Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/09716/2019
PA/09721/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 September 2021	**On 5 November 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SK (FIRST APPELLANT)
KM (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of their family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:
For the appellants: Ms B Smith, Counsel, instructed by Kesar & Co Solicitors
For the respondent: Mr S Whitwell, Senior Home Office Presenting Officer

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DECISION AND REASONS

Introduction

1. This is the re-making decision in the linked appeals of the two appellants. This follows my previous decision, promulgated on 28 May 2021, by which I concluded that the First-tier Tribunal had erred in law when allowing the appeals at first instance on the basis that the appellants were at risk on return to Uganda (the error of law decision is annexed to this re-making decision).

2. In setting the First-tier Tribunal's decision aside, I preserved the following findings of fact:

(a) the first appellant is the biological son of a prominent politician in Uganda, and the second appellant is her niece (but effectively adopted as her daughter);

(b) Ms X has experienced significant difficulties from the Ugandan authorities in the past, including arrest;

(c) the appellants have experienced problems in the past on account of Ms X's political activities, to the extent set out in the passages of the reasons for refusal letters cited in this decision;

(d) the appellants have never been, and are not currently, themselves involved in politics in any way;

(e) the second appellant is not a lesbian.

3. During the subsequent case management process, the appellants' current representatives requested that I remove (e) from the above list of preserved findings. For reasons set out in a Decision Notice dated 2 September 2021, I refused that request.

The issues

4. Put in the shortest form, the core issue in these appeals is whether, by virtue of their familial connection to Ms X, the appellants would be at risk of persecution and/or Article 3 ill-treatment on return to Uganda. Within the overall ambit of this question there are a number of more specific factual matters, including whether Ms X has been the victim of poisoning by the Ugandan authorities and the extent of "problems" experienced by the appellants when they were last in Uganda.

5. It has not been suggested that the appellants would be at risk on return for any reason other than the relationship to Ms X, nor has Article 8 been pursued on any basis independent of that essential factual matrix.

The evidence

6. I have considered the evidence contained in the appellants' consolidated bundle ("AB") indexed and paginated 1-286, together with the respondent's original appeal bundle.

7. Ms Smith provided a printed copy of an online article from the Daily Monitor, dated 30 March 2015, which I admitted in evidence without objection from Mr Whitwell.

8. The appellants attended the hearing, together with their aunt, Ms BX. All three gave oral evidence. I confirmed that the hearing that in light of medical evidence contained in AB, I would be treating the second appellant as a vulnerable witness within the meaning of the Joint Presidential Guidance Note No.2 of 2010.

9. I do not propose to set out the oral evidence here, even in summary form. Suffice it to say at this stage that the appellants were asked a number of questions about their past experiences in Uganda, particularly whilst at school, as well as their circumstances in the United Kingdom. Ms BX was asked about the failure to have made protection claims on behalf of the appellants sooner than they were.

Submissions

10. Mr Whitwell relied on the reasons for refusal letters pertaining to both appellants, as well as the preserved findings. He did not accept that the appellants had experienced past persecution whilst in Uganda. Although the oral evidence had provided further details about treatment at school, this had not been corroborated and it was perhaps surprising that Ms X had not referred to this in her witness statement.

11. Whilst the appellants were minors on arrival in the United Kingdom in 2014 and until they reached their majority in 2019, there was no proper explanation as to why Ms BX had not made protection claim sooner. The timing of the protection claims in 2018 was "convenient" as it allowed the appellants to claim university fees on a "home student" basis rather than a "foreign student" basis, the former being significantly advantageous. It was also noteworthy that an Article 8 application made in December 2014, the refusal of which was pursued to an appeal in 2017, had not raised protection issues.

12. As to the central issue of whether the appellant would be at risk on return, Mr Whitwell submitted that the position in Uganda after the Presidential and Parliamentary elections in January 2021 was not as bad as in the run-up to that event. Mr Whitwell raised concerns about the report of Dr Frederick Laker, initially querying whether he was sufficiently qualified to provide expert evidence (having received Dr Laker's CV after the hearing, Mr Whitwell confirmed in writing that he in fact made no criticism of the author's status as an expert as such). There was, he submitted, a concern that Dr Laker had an "axe to grind", given that members of his own family had apparently suffered at the hands of the Ugandan authorities. This, it was said, placed Dr Laker too close to the action. Beyond the expert report, Mr Whitwell queried why Ms BX and another relative living in United Kingdom had felt it to be safe enough for them to return Uganda for visits in 2010 and 2016. It appeared as though there were other relatives living around the world who had apparently fled Uganda in fear, but there was no evidence from these sources. Overall, Mr Whitwell submitted that the evidence did not show there to be a risk to the family members of politicians. Finally, in relation to the preserved finding that the second appellant was not a lesbian, Mr Whitwell urged me to take this adverse finding into account when assessing her overall credibility.

13. Ms Smith relied on the skeleton argument drafted by her instructing solicitors. The timing of the protection claim was in reality beside the point: the appellants had both been minors at the material time and 2014 and the Article 8 application had made some references to protection issues, prompting the respondent to invite them to make protection claims at that time. There was no evidence to indicate that the appellants had any contact with other relatives living in other parts of the world. The appellants had given clear oral evidence as to the treatment suffered whilst at school. The respondent had in fact accepted that there were "problems", but Ms Smith urged me to take account of the more detailed account now provided. It was submitted that this treatment constituted persecution and this would feed into the assessment of risk on return now.

14. In respect of Ms BX and the other aunt, Ms A, who went to Uganda, Ms Smith emphasised they were not Ms X's children and that all cases were fact-specific. There was strong evidence to show that Ms X had in fact been poisoned by the authorities because of her political activities. She continues to be active and had sought to challenge the election results in 2021. Dr Laker's report was relied on. He had been transparent about relatives and close friends who had been targeted by the authorities, but these were only one source for his report. The report and country information went to demonstrate that the appellants would be at risk.

Findings of primary facts

15. The preserved findings of fact set out earlier in this decision stand and need not be repeated here.

16. I have treated the second appellant as a vulnerable witness and considered her evidence in that context.

17. I deal with four matters which are the subject of a credibility challenge by the respondent. The first relates to the timing of the appellants' protection claims. There is something to be said about why Ms BX did not seek to ensure that protection issues were raised in the 2014 application. It may also be the case that the advent of the protection claims in April 2018 bore some causal link to university fees. Yet, to my mind, competing considerations outweigh any concerns. Firstly, both the appellants were minors in 2014 and up until 2019. They were under the direction of Ms BX. Secondly, this state of affairs was properly acknowledged by the respondent herself at paragraph 56 of the reasons for refusal letter, in which it was accepted that the timing of the protection claims did not significantly damage credibility. Thirdly, whatever "fault" may be attributable to Ms BX, I can see no material relevance of this to an assessment of the appellants' own credibility. Overall, I find that their credibility has not been materially damaged by the relatively late timing of the protection claims.

18. The second issue relates to the treatment experienced by the appellants whilst at in Uganda. As discussed earlier in this decision and indeed the error of law decision, the respondent has accepted that "problems" were encountered. On the evidence considered by the respondent at the time of the reasons for refusal letter, the "problems" consisted of being beaten by teachers and students at school and harassed by neighbours who were part of the army: paragraphs 48-52 of the letter.

19. In her latest witness statement, the second appellant reiterates these difficulties and alludes to additional "serious things" having happened to her in the past that she has been unable to disclose. I am of course unable to make a finding on matters in respect of which there is no actual evidence. Having said that, the lack of further explanation does not adversely affect her credibility, with reference in particular to her status as a vulnerable witness.

20. In oral evidence, both appellants gave additional details about the treatment they had experienced whilst in Uganda. The first appellant stated that corporal punishment had been permitted in Uganda, but that when he reached the age of 12/13, the physical punishments meted out went well beyond what happened to other students. Teachers would make specific references to his mother's involvement in politics. He recalled informing his mother about this treatment. The second appellant provided what I consider to be compelling evidence on the same issue. She described being questioned about Ms X's politics on numerous occasions and being repeatedly hit with a stick or a metal ruler. A vivid account was given of the second appellant being forced to lie across a table or on the floor whilst being hit. This "humiliation", as it was described, was not applied to other students. The second appellant also recalled having told

Ms X about the problems, but it seems as though no further action was taken.

21. I find the oral evidence to be truthful. Both appellants have been regarded as essentially credible by the respondent. The additional details provided in oral evidence by, in particular, the second appellant was consistent and plausible. I do not regard it as amounting to an untruthful embellishment. The second appellant's vulnerability does not play a significant part in my assessment: I would have regarded her evidence as truthful in the absence of this status. It is true that Ms X does not make reference to the treatment at school in her statement, which raises a concern. I am, however, persuaded by Ms Smith's submission that the statement was focussed solely on future risk and I am willing to accept that she did not address her mind to the past (or perhaps was not asked to when the statement was being drafted). Finally, my acceptance of the evidence that Ms X did not appear to take firm action in respect of the treatment at school is not inconsistent with the truth of the account. There may have been a variety of reasons why she did not make formal complaints, ranging from a fear that to do so would only make matters worse on the one hand, to a narrow focus on her own political activities on the other. I need not make any specific finding on this point.

22. Following from the above, I find as a fact that there was a causal link between the treatment of the appellants by teachers and neighbours (who were employed as, or had close connections to, the army) and Ms X's status as a prominent opposition politician. The credible evidence demonstrates a political motivation.

23. The third credibility issue relates to the claim that Ms X was poisoned by the Ugandan authorities. In fairness to Mr Whitwell, he did not specifically assert that this had never occurred, but it had been a matter raised before the First-tier Tribunal and it is best if I address it here.

24. On the evidence as a whole, and in particular that referred to in this paragraph, I am satisfied that Ms X was in fact poisoned by the authorities in 2019, with adverse effects which persisted in 2020. The evidence of the appellants and Ms X herself has been consistent. Medical evidence in the form of reports from the Almeca Medicare centre in Uganda unequivocally states that, on 3 August 2019, Ms X was admitted with "acute hepatitis secondary to acute arsenic poisoning." The admission followed two days of severe pain, diarrhoea, and vomiting. The existence of the centre is confirmed by an Internet article provided by Ms Smith at the hearing. Additional reports in the online media refer to opposition politicians being poisoned: 158-159 and 169 AB. Indeed, two articles make specific reference to Ms X having been poisoned: 160-170 AB. Finally, the use of poisoning by the Ugandan authorities against opposition politicians is addressed by Dr Laker in his report, wherein he states that, "the use of poison in Uganda, for political assassination, has been a common practice for the last 60 years. Poison is the preferred option for security agents as the slow and latent effects allow death to be explained as an outcome of

natural or explainable causes…”: 89 AB. For reasons set out below, I have concluded that considerable weight should be attributed to Dr Laker’s report.

25. The fourth and final credibility issue relates to the preserved finding that the second appellant is not a lesbian. That does not in my judgment have a material bearing on my assessment of her evidence relating to past experiences in Uganda. The problems were stated in her evidence from the outset of the protection claim and what was described by the First-tier Tribunal as a “afterthought” as regards the claimed sexuality can properly be categorised as an embellishment.

26. Before turning to my conclusions in this appeal, I make finding of fact relating to a matter which has not been specifically challenged by the respondent, but which arises from the more recent evidence. In light of the media articles before me, I am satisfied that Ms X did in fact seek to challenge the 2021 Parliamentary election result pertaining to her constituency seat, but later withdrew her case for reasons described as “personal”: 131-133 and 138-139 AB.

Conclusions

27. I deal first with the question of whether the appellants had been subjected to persecutory treatment whilst in Uganda. Article 9 of the Qualification Directive (which is retained EU law) defines acts of persecution for the purposes of Article 1A(2) of the Refugee Convention as those which are:

> “… Sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights…or be an accumulation of various measures, including violations of human rights as to affect an individual in a similar manner…”

28. On my findings of fact, I am persuaded that the appellants were the victims of persecution, at least in the school setting. The treatment suffered was, in my judgment, sufficiently serious, consisting of being beaten not only with hands, but also sticks and metal rulers. I take account of the appellants’ young ages at the time and the fact that it not only caused them physical pain, but also engendered feelings of humiliation. I am satisfied that these consequences were intended by the teachers concerned. I also take account of the fact that corporal punishment was permitted in schools. Thus, other students would have been subjected to chastisement. But on my findings, there is a clear distinction between what happened to the appellants and any punishments given to fellow students. The former were singled out because of Ms X’s political activities. Further, they were the victims of more severe beatings than others who had no links to opposition politicians.

29. In addition to the severity of the beatings, I conclude that the repetition is a relevant factor. These were not one-off incidents. Rather, they formed part of what was, I conclude, a concerted effort to harm and humiliate the appellants.

30. It is the case that, on the evidence before me, formal complaints against the teachers were not made. In this regard, it could be said that state protection was not sought, albeit that any advances to the authorities would have had to have come from Ms X and not the appellants themselves. In all the circumstances, I have significant doubts that any effective protection would have been forthcoming in any event. However, the failure to have sought protection does not preclude a conclusion that the appellants were subjected to persecutory treatment in the first place.

31. In respect of the harassment by the neighbours, I conclude that although it was politically motivated it did not constitute persecutory treatment, having regard to the nature and duration of the perpetrators' actions.

32. In assessing a risk on return now, I take into account the fact of past persecution, albeit that it constitutes a reduced indicator of future risk due to the fact that state protection was not sought.

33. I make it clear that even if the past treatment did not constitute persecution, as that term is defined, it nonetheless represents an important element of the appellants' history whilst last in Uganda. Put shortly, the appellants were targeted for ill-treatment purely on the basis of their familial links to Ms X.

34. I now turn to the future and what is reasonably likely to occur on return or relatively soon thereafter.

35. The country information provides a strong indication that the Ugandan authorities take a hostile approach to political opponents. The US State Department human rights report for 2020 highlights the following matters:

> "Members of the security forces committed numerous abuses.
>
> … Impunity was a problem.
>
> Opposition activists… reported that security forces killed individuals the government identified as dissidents and those who participated in protests against the government.
>
> … there were credible reports that security forces tortured and physically abused suspects.
>
> Conditions in detention centres remained harsh and in some cases life-threatening. Serious problems included overcrowding, physical abuse of detainees by security staff…
>
> … security forces often arbitrarily arrested and detained persons, especially opposition leaders, politicians, activists…

> Arbitrary arrests and unlawful detention, particularly of dissidents, remained problems. The UPF and UPDF on numerous occasions arrested and harassed opposition politicians, their supporters, and private citizens who engaged in peaceful protests and held public rallies.
>
> Security forces arbitrarily arrested and detained opposition leaders and intimidated and beat their supporters."

36. Media articles contained in AB and post-dating the January 2021 elections by some months, paint a fairly bleak picture:

> "A new wave of repression in Uganda has dared to the abductions of dozens more opposition activists by security forces… The country has suffered a series of crackdowns aimed at stamping out dissent since campaigning began for presidential elections late last year. [Dated June 2021, at 209 AB]
>
> Hundreds of ordinary people suspecting of supporting opposition politicians in Uganda have been snatched off the streets by security services in the worst wave of repression in the East African country for decades. [Dated April 2021, at 220 AB]
>
> [two named individuals] were snatched by security operatives after an altercation between Museveni supporters and local youths. Neither has any history of political activism. [Dated April 2021, at 225 AB]

37. I turn to Dr Laker's report. Firstly, I find that he is suitably qualified to provide expert evidence on the issues addressed in the report. I have now been able to see his CV and paragraphs 2-6 demonstrate a background which is consistent with the accumulation of knowledge relating to the political and security situation in Uganda over the course of time. My view of Dr Laker's suitability is in line with that of Mr Whitwell.

38. As noted earlier, Mr Whitwell has raised a concern relating to Dr Laker's connections to Uganda as constituting a source of information. At paragraph 3, footnote 1 to paragraph 6, and paragraph 39, Dr Laker refers to having numerous relatives and close friends in Uganda in respect of whom he has been able to obtain information on relevant issues. Mr Whitwell submits that this places him "too close to the action" and suggests that he has an "axe to grind".

39. Whilst I see a degree of merit in Mr Whitwell's position, I conclude that this factor does not significantly undermine the weight I would otherwise attribute to Dr Laker's report. Firstly, he has been entirely transparent about the sources. Secondly, I take account of Ms Smith's point that the sources were only one aspect of the evidence he has relied on for his opinions covering a range of issues. Aside from articles and reports, Dr Laker relied on interviews with individuals who are not named as relatives or close friends. Thirdly, although he states that relatives and friends have in the past fled Uganda out of fear of the authorities, the report itself is couched in appropriate language and does not indicate in any clear way that Dr Laker has trespassed into the territory of partisan advocacy. All-

told, I am satisfied that the report should be accorded considerable weight as part of my overall assessment of the evidence. That is not to say that I accept each and every point made by Dr Laker.

40. The main opposition mounted by the respondent against the appellants' case has been the absence of evidence to show that family members of political opponents are at risk from the authorities. Before turning to the report of Dr Laker, I address to specific points made by Mr Whitwell in submissions. He noted that Ms BX and her sister, Ms A, had both felt able to return to Uganda for a visit, the former in 2010 and the latter in 2016. Why, asked Mr Whitwell, would they have done this if family members of prominent politicians were at risk? It is a legitimate point. However, both individuals have addressed the question in their respective witness statements and their evidence is not been specifically challenged. Ms BX stated that when she returned she was attacked in the street (believing it to be a random attack) and decided never to return. Ms A explained that she took a risk to see her parents when her grandmother died and paid money to people to ensure safe passage through the airport. There is no sound reason to disbelieve them. The fact of the visits may tend to suggest that all family members are not at risk, but every case is of course fact-specific and Ms BX and Ms A were not targeted in Uganda as were the appellants, and are not the children of the prominent politician in question. Overall, the visits, whilst a relevant consideration, are not a decisive factor against the appellants' claim.

41. Mr Whitwell's submission that the human rights situation post-elections was better than in the run-up to them is not borne out by the country information. The media reports cited at paragraph 36, above, post-date the elections by some months and indicate that the repression of continued.

42. Dr Laker's report specifically risks to family members. At paragraph 15 (79 AB), it is said that:

> "In Uganda, there is a historical norm whereby successive ruling regimes... have always targeted the families of dissident Ugandans. This has been a calculated tactic to punish and intimidate enemies of the state into silence, and also prevent their family members from engaging in any 'subversive' actions or seeking justice in the aftermath of their death. It is common to have the parents, siblings, spouses, and children of dissidents rested, detained indefinitely, tortured, raped and murdered."

Examples are then provided.

43. At paragraph 26 (86 AB), Dr Laker opines that:

> "... many innocent Ugandans have lost their lives or have been arrested, charged, imprisoned, raped and tortured not only for having openly expressed a particular political opinion, but to simply having been seen as being associated with a particular opposition leader or coming from

> the same region of the politician. In Uganda today, any person with any association, or perceived association, to any government opposition figure that is considered a threat to the regime, is at risk of persecution."

Source materials are provided for these assertions.

44. Later, the example is given of the driver for the opposition MP Robert Kyagulanyi (better known as Bobi Wine), who was abducted and killed by security forces in 2018, notwithstanding that he was not himself politically active.

45. Dr Laker goes on to express his opinion that the appellants would be at risk of being charged with "misprision of treason" on the basis that had previously been charged with treason some years previously. Although there appears to be provision under Ugandan law for such a charge, it is unclear from the report to what extent the legal provision is in fact applied against non-political family members of opposition politicians. For the purposes of my risk assessment, I do not consider it to be reasonably likely that a charge of a charge of misprision of treason would be levelled against the appellants.

46. I have also taken full account of the fact that neither of the appellants are themselves politically active. The authorities could not therefore point to any direct pronouncements in support of Ms X and/or against the government of President Museveni. This is relevant to the perception of the authorities and makes it less likely that the appellants would be viewed with sufficient hostility such as to warrant detention, whether for the purposes of intimidation of Ms X or political opponents in general, or to "dissuade" the appellants from considering any political engagement in Uganda. Having said that, I note the examples in the country information of individuals harmed by the authorities who were not themselves politically active. Further, it is apparent from Dr Laker's report that he did not proceed on the basis that either of the appellants were politically active and therefore his evidence has been provided in the proper context of their claim.

47. That a risk on return may be at a lesser degree than otherwise might be the case (if, for example, the appellants were politically active) does not of course mean that such a risk cannot be *reasonably likely* to exist.

48. Applying the lower standard of proof to the assessment of risk, and taking account of all the considerations set out in this decision, I conclude that the appellants are refugees and individuals whose removal from United Kingdom would be contrary to Article 3. The essential factors which demonstrate risk are as follows:

(a) the prominence of Ms X and the significant problems she has experienced over time;

(b) the obvious familial connection between the appellants and Ms X;

(c) the fact that the appellants have been persecuted, or at least subjected to significant harm, in the past because of the familial connection;

(d) the evidence demonstrating a risk of ill-treatment of detainees perceived to be political opponents of the government;

(e) the evidence demonstrating hostility towards family members of political opponents;

(f) my assessment that an absence of actual political activities on the part of the appellants does not preclude the existence of risk on the lower standard of proof.

49. The Convention reason in this case is imputed political opinion. Again, the absence of actual political opinion and/or activities on the part of the appellants is not determinative. The respondent has accepted the existence of this Convention reason throughout.

50. It is plain that the appellants could not avail themselves of effective protection from the authorities, nor could they reasonably internally relocate. The respondent has not sought to argue the contrary.

51. It follows that the appellants succeed in their appeals, both in respect of the Refugee Convention and Article 3.

Anonymity

52. The First-tier Tribunal made an anonymity direction on the basis that these appeals concern protection issues. For the same reason, I maintain that direction.

Notice of Decision

53. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.

54. I re-make the decision by allowing both appeals on Refugee Convention and Article 3 ECHR grounds.

55. The appeals must be dismissed on humanitarian protection grounds.

Signed: H Norton-Taylor Date: 20 October 2021

Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT
FEE AWARD

No fees were paid or payable and therefore there can be no fee awards.

Signed: H Norton-Taylor Date: 20 October 2021

Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/09716/2019
PA/09721/2019
(V)

THE IMMIGRATION ACTS

Heard remotely from Field House **Decision & Reasons Promulgated**

On 19 May 2021

…………………………………

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

SK (FIRST CLAIMANT)
KM (SECOND CLAIMANT)
(ANONYMITY DIRECTION MADE)
Respondents

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the respondents or members of their family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:
For the appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the respondent: Mr C Appiah, Solicitor from Vine Court Chambers

DECISION AND REASONS

Introduction

1. I shall refer to the appellant in this appeal as "the Secretary of State", to SK as the "the first claimant", and to KM as "the second claimant".

2. The Secretary of State appeals against the decision of First-tier Tribunal Judge Lucas ("the judge"), promulgated on 29 January 2021. By that decision, the judge allowed the claimants' appeals against the Secretary of State's decision, dated 23 September 2019, refusing their protection human rights claims.

3. The claimants are both citizens of Uganda, born in 2001. The first claimant is the first cousin of the second. The first claimant is the son of a prominent Ugandan politician, Ms X. The second claimant is the niece of Ms X, having been effectively adopted by her at a young age. Ms X's party (which I will not name in order to prevent the identification of the claimants) has been and remains in opposition to the ruling party in that country. It was said that she and the claimants had experienced difficulties with the authorities. These past difficulties, combined with the current country situation, went to show that the claimants would, as the family members of Ms X, be at risk on return. In addition, the second claimant asserted that she was a lesbian and would be at risk on the basis of her sexuality.

4. In refusing the protection and human rights claims, the Secretary of State accepted a number of factual matters. These were set out in the reasons for refusal letters, and were as follows:

i. the claimants were related to Ms X as claimed;

ii. Ms X did indeed hold a formal and prominent role in an opposition party in Uganda;

iii. Ms X had experienced arrests by the Ugandan authorities in the past;

iv. both claimants had themselves faced "problems" as a result of Ms X's political activities. These "problems" were as set out in paragraphs 50-53 of the first claimant's reasons for refusal letter and in paragraphs 48-51 of the second claimant's reasons for refusal letter.

5. However, the Secretary of State did not concede that the claimants had experienced past persecution or Article 3 ill-treatment, and it was expressly stated that there was no risk on return, having regard to the facts of the case and the country information. The second claimant's assertion that she was a lesbian does not seem to have been raised prior to the decision being made.

The decision of the First-tier Tribunal

6. The section of the judge's decision setting out his findings and conclusions is fairly brief. Whilst brevity is often to be commended, there are cases, such as the present, where this can lead to problems.

7. Having set out the matters accepted by the Secretary of State in the reasons for refusal letters, the judge went on to state the following at [51]-[56]:

> "51. These "concessions" are significant because there is no objective evidence to suggest that the situation from [Ms X] and her Party has changed in any fundamental respect.
>
> 52. I agree with Mr Appiah that there is an inconsistency in the reasoning of the Respondent. On the one hand, it is accepted that the Appellants faced difficulties on account of their familial association with [Ms X] but on the other, it is stated that there is no risk upon return. In the view of the Tribunal, this inconsistency is inconsistent to the point of absurdity.
>
> 53. There is evidence that [Ms X] faced and continues to face difficulties in Uganda on account of her political activities. This is likely to be exacerbated in the light of the forthcoming general elections in that country. There is also evidence of her poisoning in or just prior to 2020.
>
> 54. The fact that she may have the "full backing of her husband" is not, in itself, indicative of a lack of risk for either her or these Appellants as it cannot and does not address the general risk of targeting from others in the [specific party named].
>
> 55. The Tribunal has no difficulty in reaching the conclusion that [Ms X] remains at risk on account of her political activities in Uganda. Both Appellants faced targeting in Uganda on account of their family association with her. There is no indication that this targeting would be absent upon return to Uganda..
>
> 56... As stated, the article [purporting to show that the mother and father had reconciled their differences] does not address the fact that it is accepted that [Ms X] and the Appellants have faced and continue to face difficulties within Uganda. The relationship between the father and mother or the Appellant does not alter this fact."

8. The judge concluded that there was no internal relocation option available to the claimants. He rejected the second claimant's assertion that she was a lesbian, finding that this had been added "as an afterthought."

9. The claimants' appeals were duly allowed.

The grounds of appeal and grant of permission

10. Ground 1 asserted that the judge had erred in concluding that there was a significant inconsistency in the Secretary of State's position. The reasons for refusal letters had accepted that the claimants had faced "problems"

in the past, but it did not follow that there was a risk on return and the letters had made this clear.

11. Ground 2 asserted that the judge had failed to identify the evidence on which he based his finding that Ms X had been poisoned. The judge had also failed to take into account the newspaper article relating to the relationship between Ms X and the first claimant's father. Finally, the judge had failed to take account of his adverse finding on the second claimant's claim to have been a lesbian when assessing overall credibility.

12. Permission to appeal was granted by First-tier Tribunal Judge Haria on 23 February 2021.

The hearing

13. There were some technical difficulties at the hearing. Neither Mr Melvin nor Mr Appiah were able to use their video functions. It was unclear why this was the case. In the end, both were able to attend by telephone and both confirmed that they were content to proceed in this way. In the event, I was able to hear submissions clearly and the technical problems did not prejudice their ability to present their respective cases in any material way.

14. Mr Melvin relied on the grounds of appeal, with particular emphasis on ground 1.

15. Mr Appiah submitted that the "problems" accepted by the Secretary of State in the reasons for refusal letters had effectively amounted to past persecution and this is the way in which the claimant's case had been put to the judge. The judge had been entitled to treat the acceptance in this way and accordingly was entitled to have reached the conclusions he did. The judge's reference at [55] to the claimants having faced "targeting" was based on what had been accepted in the reasons for refusal letters. Mr Appiah quite candidly accepted that he was unable to identify any country information before the judge which indicated that family members of opposition politicians had been, or were, at risk of persecution and/or ill-treatment by the authorities. However, there was, submitted Mr Appiah, country information to show that opposition politicians/activists had been subjected to harassment, arrest, and detention. In respect of the poisoning issue, and article contained in the claimants' bundle was one source of evidence, although the judge had not referred to this expressly.

16. At the end of the hearing I reserved my decision.

Conclusions on error of law

17. I conclude that the judge did erred in law and that as result I should exercise my discretion under section 12(2)(a) Tribunals, Courts and Enforcement Act 2007 and set the decision aside. My reasons for this conclusion are as follows.

18. Whilst there is nothing in principle to prevent a judge from relying on and/or adopting what is said in a reasons for refusal letter, real caution must always be exercised before doing so. The contents of the letter (which sets out, as at the date it was made, the Secretary of State's position) must be examined carefully.

19. In the present case, the paragraphs within the reasons for refusal letters I have referred to previously did indeed accept that the claimants had experienced "problems" in the past as result of Ms X's political activities. However, on inspection, it is plain that the "problems" which had been accepted were limited in their nature. They related to difficulties faced whilst at school and verbal threats from neighbours, some of whom appeared to have been in the army. No incidents of actual harm were identified. There was no acceptance that there had been a genuine threat to the claimants when they left Uganda, nor that one existed as at the date of decision. Indeed, the sections of the reasons for refusal letters entitled "Assessment of Future Fear" sets out in detail the Secretary of State's view that no such risk existed.

20. The fundamental problem with what the judge said at [52] of his decision is that he was effectively treating the Secretary of State's limited acceptance in relation to past "problems" as being so apparently inconsistent with the rejection of future risk as to render her whole position on appeal untenable. With respect, that was simply not the case. The Secretary of State had put forward a legitimate position (whether or not this ultimately proved to be justified following a full merits appeal), namely that past difficulties did not, alone or in combination with the country information, go to show future risk. In my judgment, the judge either failed to provide adequate reasons as to why there was any inconsistency in the Secretary of State's position (significant or not), or was simply not entitled to conclude that there was any such inconsistency.

21. This first error has in my view gone on to materially infect the rest of the judge's reasoning as regards risk on return. At [55] and [56] the judge stated that Ms X was at risk in Uganda on account of her political activities. However, he failed to identify any evidence to indicate that Ms X was indeed "at risk" as at the date of hearing (she continued to reside in Uganda and, as far as I can see, had not been ill-treated or detained in the recent past). The judge's references to the claimants having faced "targeting" appears to relate only to the "problems" accepted by the Secretary of State. However, as I have explained in the preceding paragraphs, the past difficulties (as accepted by the Secretary of State) were not, in the absence of additional reasoning with reference to country information, sufficient in and of themselves to disclose a risk on return. Following from this, it is apparent that the judge did not engage with the

country information at all, particularly that relied on by the Secretary of State in the reasons for refusal letters, when reaching his conclusion that the claimants themselves would be at risk on return.

22. Bringing all of the above together, I conclude that the judge has erred in law by: (a) misapprehending the nature of the Secretary of State's acceptance of certain factual matters; (b) failing to provide any or any adequate reasons on material issues (in particular, risk on return); and (c) failing to assess and reach findings on relevant country information.

23. These errors are in my view sufficient for the judge's decision to be set aside.

24. For the sake of completeness, I address the Secretary of State's remaining complaints. As regards the poisoning of Ms X, I am satisfied that there was evidence before the judge in the form of a newspaper article contained in the claimants' bundle. Unfortunately, the judge has neither specified this evidence nor engaged with its content. There is no clear finding of fact as to whether this incident occurred in the circumstances claimed. I regard this as a further error of law. Even if I were to assume that the poisoning had occurred, the judge failed to relate that matter to the issue of risk on return to the claimants themselves. This too is an error.

25. The newspaper article relating to the relationship between Ms X and the first claimant's father was a peripheral matter and there is no error in respect of this.

26. Finally, whilst it would have been better for the judge to have explained his conclusions in more detail, I am satisfied that he was entitled to regard the second claimant's claimed sexuality as simply an embellishment which did not go to undermine the core issue relating to Ms X's political activities. I remind myself of what the Court of Appeal said in Uddin [2020] EWCA Civ 338, at paragraph 11. There is no error here.

Disposal

27. Having set the judge's decision aside, I consider it appropriate to retain these appeals in the Upper Tribunal for a resumed hearing. Whilst certain additional findings of fact may be required, this does not require remittal to the First-tier Tribunal. In addition, certain factual matters are not in dispute at this stage.

28. The appeals shall be listed for a resumed hearing. My provisional view is that this should be on a face-to-face basis, particularly because oral evidence may well be called. The wish to avoid any further technical problems is also a consideration.

29. The following factual matters are, as matters now stand, not in dispute and shall constitute the starting point for the Tribunal's consideration at the resumed hearing:

i. the first claimant is the biological son of Ms X and the second claimant is her niece;

ii. Ms X has been and remains a prominent politician within a known party in Uganda;

iii. Ms X has experienced difficulties from the Ugandan authorities in the past, including arrest;

iv. the claimants have experienced problems in the past on account of Ms X's political activities, but only to the extent set out in the passages of the reasons for refusal letters cited in this decision;

v. the claimants have never been, and are not currently, themselves involved in politics in any way;

vi. the second claimant is not a lesbian.

30. The relevant matters to be addressed at the resumed hearing will be:

i. whether the claimants themselves experienced any material difficulties from the Ugandan authorities over and above those identified in the reasons for refusal letters;

ii. whether Ms X was in fact poisoned by the Ugandan authorities or persons acting on their behalf;

iii. whether the claimants are themselves at risk on return by virtue of their familial connection to Ms X.

31. It is a matter for the claimants as to what, if any, further evidence they seek to adduce in advance of the resumed hearing.

Anonymity

32. The First-tier Tribunal did not make an anonymity directions, but failed to give any reasons for this. These appeals concern protection claims and I see no proper basis for declining to make a direction. Mr Melvin had no objection to this course of action.

33. I make a direction in respect of both claimants.

Notice of Decision

34. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

35. I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.

36. These appeals are adjourned for a resumed hearing in the Upper Tribunal.

Directions to the parties

1. **No later than 7 days after** this decision is sent out, either party may raise any objections to the resumed hearing being conducted on a face-to-face basis;

2. **No later than 21 days after** this decision is sent out, the claimants shall file and serve a consolidated bundle of all evidence relied on;

3. **No later than 28 days after** this decision is sent out, the Secretary of State shall file and serve any additional evidence relied on;

4. **No later than 10 days before** the resumed hearing, the claimants shall file and serve a skeleton argument which shall include page references to all evidence relied on in the consolidated bundle;

5. **No later than 5 days before** the resumed hearing, the Secretary of State may file and serve a skeleton argument/written submissions in response;

6. With liberty to apply to vary these directions.

Signed: H Norton-Taylor Date: 20 May 2021

Upper Tribunal Judge Norton-Taylor