view to re-joining her successful;

8. The judge concluded [49]:

> "Ultimately, I am conscious of the low standard of proof. I have considered the evidence in the round. I have had regard to the country information. It is possible the appellant is being pursued because of her association of her husband and in turn his association with their conversion. I could accept the authorities might offer limited protection. On her account an attempted relocation did not remove the problem. On this basis I find her claim succeeds."

9. The Secretary of State sought permission to appeal on the grounds that the judge had erred:

(i) in failing to give adequate reasons as to why the appellant would be at risk in Egypt despite noting that the husband, who was the principal, had returned to Egypt and was apparently unharmed; and, ignoring the actions and apparent safety of the husband her decisions in favour of the respondent were arguably perverse;

(ii) in failing to consider the position of the appellant at the date of hearing, it being submitted that even if the events she had claimed did occur, the fact of her association with the protagonist had ceased

was indicative of the current lack of risk, is thus unclear. The basis on which the judge found that she would still be at risk on return by those who accused her husband of assisting in a conversion, thus leading to a failure to consider the evidence holistically.

10. On 2 March 2021 Upper Tribunal Judge Blundell gave permission, observing there was no finding regarding sufficiency of protection.

**Submissions**

11. Ms Cunha relied on YH [2010] EWCA Civ 116 and TK (Burundi) [2009] EWCA Civ 40 and sought also to expand the grounds to make submissions on the basis of HJ (Iran) through there had been a complete failure to deal with the issue of sufficiency of protection, which was a relevant matter. I was not satisfied that it would be appropriate at this late stage to permit an amendment to the grounds, there being no proper reason why that ground could not have been made before and, for the reasons set out below, I found no merit in the submission.

12. Ms Cunha submitted further that the judge should have applied anxious scrutiny to the respondent's claim and should not have, in effect, suspended his belief if he had had concerns. She did, however, accept that there was, to an extent, a tension with the Surendran Guidelines in that a judge, of course, a judge cannot in effect put to the Secretary of State's case for her. She submitted further that the judge, following TK (Burundi), that if the judge had had concerns about material matters he could have required evidence and that the judge erred in not attaching weight to the lack of corroborating evidence.

13. Mr Brennan submitted that the Secretary of State had mischaracterised the evidence of the husband returning to Egypt. The respondent had simply said that she believed that was the case and that they were estranged and they were no longer contactable. He submitted further that even if he had gone back that was not relevant and the judge had in effect accepted her account of what happened to her in the past, which was personal to her. He submitted that in reality the Secretary of State's grounds were nothing more than a disagreement with the findings reached by the judge.

14. In reply, Mr Cunha said that the judge had not made up the objective situation and did not take into consideration that would exist even if what the respondent had said was accepted. She submitted there were no findings of the risk now on return and that the issue of state protection was not dealt with and there were no findings on the situation that would exist now.

**Discussion**

15. I bear in mind that an Appellate Tribunal should be very reticent in setting aside findings, particularly as regards findings as to the credibility of

witnesses which that Tribunal had the benefit of seeing and hear give evidence. I bear in mind that the witness in this case was not cross-examined but nonetheless the judge did hear the witness give evidence.

16. I bear in mind also that this is not a case in which the Secretary of State chose not to be represented. The judge was therefore in a difficult position given an apparent change in circumstances of the husband having gone back to Egypt, which he properly and fairly asked to be dealt with in the hearing in line with his self-direction at [17].

17. It is of note that the judge did not simply accept what the respondent said; on the contrary, in several places he set out the difficulties he found in her evidence and has explained why he attached weight or not to the points made by the Secretary of State in the refusal letter.

18. I do not consider that it could be said that the judge was applying an impermissibly low standard of proof at [49], when stating it was possible the respondent was pursued because of her association with her husband, given that in the preceding sentence he had directed himself properly as to the relevant low standard of proof. There is merit in Mr Brennan's submission that had the judge said "probable" he would have misled himself. Whilst this could have been more elegantly expressed, it is nonetheless sufficiently clear that the judge was applying the correct standard of proof in this case.

19. It is also sufficiently clear from the judge's findings that he did accept the respondent's account of what had happened to her, her husband and their children in Egypt. That in particular includes attacks on her and on the children in Alexandria and also in Cairo where they had fled. Essentially, the judge having heard and seen the respondent give evidence accepted what she had said and dealt properly with the points that had been raised by the Secretary of State in his decision and points arising at the hearing. What in effect the Secretary of State submits in a large part of the grounds is the submissions that she might have wanted to make to the judge had she attended the hearing.

20. I consider that YH can be distinguished. While the passages relied upon make ic lear that anxious scrutiny also requires a judge not to be too credulous, in this case. as noted above, the judge did not simply say that he believed the respondent; on the contrary he gave good reasons why he did so and identified areas of difficulty and that he did not believe some of what she said. Further, it is incorrect to suggest that the respondent's husband was unharmed. That was not part of the case; in reality there was simply no evidence on that point.

21. There is merit in Mr Brennan's submission that it is clear that the targeting of the respondent continued after she fled Alexandria and that she was specifically attacked. The difficulty the Secretary of State faces is her submission is that it proceeds on the assumption that the risk that there might be to the respondent may have diminished because of the

separation from the husband, but that would presumably require the attackers to know that. That is speculative and whilst it might have been a point that could be made in submissions, it is difficult to see how the judge has erred in not putting that point to himself.

22. Reliance on TK (Burundi) is unhelpful and can be distinguished on its facts. The issue there was regarding why evidence, which could have been obtained from somebody within the jurisdiction, could have been obtained but was not. That is manifestly not the case here.

23. Again, in that regard, the Secretary of State is seeking to put the points she could have made had she attended the hearing and whilst it is for the judge to assess the evidence in the round, and he said so, it was not for the judge to speculate about the whereabouts of the husband and he did not ignore them. Accordingly, it cannot be said that the decision was perverse.

24. There is little merit in the submission that the judge did not properly assess risk in light of the circumstances appertaining at the date of decision, that is that she was separated from her husband. Again, any diminution of the risk is presupposed on two bases:

    (a) that those seeking to attack her or her husband knew of the separation; and

    (b) that if they did so they would not be interested in attacking her.

    It is, I consider, sufficiently clear from the decision that the judge accepted that she would still be at risk given what had happened to her in the past and the extent to which she had been targeted for attack and followed to Cairo. Given the accepted facts that the group were sufficiently motivated to attack her on more than one occasion and to seek to abduct the children, it does not necessarily follow that they would cease to target her if they became aware again of her presence.

25. Further, it cannot be argued that there is any error with respect to the assessment of sufficiency of protection. Given the self-direction at [31] to [33] and the sustainable finding that he found the inaction of the police to be credible, and what is said at paragraph 121:

> "The situation of Coptic Christians is such, in our opinion, that where an individual appellant can establish a real risk of serious harm, by virtue of some characteristics additional to merely being a Coptic Christian, it is quite unlikely he or she will have available protection, even when we limit that to meaning protection against violations of non-derogable rights. Physical attacks and threats to life are of course the clearest example. Further, in assessing the risk categories it is evident that conversions is a very sensitive issue. It is evident that converts are unusually vulnerable to harm and whilst it rejected the suggestion that people who work with converts was too vague to

suggest that they too would be at risk, it did take the view depend on the circumstances, which would appear to cover the respondent's husband."

26. In light of the background evidence and the country guidance it cannot properly be argued that the judge erred in his assessment of sufficiency of protection properly understood and viewing the decision as a whole, bearing in mind the self-direction I am satisfied that this did not amount to an error of law.

27. Whilst this was a decision I might not have reached myself, it is nonetheless sustainable. Contrary to what is submitted, the judge gave adequate and sustainable reasons for the findings of fact and it is sufficiently clear to the Secretary of State why the findings were reached.

28. In summary, the judge accepted for good reason the respondent's account of what happened to her and the risks on return and that there would not be a protection for her. Whilst this may have been more elegantly and fully explained, it is adequate and sufficient. Accordingly for these reasons I am not satisfied the decision of the First-tier Tribunal involved the making of an error of law and I uphold it.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

**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 December 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul