Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11318/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House via Skype for Business	**Decision & Reasons Promulgated**
On Thursday 25 February 2021	**On 18 March 2021**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

T E S G

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms U Sood, Counsel acting on a direct access basis
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer.

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity order was made by the First-tier Tribunal. As this appeal involves a protection claim, I consider it is appropriate to continue that order. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge O R Williams promulgated on 23 March 2020 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 17 October 2019 refusing her protection and human rights claims but accepting those as fresh claims. This is the second appeal brought by the Appellant. Her first appeal was dismissed by the First-tier Tribunal (Judge Tynan) in July 2016 and upheld on onward appeal by the Upper Tribunal (Deputy Upper Tribunal Judge Doyle). The Appellant's two children are dependents on her claim.

2. The Appellant is a national of Egypt. It is accepted that she is a Coptic Christian. She claims that she and her family were targeted in Egypt by a Salafist preacher ("SG"). The Judge took as his starting point the previous appeal decision as he was bound to do. He accepted that the Appellant is a Copt. He also accepted that the Appellant would be at risk from SG if she chose to return to the district of Cairo where SG lived and where the Appellant had previously resided with her husband and children but concluded that the Appellant could safely and reasonably relocate within Egypt ([19] of the Decision). He found that SG would not be able to trace the Appellant via the police in Egypt. The Judge did not accept the Appellant's case that her husband (who remains in Egypt) has been attacked in order to obtain information about the Appellant and her children nor that he is in hiding in fear of Islamist groups. The Judge did not accept as genuine documents purporting to show that the Appellant is wanted by the Muslim Brotherhood. Whilst the Judge accepted that the Appellant's parents and sisters were recognised as refugees in the UK in 2012, he did not accept that this had any bearing on the Appellant's case.

3. The Judge treated the Appellant as a vulnerable witness. The Appellant's daughter [C] also suffers from mental health problems. The Judge dealt with the evidence in that regard at [27] to [30] of the Decision but did not accept that return to Egypt would breach Articles 3 or 8 ECHR. The appeal was dismissed on all grounds.

4. The grounds of appeal are discursive but may be summarised as follows:

   (1) The Judge has ignored the Appellant's account that she has reported sensitive information to the police in the UK. That information is said to be the identification of one of her attackers in Egypt from a YouTube video showing an attack on another Christian woman.
   (2) The Judge has failed to take into account some of the medical evidence which attributes [C]'s mental health problems to fears for her father in Egypt and fears of what will happen to her on return rather than, as the Judge is said to have concluded, being based on separation from her father. For that reason, it is said that the Judge has failed properly to assess the impact of return on [C]'s mental health.
   (3) The Judge has failed properly to assess the relevance of the grant of asylum to the Appellant's parents and sister.
   (4) The Judge has failed to consider an argument of risk generally to Copts.

(5) The Judge has failed to take into account the Respondent's failure to consider her section 55 duty to assess the best interests of the child.
(6) The Judge has failed to take into account the relationship between the Appellant's children and her sister. It is said that her sister has been appointed as their "testamentary and spiritual guardian" and that this, coupled with the impact of the Appellant's inability to parent because of her mental health problems, has not been considered when looking at the position on return.
(7) The Judge has not considered any breach of Article 3 ECHR in relation to [C].

5. Permission to appeal was refused by First-tier Tribunal Judge Kelly on 14 May 2020 in the following terms:

> "The grounds make little sense given that they complain that the Tribunal failed to engage with the many and varied legal submissions made by their author at the hearing whilst simultaneously purporting to be 'holding grounds' pending receipt of a legible copy of the Tribunal's decision. It is not in any event arguable that the Tribunal failed to deal with those legal issues that were relevant and necessary for the just determination of an appeal against refusal of an international protection and human rights claim. The complaint that the Tribunal failed to adjudicate upon the alleged failure of the respondent to consider the welfare of a child under section 55 of the 2009 Act is entirely misconceived given that (a) it is no longer a ground of appeal that the respondent's decision was 'not in accordance with the law' (see sections 82 and 84 of the 2002 Act as amended by sections 15 and 16 of the Immigration Act 2014), (b) the authorities cited in support of this ground were decided in relation to appeals where this ground of appeal was still available (ie prior to the amendments referred to above) and (c) the Tribunal specifically considered section 55 for itself. Permission to appeal is accordingly refused."

6. The application was renewed on the same grounds to this Tribunal. The Appellant however raised an additional ground namely that the Judge "had omitted to evaluate the additional risk (raised as a preliminary issue at the hearing) from the Appellant's evidence recently identifying a perpetrator". As I understand it from the footnote, this is the issue which I summarised as ground (1) above.

7. Permission to appeal was granted by Upper Tribunal Judge Norton-Taylor on 30 July 2020 as follows so far as relevant:

> "… 2. With respect to the author of the grounds, they are not the easiest to follow. One element of them is what is said to be an 'additional risk' in respect of the appellant's claimed identification of a 'perpetrator'. If this matter was properly put before the judge, it is arguable that he has not dealt with it. Counsel will need to provide a copy of her notes of the hearing and/or a witness statement in respect of this proposed challenge.
> 3. On the face of it, there does not appear to be any great merit in the other grounds. However, I am granting permission in respect of all of them."

Although Judge Norton-Taylor provisionally indicated that the error of law hearing should proceed on a face-to-face basis, following submissions made on behalf of the

Appellant, Upper Tribunal Judge Kekic directed on 15 October 2020 that the hearing should proceed as a remote hearing.

8. So it is that the matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing before me was conducted via Skype for Business. There were no major technical difficulties affecting the conduct of the hearing. In addition to the representatives, the Appellant also attended remotely but did not participate. In addition to the Appellant's bundle to which I refer below as [AB/xx] I also had the Respondent's bundle, the Appellant's skeleton argument before Judge Williams and a skeleton argument produced by Ms Sood for the hearing before me.

DISCUSSION AND CONCLUSIONS

9. As noted by Judge Norton-Taylor, the grounds are discursive. Whilst I have attempted to summarise the grounds as pleaded at [4] above, it is most convenient to break down the issues into the order in which they were taken at the hearing which broadly separates them into the challenges to the Judge's consideration of the protection claim first and the human rights claim second.

PROTECTION GROUNDS

10. The first part of the Decision is concerned with the previous appeal decision which Judge Williams rightly notes at [15] of the Decision should be her starting point (per Devaseelan). At [16] of the Decision, Judge Williams summarises the findings made by Judge Tynan in 2016. At [17] of the Decision, Judge Williams sets out the salient passage from the decision of Deputy Upper Tribunal Judge Doyle, upholding Judge Tynan's decision.

11. Thereafter, from [18] to [23] of the Decision, Judge Williams focusses on the facts of the protection claim which have occurred since the earlier appeal. It is convenient to set that passage out in full since the Appellant's grounds take issue with much of what is there said:

> "18. I do not accept the appellant's claim that since the previous determinations facts have happened which when taken into account by myself should lead me to a different conclusion for the following reasons [§19-23]:
> 19. It is reasonably likely that the appellant would be at real risk from [SG] (whom she has identified as still being alive after having seen him on a television report – she reported her concerns to the police in the United Kingdom (AB3-1) if she chose to return to the Shobra district of Cairo. However, I see no reason to depart from Judge Tynan/Doyle's findings that the appellant would be able to internally relocate to reside in Alexandria or Tanta province or Nasr city. Judge Tynan specifically quoted from country guidance information about the 'increased level of violence against Copts in the immediate aftermath of the ousting of President Morsi', and whilst this was the previous Country Information and Guidance – Egypt, Christians I note the current

version from 2017 does not report such levels of risk/violence against Copts to lead me to conclude that there are 'very strong ground supported by cogent evidence' (SG (Iraq) v SSHD [2012] EWCA Civ 940 [2013] 1 WLR 41 such that I should depart from the country guidance case of MS regarding internal relocation. Specifically (my **emphasis**):

2.2.5 Following the case of MS, which relied on evidence up to the end of 2013, the political, security and social situation for Christians improved up to 2015. However during 2016 and early 2017 there has been an increase in nonstate sectarian violence against Christians (see State attitude and treatment and Societal attitudes and treatment).

2.2.6 Whilst some laws reportedly discriminate against Christians – Copts appear more likely to face prosecution and conviction for blasphemy than Muslims – the Al Sisi Government has sought to improve law and order, and has taken several highly visible steps towards bettering state relations with, and to provide support for, the Coptic community. ***Christians are not generally at risk of persecution or serious harm from the state*** *(see Legal rights and State attitude and treatment).*

2.2.7 Christians continue, however, to face societal discrimination and some violence. The number and severity of violent incidents targeting Copts and their property has increased since 2015. This includes attacks by Daesh (aka Islamic State), which stated its intent to target Christians and claimed responsibility for high profile bombings in Cairo, Alexandria and Tanta in December 2016 and April 2017 resulting in scores of casualties (see Societal attitudes and treatment).

2.2.8 ***Christians are in general not at risk of persecution or serious harm by nonstate actors in urban areas, including in Cairo and Alexandria.*** *However, Christians in some rural or poorer areas, particularly those with a strong extremist presence, where there have been recent attacks on churches and Christian properties, continue to face discrimination and ill-treatment by nonstate actors that may amount to persecution.*

20. Furthermore, Dr Rebwar Fatah Expert's report dated 23rd October 2017 (the respondent's representative conceded that Dr Rebwar Fatah was an expert) does no more than confirming that Coptic Christians are increasingly being targeted as victims of violent attacks in Egypt – as also noted by Judge Tynan, *'81. Coptic Christians have increasingly come under targeted violence in Egypt ...'* but confirms the viability of internal relocation *'138. Christians who were at risk of targeted violence relocated to Ismailia and elsewhere in Egypt in large numbers.'*

21. I have given anxious scrutiny as to whether the appellant and the family would be specifically targeted by [SG]/ Salafi groups and conclude that they would not be. I reach that conclusion as there is no evidence of [SG] having any influence outside of Cairo. Specifically Dr Rebwah Fatah makes no specific findings regarding [SG] but rather speculates (my **emphasis**), *'142* ***If*** *[SG] is an influential figure within the Sufi movement,* ***it is possible*** *that he could become aware of [the appellant's] location if she is a person of particular interest to him'.*

22. I have given anxious scrutiny as to whether the appellant and the family would be specifically targeted by [SG] via the Salafi movement/ other agents and conclude they would not be. I reach that conclusion as whilst Dr Rebwar Fatah opines *'88. The Salafi movement is active through organisations' /94…prevalent within political, religious, and charitable spheres/102…has a network of hundreds of religious preachers'* Dr Rebwar Fatah finds that the influence of Salafi groups is *'marginalised'* with a *'licence to preach'* limiting *'influence'* (paragraphs 96-98) with Dr Rebwar Fatah opining that *'it is unlikely for [SG]to have influence within the security forces for his status alone'.*

23. I have given anxious scrutiny as to whether the appellant and the family would be specifically targeted by [SG] via the police and conclude they would not be. I reach that conclusion as Dr Rebwar Fatah's report is speculative *'While it is unlikely for [SG] to*

> *have influence within the security forces for his status alone, it may be possible for such a figure to have influence over an individual police officer if his personal beliefs are sympathetic to the Salafi ideology.*' However, that finding is speculative since as discussed above, Dr Rebwar Fatah makes no specific findings regarding [SG] bur rather speculates (my **emphasis**), '*142* ***If*** *[SG] is an influential figure within the Sufi movement,* ***it is possible*** *that he could become aware of [the appellant's] location if she is a person of particular interest to him'*. Moreover, the central issue to this case is that the appellant could relocate to avoid coming into contact with [SG] and hence any potential problem from an individual corrupt police officer."

12. I begin with the ground which forms the focus of the grant of permission to appeal, namely the additional claim made that the Appellant would be at risk due to a report made to the Sussex police about the perpetrator of an attack on her whilst she was in Egypt. It is said that she identified that perpetrator from the report of another attack on an unconnected individual which appears on YouTube.

13. There is no evidence from Ms Sood about the way in which this was raised with the Judge as Judge Norton-Taylor had envisaged when he granted permission. I accept however that this was not necessary as the Decision does refer to this additional claim albeit obliquely.

14. Ms Sood's skeleton argument before Judge Williams says that the Appellant identified via this video "a suspect in one of the attacks on her family". Ms Sood told me that the Appellant in fact identified an individual who had attacked her and not her family albeit the attacker is not said to be [SG]. The Appellant's updated witness statement dated 3 February 2020 at [AB/1-26] in this regard says the following:

> "8. <u>Recent Risk Evidence</u> An incident happened 2 weeks ago in Cairo which was reported in the media when a man attacked a Christian lady in the street and he tried to slaughter her but she survived and the accident appears on the street CCTV system. When I saw the news and they showed the attacker's Egyptian ID with his photo, I realised that I recognised the man and he was one of the group who attacked me at home, and the media gave his name as [MR]. I spoke to my family and barrister and decided to let the local Sussex police in Brighton on 29th January know and pass the information on to the Egyptian police in case it helps. They gave me a crime reference number: 0586, and will be in touch."

15. The only evidence about the report to the Sussex Police is a document dated 29 January 2020 at [AB/3-1] which gives a crime number. It says nothing about the information given to the police.

16. Unfortunately, I was unable to view the YouTube video for myself as either the reference given in Ms Sood's skeleton argument is inaccurate or the video has been taken down. Ms Sood told me that Judge Williams had been shown the video at the hearing. There are no screenshots of the video.

17. Ms Sood informed me that the incident described in the Appellant's witness statement as shown on YouTube was a report of the man who the Appellant said attacked her

being charged for another offence when he had held a knife to someone's throat. I assume that is the reference to the attack on "a Christian lady" as the Appellant describes in her statement. If Ms Sood's description of the YouTube video is accurate and the report was of the man having been charged, that undermines rather than assists the Appellant as it would suggest that the authorities are willing and able to provide protection to Christians who are attacked by such individuals.

18. I recognise however that this is not something which is said by Judge Williams. Whether or not the video is suggestive of a sufficiency of protection, and notwithstanding the Judge's misunderstanding as to the identity of the individual recognised by the Appellant in what is said at [19] of the Decision (the Judge appears to have assumed it was [SG]), it cannot be said that the Judge ignored this aspect of the claim. However, as with the Judge's findings more generally, the Judge did not need to go further than she did in relation to the incident because she found that the Appellant could be expected to internally relocate. If the Judge was entitled to reach the conclusion she did regarding internal relocation, the "additional risk" is irrelevant.

19. Before I move on to the Appellant's criticism of the findings as to internal relocation, however, I make some additional observations about the incident on which the Appellant now relies. First, as I have already pointed out above, there is no evidence other than the Appellant's witness statement about what was reported to the police. There is no direct evidence from the Sussex police confirming the content of the report. Ms Sood was unable to offer an update on any action taken by the Sussex Police. Second, there was no evidence before Judge Williams at the previous hearing or before me now to show that the Sussex Police has taken any action in relation to the report and specifically to show that it has passed any information to the Egyptian authorities. Third, even if the police has taken any action and has reported the matter to the Egyptian authorities, there is no evidence that it has or would have passed on the Appellant's name. Fourth, even if the matter was reported to them, there is no evidence that the Egyptian police has taken action based on that report. Fifth, even if the Egyptian police has received the report and has utilised it in some way, there is no evidence that the Egyptian police has or would have informed the attacker of the Appellant's identity. There is no suggestion that the Appellant has been approached by the Egyptian police to provide a statement or evidence in the charges against this attacker. The risk said to arise to the Appellant from what she is said to have told the Sussex police is based on pure speculation. There is no evidence from which a real risk could be found to exist. The burden of proving a real risk lies with the Appellant even though that is only to the lower standard. She has provided no evidence which could even conceivably show a real risk to her arising from the report.

20. Even if she were at risk, in any event, the Judge's finding at [19] of the Decision accepts that the Appellant is at risk from [SG]. That she may also be at risk from another individual in Cairo does not add anything to that finding, unless it is said that the other attacker is a more influential individual (as to which there is no evidence from Dr Fatah or otherwise and the evidence that the individual was being charged for another attack undermines any such suggestion).

21. The Judge's finding at [19] and following is therefore that the protection claim fails not due to lack of a risk to the Appellant but on the basis that she can internally relocate within Egypt.

22. In that regard, although Ms Sood initially sought to suggest that the Judge had ignored background material which the Appellant produced in evidence, she was constrained to accept that the only background evidence relied upon directly in her skeleton argument is the report of Dr Fatah. I begin with that report. The criticism made at [10] of the grounds is that the Judge has unreasonably concluded that the Appellant can internally relocate given what is said at [81] and [102] to [106] of Dr Fatah's report about the increasing risk of targeting and violent attacks against Coptic Christians.

23. In relation to Dr Fatah's report, that is dated 23 October 2017 which is unsurprising since it was provided to the Respondent at that time. It appears in the Respondent's bundle. Notwithstanding suggestions on file that an adjournment or delay was sought in the course of this appeal to obtain an updated report, Ms Sood confirmed that there is no later report. She said that this was because the Appellant could not afford to pay for one. For that reason, though, Dr Fatah's consideration is limited to events occurring prior to October 2017 and therefore over three years ago (and over two years before the hearing before Judge Williams).

24. The Respondent's concession as to Dr Fatah's expertise may be somewhat generous given the description of his expertise which appears to concern mainly Afghanistan and Iraq. As the Respondent notes in her decision letter, Dr Fatah has only recorded one visit to Egypt six years previously and he has carried out very few reports in relation to Egypt (and the content of those reports is not clear). Whilst Judge Williams accepted Dr Fatah's expertise based on the Respondent's concession, it is notable that the information on which his report is based comes from published sources (rather than his own expertise). Those sources, as I have already noted and appears from the footnotes, date from 2017 at the latest. I also mention in passing (since it is raised in Ms Sood's skeleton argument before Judge Williams) that the unreported decision relied upon as showing that Dr Fatah has been accepted by the Tribunal as an expert in relation to Egypt does no such thing. That decision which appears at [AB/1-5 to 1-7] merely records the Upper Tribunal's conclusion that where the expertise of Dr Fatah had apparently been accepted by the First-tier Tribunal Judge, his report ought to have been engaged with and findings made in relation to the report.

25. Judge Williams' starting point in this appeal was not only the 2016 appeal decision but also the country guidance case of MS (Coptic Christians) Egypt CG [2013] UKUT 611 (IAC) ("MS"). That guidance remains extant. It reads as follows:

> "Law
> In relation to a country which is in a state of emergency affecting the life of the nation and which takes measures strictly required by the exigencies of the situation, its ability to afford adequacy of protection under Directive 2004/83/EC (the Qualification

Directive) is to be assessed by reference to its general securement of non-derogable rights as set out in the ECHR.

Country guidance

1. Notwithstanding that there is inadequate state protection of Coptic Christians in Egypt, they are not at a general risk of persecution or ill-treatment contrary to Article 3, ECHR.

2. However, on current evidence there are some areas where Coptic Christians will face a real risk of persecution or ill-treatment contrary to Article 3. In general these will be (a) areas outside the large cities; (b) where radical Islamists have a strong foothold; and (c) there have been recent attacks on Coptic Christians or their churches, businesses or properties.

3. On the evidence before the Upper Tribunal, the following are particular risk categories in the sense that those falling within them will generally be able to show a real risk of persecution or treatment contrary to Article 3, at least in their home area:

(i) converts to Coptic Christianity;

(ii) persons who are involved in construction or reconstruction/repair of churches that have been the target for an attack or attacks;

(iii) those accused of proselytising where the accusation is serious and not casual;

(iv) those accused of being physically or emotionally involved with a Muslim woman, where the accusation is made seriously and not casually.

4. Coptic Christian women in Egypt are not in general at real risk of persecution or ill-treatment, although they face difficulties additional to other women, in the form of sometimes being the target of disappearances, forced abduction and forced conversion.

5. However, depending on the particular circumstances of the case, Coptic Christian women in Egypt aged between 14-25 years who lack a male protector, may be at such risk.

6. If a claimant is able to establish that in their home area they fall within one or more of the risk categories identified in 3 (i)-(iv) above or that they come from an area where the local Coptic population faces a real risk of persecution, it will not necessarily follow that they qualify as refugees or as beneficiaries of subsidiary protection or Article 3 ECHR protection. That will depend on whether they can show they would not have a viable internal relocation alternative. In such cases there will be need for a fact-specific assessment but, in general terms, resettlement in an area where Islamists are not strong would appear to be a viable option.

7. None of the above necessarily precludes a Coptic Christian in Egypt from being able to establish a real risk of persecution or ill-treatment in the particular circumstances of their case, e.g. if such an individual has been the target of attacks because he or she is a Coptic Christian."

26. The guidance in MS was set out in the previous appeal decision of Deputy Upper Tribunal Judge Doyle. The MS guidance is therefore incorporated at [17] of the Decision. Based on the MS guidance, the Deputy Upper Tribunal Judge had previously found that "taking the appellant's claim at its very highest and accepting each strand of the appellant's evidence, the appellant establishes a genuine fear because she has been targeted by rogue Islamist due to her faith as a Coptic Christian" but that "[t]he appellant does not need international protection because she can safely live in a different part of Egypt."

27. The task for Judge Williams when considering the appeal on this second occasion was therefore, as she directed herself, to start from the previous appeal decision and in so

doing take as a starting point the guidance in MS unless there were "very strong grounds supported by cogent evidence" which would lead her to depart from the MS guidance (see [19] of the Decision). The consideration of the evidence following the decision of Deputy Upper Tribunal Judge Doyle is then set out at [19] to [23] of the Decision.

28. The Judge took into account the Respondent's 2017 Country Information Report. In so doing, she set out a passage which is in many respects in line with what is said by Dr Fatah about the risks to Copts from ISIS and the growth of the Salafist movement, albeit some of Dr Fatah's sources in the sections relied upon in the grounds are historic (dating between January 2013 and August 2014 and therefore prior to the previous appeal decision in this case). Notwithstanding the reference to high profile bombings against Christian targets by ISIS, some discrimination by the Egyptian state and some violent attacks by other non-state agents, Judge Williams noted at [19] of the Decision that the background information remained that Christians were not generally at risk of persecution or serious harm by non-State actors in urban areas. The Judge thereafter took into account the specific risk to the Appellant from [SG] and what was said by Dr Fatah about the potential reach of [SG] but concluded that Dr Fatah's reasoning was speculative.

29. Ms Sood's grounds refer to later background evidence which was not before me (the Country HO Policy and Information Note: Egypt Women dated June 2019). More importantly, it was not part of the Appellant's evidence before Judge Williams. In any event, it does not bear out the point which Ms Sood seeks to make. As the title of that Note makes clear, it is concerned with the position of women and not with the treatment of Christians as such. At [2.5.1] (the passage on which Ms Sood relies), the Note deals with discrimination and violence against women based on gender and police attitudes/ enforcement effectiveness when dealing with gender-based violence. That has nothing to do with this Appellant's case. She does not claim to have been subjected to violence because of her gender; she claims that it is her faith which puts her at risk. In any event, the conclusions of Judge Williams are based not on availability of State protection but on the possibility of internal relocation.

30. I have for the sake of completeness on this issue, looked at the updated Home Office country information in relation to Christians in Egypt, issued in October 2020. That is largely the same as that relied upon by Judge Williams. If anything, it indicates a reduction in violent attacks in 2018 and 2019 ([2.4.8] of that report).

31. The Judge was entitled to form the conclusions she did about the availability of internal relocation on the material before her for the reasons she gave. She did not fail to have regard to Dr Fatah's report and was entitled to have regard to other country information, particularly the Respondent's 2017 Country Information Report. Based on that background evidence, she was entitled to reach the conclusion that she should not depart from the guidance in MS and that the report of Dr Fatah did not advance the Appellant's case as decided in the previous appeal.

32. There is an additional issue raised in the grounds which relates to the protection claim. That is outlined at [2] and [8] of the grounds. It is based on the Appellant's parents and sister having been recognised as refugees when they came to the UK in 2012. It is not clear from the evidence in the Appellant's bundle whether it was general country conditions or specific risk factors which led to the according of refugee status, but the Judge appears to have understood the grant to be based on specific risk factors as Coptic Christians (see below). In fact, the evidence in the bundle as to the grant of leave is incomplete but Mr Walker was able to confirm by reference to electronic records that the Appellant's family were indeed granted leave based on their recognition as refugees.

33. That brings me on to the main submission made orally in this regard by Ms Sood. This concerned Judge Williams' refusal to adjourn the hearing to permit the Respondent to provide evidence about the family's asylum claim. The Judge dealt with that at [12] of the Decision as follows:

> "I considered whether the case should be adjourned, and in doing so had regard to the Tribunal Procedure Rules 2014, Rule 2 and 4. The application for an adjournment was on the basis that the asylum grant minutes on for appellant's parents SG, and EB and sister, TG who left Cairo and claimed asylum successfully in the UK in February 2012, on the basis of being targeted and threatened by a neighbour/ Muslim Salafist ([EE]) and his group of followers, who tried to force them to convert to Islam. The parents and sister were granted leave to remain on 14th February 2012. However, it was conceded that there was no provable link between the two cases (the appellant's/ her relatives) and as such in my judgement there was no benefit to adjourning to obtain the Asylum Grant Minutes as they were not relevant to the factual matrix before me."

34. As I understood Ms Sood's submission it was that the Judge should have adjourned to allow the production of these documents as they might have advanced the Appellant's case if it could be shown that there was a link between the individual who threatened the Appellant's family before they left Egypt in 2012 and [SG] or another of the individuals who had threatened or attacked the Appellant and her own family.

35. Although, as I understood the position from Ms Sood, it appeared initially that Mr Walker was willing to concede that the Judge should have permitted this adjournment, he did not pursue that argument and he was right in my estimation not to do so for the following reasons.

36. First, I very much doubt that the files for the Appellant's parents and sister would still be in existence after all this time, particularly since they were granted indefinite leave to remain about eight years ago and, at least the Appellant's sister if not also her mother have since been naturalised (her father has sadly passed away).

37. Second, even assuming the files were still in existence, all they would show is the basis of the claim made and the individual(s) who the Appellant's parents and sister claimed had threatened or attacked them. That information is known to the Appellant's mother and sister and they could be expected to provide it.

38. Third, as I think Ms Sood accepted, it could not be the case that any such documents as still exist in relation to the 2012 claim would show a link between the individual(s) said to have threatened or attacked the Appellant's parents and sister and [SG] or the other individuals who the Appellant says have attacked her much more recently. It would be for the Appellant to show that such link exists if it does. As indicated by the Judge at [12] of the Decision, it was conceded that no such link can be demonstrated. Although it is said at [2] of the grounds appealing the Decision that there was evidence from both the Appellant and her sister that "these cults could be linked", I was not shown any evidence to that effect. The statement of the Appellant that she "always [has] a feeling that there could be a connection" does not establish such a link even to the lower standard. The statement of the Appellant's sister does not mention any link.

39. Fourth, even if such a link could be shown, any risk arising from it would be overcome by the possibility of internal relocation unless the Appellant could show that the individuals concerned had influence elsewhere in Egypt.

40. Finally, the way in which the grounds raise this issue, is different from that advanced by Ms Sood orally. Paragraph [8] of the grounds appealing the Decision suggest that "[t]he FTTJ has erred in not considering that specific evidence was needed of that grant" (ie the grant to the Appellant's parents and sister). But why would such evidence be required? The Appellant's sister gave evidence. The Judge accepted that the Appellant's parents and sister were recognised as refugees because of their religion. At [26] of the Decision, the Judge said this about the relevance of that fact:

> "Secondly, it was accepted by the respondent's representatives that the appellant's parents and sister claimed asylum and were granted leave to remain on the basis of the Refugee Convention in 2012 based on persecution as Coptic Christians in Egypt. However, I am satisfied that the grant of refugee status adds little to the appellant's claim since it merely reflected the specific conditions in relation to them as opposed to the appellant – as conceded by the appellant's representative there is no evidence that the persecution they suffered is directly linked with that which the appellant faced, in other words there are two separate incidents."

There is no error in the way in which the Judge analysed the relevance of the grant of status to the Appellant's family members in 2012.

41. Finally, in relation to the appeal on protection grounds, I come on to an issue raised at [9] of the grounds appealing the Decision which is linked to the previous point regarding the Appellant's family's refugee status. It is suggested that the Judge failed to rule on a submission that Copt Christians are "an endangered group". That submission relies on the Court of Appeal's judgment in Secretary of State for the Home Department v MSM (Somalia) & Anor [2016] EWCA Civ 715 and what is said at [52] of that judgment. I observe that the extract cited in the grounds is taken from the brief observations of Lord Justice Moore-Bick agreeing with the lead judgment. It is worth noting that the extract cited is preceded by the words "[i]t may seem strange at first sight that a person…" even though the Court was driven to the conclusion reached in

the lead judgment. However, the judgment does not and did not need to be referred to as it simply has no bearing on this case. What was under consideration in that case was the HJ (Iran) line of authority and the issue whether a person could be expected to act in such a way as to avoid a risk which would otherwise amount to a well-founded fear of persecution. In this case, whilst the risk was accepted by Judge Williams to exist, it did not lead to a well-founded fear of persecution because of the availability of internal relocation. It was not suggested (nor could it be) that the Appellant should cease to practise her religion in order to avoid that risk. In any event, it cannot be suggested, based on the extant country guidance, that all Coptic Christians are at a generalised risk throughout Egypt which appears to be the point made in the grounds.

42. For all of the above reasons, the grounds do not disclose any errors of law in the Decision so far as concerns the protection grounds of the appeal.

HUMAN RIGHTS GROUNDS

43. The grounds of appeal challenging the Decision dealing with the human rights grounds are largely focussed on the mental health of the Appellant and that of her daughter [C].

44. The Judge deals with the medical evidence in relation to [C] and the Appellant at [27] and [28] of the Decision as follows:

> "27. I am satisfied that the appellant's daughter [C], as reflected in the medical and social work evidence before me has a '*history dysfunctional breathing with sudden onset secondary to huge anxiety of family separation'* (AB3-32). I also note that the appellant herself has palpitations of depression, low mood and occasional forgetfulness (AB 3-22/3). [C] has undergone, *counselling for the form of events she underwent in Egypt struggle to accept better father's absence is not her fault, she's highly anxious at the prospect of returning to Egypt'* AB 3-36). A Social Worker, Ranjit Soar's report describes the family's and in particular [C]'s subjective fear: *'They all [T and family] fear that they will be tortured and killed if returned to Egypt'*. I have no reason to doubt that [C] has a history of severe short of breath attacks without physical cause with a diagnosis of Post-Traumatic Stress Disorder. Dr Michail opined that [C] will need help and support through psychological intervention. Ranjit Soar describes part of the cause of her ill health due to *'separation from her dad and her constant worries about safety'* and finds that *'her condition will become worse. If the family is forced to go back to region because of the ongoing religious persecution …[C] believes that she will be kidnapped and forcefully converted to Islam and married to an older Muslim man. This fear of being sent back to Egypt has had a marked impact on [C]'s mental and emotional well-being…[C] then told me that she is sad and that she can hear the voices and violence and sees her father being beaten up [which she witnessed when she was 7 years old]. She says she is afraid to go to bed as she becomes anxious and panicked. She says she has difficulty sleeping and has frequent flashbacks and nightmares…[C] recently lost her grandfather whilst he was visiting his brother in Egypt …helping people heal after trauma often focussed on providing them with a safe haven where healing could take place.'*
>
> 28. However I am satisfied that the child's mental health (and indeed the appellant's) would not deteriorate on return to Egypt. I am satisfied that the medical/psychological opinions before me are made without the knowledge that there

> is a viable internal relocation option available which would mean that [C]/ her family could be relocated safely and be safely reunited with her father and so the anxiety and panic attacks caused by fear of return to Egypt/separation from a loved one would be allayed. Moreover, I note that the reports were partly based on the premise of [C] having witnessed her father having been assaulted – which of course was specifically found not to have occurred by Judge Tynan/Doyle, I am satisfied that both the social worker/ psychiatrist have not had regard to the fact that there is a 'safe haven' available by internal relocation within Egypt here [C] would be able to go to church and school in safety. I note that the family remain close, with family visits to Egypt; as such, I am satisfied that the guardianship appointments in favour of the maternal aunt could be maintained by regular visits to Egypt to see the child/ren."

45. I begin with the suggestion that the Judge failed to deal with Article 3 ECHR based on the medical evidence (paragraph [14] of the grounds). The Judge referred at [29] of the Decision to the guidance given in AXB (Art 3 health: obligations; suicide) Jamaica [2019] UKUT 397 ("AXB"). Thereafter, the Judge concluded as follows:

> "30. The evidence before me does not establish a credible real risk of deterioration in the child's/appellant's health for the reasons given above. Moreover, the respondent has clearly considered Article 3 at paragraph 116 of the refusal letter, providing details of the availability of Egyptian healthcare where the child can receive treatment (paragraphs 17-118) and going on in detail to consider the relevant case law concerning medical problems."

46. It cannot sensibly be suggested that the Judge failed to deal with this aspect. Neither can it be said that the Judge has erred in her consideration of this issue. Since the Decision, the Supreme Court has had cause to consider Article 3 ECHR in this context in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17. The Court said the following about the standard and burden of proof in relation to an Article 3 health claim:

> "32. The Grand Chamber's pronouncements in the *Paposhvili* case about the procedural requirements of article 3, summarised in para 23 above, can on no view be regarded as mere clarification of what the court had previously said; and we may expect that, when it gives judgment in the *Savran* case, the Grand Chamber will shed light on the extent of the requirements. Yet observations on them may even now be made with reasonable confidence. The basic principle is that, if you allege a breach of your rights, it is for you to establish it. But "Convention proceedings do not in all cases lend themselves to a rigorous application of [that] principle …": *DH v Czech Republic* (2008) 47 EHRR 3, para 179. It is clear that, in application to claims under article 3 to resist return by reference to ill-health, the Grand Chamber has indeed modified that principle. The threshold, set out in para 23(a) above, is for the applicant to adduce evidence "capable of demonstrating that there are substantial grounds for believing" that article 3 would be violated. It may make formidable intellectual demands on decision-makers who conclude that the evidence does not establish "substantial grounds" to have to proceed to consider whether nevertheless it is "capable of demonstrating" them. But, irrespective of the perhaps unnecessary complexity of the test, **let no one imagine that it represents an undemanding threshold for an applicant to cross. For the requisite capacity of the evidence**

> **adduced by the applicant is to demonstrate "substantial" grounds for believing that it is a "very exceptional" case because of a "real" risk of subjection to "inhuman" treatment. All three parties accept that Sales LJ was correct, in para 16, to describe the threshold as an obligation on an applicant to raise a "prima facie case" of potential infringement of article 3. This means a case which, if not challenged or countered, would establish the infringement: see para 112 of a useful analysis in the Determination of the President of the Upper Tribunal and two of its senior judges in *AXB v Secretary of State for the Home Department* [2019] UKUT 397 (IAC)**. Indeed, as the tribunal proceeded to explain in para 123, the arrangements in the UK are such that the decisions whether the applicant has adduced evidence to the requisite standard and, if so, whether it has been successfully countered fall to be taken initially by the Secretary of State and, in the event of an appeal, again by the First-tier Tribunal."
> [my emphasis]

47. The Supreme Court's judgment was not handed down until after the Decision in this appeal and therefore is not referred to by Judge Williams. However, AXB which was cited was referred to with approval by the Supreme Court as regards the burden and standard of proof in the extract to which I refer above. It cannot be said that the Judge misdirected herself as to the test which applies.

48. The evidence about the impact of return on [C]'s mental health is dealt with in a report of Ranjit Soar, a retired social worker dated 29 January 2020 ([AB/3-5 to 3-13]), a psychiatrist report dated 20 September 2017 ([AB/3-28 to 3-29]), a GP report dated 23 May 2016 ([AB/3-30]) and various other medical documents and documents from [C]'s school.

49. Although Mr Soar says that the fear of return has "has had a marked impact on [C]'s mental and emotional well-being", it is not entirely clear on what that assessment is based given that Mr Soar does not purport to have any medical qualifications and was seemingly provided only with hospital and psychiatrist's letters. The psychiatrist's report is dated 20 September 2017 and is written by Dr Milad Michail. He is described as a consultant psychiatrist although his qualifications and experience are not set out. [C] is said to be "terrified" of return. Dr Michail expresses the view that [C]'s "condition will become worse if the family is forced to go back to Egypt because of the ongoing religious persecution".

50. Against that evidence, as Judge Williams noted at [30] of the Decision, the Respondent has provided evidence that there is healthcare available in Egypt to treat [C]'s mental health. The availability of treatment is not dealt with in the expert evidence provided by the Appellant. The Judge was therefore entitled to reach the conclusion she did in relation to Article 3 ECHR in the context of the medical claim.

51. It is suggested that the Judge has failed to consider the impact of return on [C] because she has focussed only on one part of the reason why [C] has mental health problems namely separation from her father. However, the extract from Mr Soar's report which is cited at [5] of the grounds is replicated at [27] of the Decision. The Judge was clearly aware that [C]'s mental health problems were caused not simply by separation from

her father and fears for her father's safety but fears of what would happen to her on return.

52. The reason the Judge gives for finding that the impact on [C] would not be as described by the health and other professionals is that those professionals were unaware that the fears expressed would not come to fruition because the family could move to another area of Egypt to avoid the risks which they foresaw. The Appellant's husband and [C]'s father remains in Egypt. The Judge did not accept that he was in hiding or had faced threats and attacks since the Appellant and the children had come to the UK ([24] to [25] of the Decision). Those findings are not challenged by the Appellant. As such, the Appellant and her children would be returning to Egypt to re-join their husband/father in circumstances where, based on the findings in relation to the protection claim which I have already upheld, they could find safety in another part of Egypt. Even accepting the evidence as to [C]'s mental health problems and potential impact of return, therefore, the Judge was entitled to reach the conclusion she did because the healthcare professionals were unaware of (or did not deal with) the possibility that the claimed risks could be avoided by internal relocation.

53. It cannot be said that the Judge has failed to note the Appellant's own mental health problems. Those are referred to at [27] of the Decision. The evidence in that regard is at [AB/3-22 to 3-27]. The Judge's summary of the symptoms "palpitations of depression, low mood and occasional forgetfulness" is a fair one. It is suggested at [13] of the grounds that there was evidence of the Appellant "as having depression, which could make her less capable of effective parenting". It is said that "this submission in the skeleton argument is also not dealt with". However, the Judge was not required to deal with unevidenced submissions. She was required to deal with the evidence. There is no evidence that the Appellant's mental health problems had rendered her "less capable of effective parenting". The closest one comes is a suggestion at [AB/3-27] that the Appellant would be referred to "the voices in exile service who can provide support and casework for [the Appellant and her children] with a focus on engaging in some meaningful daytime activity". That does not however go so far as to call into question the Appellant's ability to parent.

54. That then brings me on to [12] of the grounds concerning the "legal implications of a testamentary and spiritual guardianship appointment" in favour of the Appellant's sister (the children's aunt).

55. Before I deal with the asserted "legal implications" it is necessary to look at the evidence in relation to this appointment. The document which is signed by the Appellant and her sister appears in translated form at [AB/3-4]. It is undated. It reads as follows (so far as relevant):

> "I [TESG] being the mother of [C] …and [K]…appoint my sister [TG] …to be the guardian of my children, in the event of my death or incapacity. [TG] already acts as a spiritual guardian and godparent to my children. She agrees to the said appointment, and we have both had legal advice about this document."

As can be seen, the document says nothing about the nature of spiritual guardianship. Testamentary guardianship is in the event of the parent's death or incapacity. I have already referred to the [lack of] evidence about the Appellant's incapacity.

56. The Appellant's evidence in this regard is at [12] of her statement dated 2 February 2020 ([AB/1-27]. She says the following:

> "I have been so anxious about the future that my sister [TG] and I have decided she will be the testamentary guardian for my children if anything happens to me as life and health is so uncertain for us. She is already close to the children as she has been their godparent, and guides them spiritually."

57. The Appellant's sister says this in her statement ([AB/1-30]):

> "11. After our father passed away, my sister [TESG] and I discussed how to safeguard her children if anything happens to her. I am already their godmother, so I have agreed after legal advice, to be their testamentary guardian so there will be no concerns about them being looked after."

58. The submission made in Ms Sood's skeleton argument before Judge Williams is as follows:

> "12. Family and maternal concerns over the children's future has resulted in a testamentary and spiritual guardianship appointment in favour of the maternal Aunt as the testamentary guardian of the children. She is also their spiritual guardian and helping the children to integrate. As testamentary and spiritual guardians to children, she has a legal status through the role under Section 5, Children Act 1989. The document as to Testamentary Guardianship is thus legally compliant and welfare-centred (*Re E-R (A Child)* [2015] EWCA Civ 405)
> 13. Moreover, the Spiritual Guardianship is also relevant under Articles 8 and 9 as affecting the spiritual needs of child welfare.
> There are established roots (between the Appellants and the wider maternal family including cousins and grandpatents [sic] in this country) since 2015, which inclusive of the guardianship document, have significant legal consequences pursuant to S55 and Article 8 and child welfare generally.

59. I can deal very shortly with what is said at [12] of the skeleton. As the footnote in that paragraph of the skeleton argument makes clear the reference to the Children Act is in relation to the appointment of a guardian in the event of the death or incapacity of a parent. Whilst the wishes of the Appellant and her sister to make provision for guardianship of the children is understandable given that the children's other parent remains in Egypt, the circumstances in which that would come into play have not arisen. I return to the point that there is no evidence of the Appellant's inability to parent the children herself.

60. Turning then to the points made about the importance of spiritual guardianship, I repeat the point I made previously. The Judge had to consider the evidence given by the witnesses and in the documents and not such evidence as Ms Sood might have

wished to refer to had it been there. It is not for Counsel to provide evidence. The evidence of the Appellant and her sister is that the Appellant's sister is the children's godparent and provides some spiritual guidance. The importance of that for the children is not however dealt with in that evidence.

61. That brings me back to what is said by the Judge in this regard. The Judge touches on the guardianship appointment in the final sentence at [28] of the Decision. As I have already noted, the Appellant's sister was recognised as a refugee in the UK and it might therefore be thought to be an error for the Judge to suggest that she could visit the children in Egypt. That reference is the reason I asked Mr Walker to check that the Appellant's sister was in fact granted leave based on her status as a refugee. Having confirmed that to be the position, Mr Walker accepted that what is said about the Appellant's sister being able to visit Egypt might be an error but is not necessarily a sufficient error to require the Decision to be set aside either wholly or in part.

62. Whilst I accept that the Judge was perhaps wrong to assume that the children's aunt could visit them on return to Egypt, what is there said has to be considered in context. I have referred to the Appellant's sister having been naturalised. She is now a British citizen and does not have to rely for travel on a refugee travel document. I have referred to the Appellant's father having sadly passed away. What I have not previously mentioned is the evidence of the Appellant and her sister that their father passed away whilst in Egypt. The Appellant says that she and her children could not go to the funeral which also took place in Egypt. It is not entirely clear whether the Appellant's sister attended the funeral. Judge Tynan (who heard the previous appeal of the Appellant) recorded at [25] of his decision that the Appellant's brother had also returned to Egypt in 2015 for a holiday with his family. Although he is not part of the family recognised as a refugee in 2012, the Appellant's father was so recognised and yet felt able to return to Egypt, presumably having been naturalised as a British citizen.

63. In any event, even if this is an error, it is not on the evidence one which has any material impact on the Decision. As I have already noted, there is a lack of evidence about the importance of a spiritual guardian for the children let alone evidence pointing in the direction of this being a significant factor in favour of individual rights under Articles 8 and 9 ECHR as the submission in the skeleton argument suggests. Based on the very limited evidence on this issue, the error (if error it is) concerning the possibility of the Appellant's sister visiting the children in Egypt would not persuade me to set aside the Decision either wholly or in part.

64. Dealing finally then with the issue of links between the Appellant and her children on the one hand and the Appellant's mother and siblings on the other, those are dealt with in the context of Article 8 ECHR at [36] of the Decision and following. The Judge there takes into account the children's best interests ([48] of the Decision). As was pointed out by First-tier Tribunal Judge Kelly when refusing permission to appeal, the ground that the Judge failed to take into account the Respondent's failure to evaluate best interests is of no relevance. There is no longer a ground of appeal based on the Respondent's decision being "not in accordance with the law". In fact, the Respondent

did consider those best interests ([106] to [109] of the decision letter) but in any event the Judge considers this issue for herself (as she was bound to do). The Judge accepts that leaving the UK will lead to "inevitable initial disappointment, disruption and distress" but points out that this will be balanced against being reunited with their father. The Judge also takes into account that the children have been educated in the UK ([43] of the Decision). The Judge accepts at [43] of the Decision that "[t]he appellant has a strong and enduring relationship with her family in the United Kingdom such as her sister/family".

65. The Judge correctly directs herself in accordance with the relevant legal principles applying to Article 8 ECHR and carries out a balancing exercise between the rights of the Appellant and her children against the public interest as advocated by the Supreme Court in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60. The Judge concluded that the Appellant was unable to meet the Immigration Rules in relation to her family and private life and that of her children ([37] to [39] of the Decision). Having noted that the children's best interests must be a primary consideration at [42] of the Decision and weighing all competing factors, the Judge reached the conclusion at [49] of the Decision that "it would be proportionate to interfere with the appellant's family life by removing the family as a unit". That was a conclusion which the Judge was entitled to reach based on the evidence before her.

66. For all of the above reasons, whilst it may be the case that the Judge should not have relied on the ability of the Appellant's sister to visit the children in Egypt at [28] of the Decision, that error (if error it is) does not impact on the outcome given the limited evidence about the importance of a spiritual guardian for the children's welfare. The grounds do not disclose any material errors of law in the Decision so far as concerns the human rights grounds of the appeal.

67. For the foregoing reasons, I conclude that there is no error of law in the Decision such as to lead to the setting aside of the Decision and I uphold it.

DECISION

The Decision of First-tier Tribunal Judge O R Williams promulgated on 23 March 2020 does not involve the making of a material error on a point of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

Signed: *L K Smith*

Upper Tribunal Judge Smith

Dated: 10 March 2021