



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers:
HU/08060/2016
HU/08067/2016

THE IMMIGRATION ACTS

Heard at: Manchester
On: 24th May 2017

Decision Promulgated
On: 1st June 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

KH
LG
(anonymity direction made)

Appellants

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Al-Hadi, Stevjeme & Co
For the Respondent: Mr G. Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are both nationals of Jamaica. They are respectively a mother and daughter, who is now aged three.

Anonymity Order

2. The adult Appellant is a foreign criminal and as such would not ordinarily merit protection of her identity. This case does however turn, in large measure, on the involvement of the second appellant (LG) and her British siblings, who both remain minors. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify either Appellant nor any member of their family. This direction applies to, amongst others, both the Appellants and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Matters in Issue before the First-tier Tribunal

3. KH first arrived in the UK in June 1999. She was in possession of a valid visit visa and was then aged 18. In approximately December 1999 her child SJ was brought from Jamaica to join her here. KH was subsequently arrested and charged with possession with intent to supply a Class A controlled drug (heroin). She claimed asylum, asserting a fear of the criminal elements who had lured her into the drug business. On the 13th April 2000 KH was convicted at Woolwich Crown Court of five counts of possession with intent to supply heroin and sentenced to a total of 33 months' imprisonment, to be served concurrently. On the 5th October 2000 she got a further three months, consecutive, for common assault. Her asylum claim was rejected and appeal dismissed. KH was removed from the United Kingdom on the 23rd January 2002. SJ remained here, living with his maternal grandmother.
4. On the 12th October 2002 KH illegally entered the UK. She passed through immigration control by using a false identity. She was given leave to enter until the 12th April 2003, presumably as a visitor. KH remained in the UK. She entered into a relationship with British national FBC. In May 2006 her daughter S was born, and in June 2009 her son T was born. It is not in dispute that both of these children are British and that at present they are living with the Appellants.

5. In March 2010 KH made an application to the Home Office using her false identity. She was seeking leave to remain on human rights grounds. She was granted three years Discretionary Leave.
6. In June 2013 she made a further application but this time was required to register her biometric information. When she did so, her true identity, and the earlier convictions, were revealed.
7. LG, the second appellant, was born in March 2014. FBC is not her father. LG's father is believed to be a Jamaican national whose immigration status is unknown, and with whom she has no contact.
8. On the 12th November 2014 the Respondent served notice that she intended to deport KH on the grounds that her presence in the UK was not conducive to the public good. On the 10th January 2016 a decision was made to deport LG as the family member of a person liable to deportation. Representations were made on human rights grounds but these were rejected in a 'decision to refuse a human rights claim' dated 14th March 2016.
9. It was against the latter decision that these linked appeals were brought to the First-tier Tribunal. There has to date been no deportation order signed. The matter came before First-tier Tribunal Judge Morris on the 13th July 2016.

The Decision of the First-tier Tribunal

10. The Respondent's position before the First-tier Tribunal was that the KH had committed a serious crime, for which she had been sentenced to 33 months imprisonment. This brought her within the ambit of the automatic deportation provisions and (although a deportation order had not in fact been signed) it was in the public interest that she be removed from the UK. By virtue of paragraph 398(b) of the Rules KH could successfully resist deportation by showing one or more of the 'exceptions' at paragraphs 399 and 399A of the rules applied. It was agreed between the parties that the only one of the 'exceptions' that could possibly apply to KH was that set out at paragraph 399(a):

399. This paragraph applies where paragraph 398 (b) or (c) applies if -

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; **and in either case**

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported;

It being accepted that KH had two children living in the UK who might potentially engage this exception¹, the Tribunal was invited to consider that issue.

11. The First-tier Tribunal accepted, as did the Respondent, that KH had a genuine and subsisting parental relationship with S and T, British citizens who were at the date of the appeal aged 10 and 7 respectively [see §62]. It then turned to consider whether it could be demonstrated that it would be “unduly harsh” for the children to go to Jamaica with their mother, and for it to be “unduly harsh” for them to remain here without her if she were to be deported. In doing so the Tribunal directed itself to take the approach set out by the Upper Tribunal in KMO (section 117 – unduly harsh) Nigeria [2015] UKUT 00543.
12. The Tribunal reminded itself that KH had been found guilty of five counts of supplying heroin. It was satisfied that these were serious offences and that weighed against the impact on the children, the consequences of her deportation could not be said to be “unduly, inordinately or excessively harsh”. The Tribunal found that as British citizens S and T can remain living in the UK. Their father FBC is living in Leeds. He speaks to the children on the phone and visits them at their home in Manchester when he can. They stay with him during the holidays. The Tribunal notes “no evidence was presented to me to the effect that it would not be possible for him to provide a home for these children” [at §66]. The children would receive additional support from their grandmother, aunt and uncle. The Tribunal considered that it might be possible for these relatives to provide an alternative home for the children. It then says this:

“In this connection, it is appropriate that I should record that in his closing submissions, the Appellant’s representative raised, for the first time, that their father [FBC] had suffered a stroke and was incapable of providing a home for his children, and showed me a photograph of a man who appeared to be in hospital. I heard no evidence to that effect. Indeed, I repeat that the evidence of the Appellant was to the contrary regarding the contact he has had with

¹ S1 had, by the time of the appeal, turned 19 and was living independently. At the age of three KG was not a ‘qualifying child’.

his children as set out above. She made no mention of any ill health. That said, since the hearing, I have noted in the Appellant's bundle of documents a letter from a Dr Blatherwick dated 8 June 2016 in which she states of [FBC] "he is still an inpatient in the Stroke Unit at the LGI, and he will likely be an inpatient for a further two-three months". The letter was neither drawn to my attention nor relied upon at the hearing in any way".

Having found that the children could live with their father, or other relatives, the appeal was thereby dismissed.

The Appeal

13. On the 8th February 2017 I heard submissions on whether the decision contained an 'error of law' and should therefore be set aside.
14. The grounds of appeal are straightforward. It is submitted that it was irrational and/or otherwise unlawful for the Tribunal to disregard the evidence of FBC's incapacity. The fact that none of the witnesses had been asked questions about it was irrelevant given that the evidence was plainly in the bundle, and was expressly relied upon at hearing. It is further submitted that the alternative arrangements suggested, that the children could live with another family member, was a suggestion unexplored in the evidence. None of those family members had volunteered to look after the children, they had not been asked about that possibility and there had been no assessment of their suitability to do so. The Appellants submit that the "unduly harsh" assessment had, as a starting point, to involve a lawful appraisal of the children's welfare. It was only once that assessment had been conducted that the Tribunal could proceed to weigh against those findings the public interest in the removal of KH.
15. I do not need to address these grounds in any great detail save to record that they were accepted as made out in their entirety by the Respondent. I find this to have been a concession properly made. There was evidence before the Tribunal relating to the illness of FBC, not just in the form of the letter from Dr Blatherwick, but for instance in the statement of S1: "Recently my sister's father has suffered from a stroke and as he is still in a critical state my siblings really only have my mum to depend upon". The finding at paragraph 66 of the determination that there was "no evidence" that FBC would be unable to provide a home for these children was not strictly speaking correct, since there was evidence before the Tribunal that he had suffered a stroke, remained hospitalised and in a critical condition. As for the alternative arrangements suggested, namely that the children could live with their grandmother, aunt or uncle, there was certainly no evidence to that effect. If that was to be

considered as a viable care plan for these children, it had to be explored and evaluated in light of s55 of the Borders, Citizenship and Immigration Act 2009.

16. The decision of the First-tier Tribunal was therefore set aside.

The Re-Made Decision

17. As the chronology set out above illustrates, in the case of KH, this was an appeal against a human rights decision. KH was notified that the Secretary of State for the Home Department had taken a decision to deport her (not in itself an appealable decision) and invited to give reasons as to why she should not be deported. These representations were treated as a human rights application, which were refused. This is the decision under appeal. Mr Harrison informed me that no deportation order has to date been made. It is unclear whether there was actually an order signed in 2002: if there was, I have not seen it, and the Respondent has at no stage treated KH's representations as an application for revocation.
18. This rather confused legal picture notwithstanding, the parties, and the First-tier Tribunal, have all proceeded on the basis that this should be treated as a deportation appeal: KH is a 'foreign criminal', she is liable to deportation, and those facts underpin the public interest in her removal. Paragraphs 398-399A of the Rules should therefore be the starting point in the assessment of her human rights appeal. It was further agreed that the matters weighing against KH were not confined to her criminal convictions (5 counts of possession of heroin and intent to supply, a single count of assault). It was not disputed that KH had an appalling immigration history, including prolonged deception in the assumption of a false identity, the use of a national insurance number to which she was not entitled, and working illegally. These were matters that had to be weighed in the balance when considering the tests in paragraph 399(a), ie. when assessing whether KH's deportation would have an *unduly* harsh impact on her British children: MM (Uganda) v Secretary of State for the Home Department [2016] EWCA Civ 450.
19. There is no dispute that the second appellant, S and T all live together with their mother, and have done so since birth. The Respondent accepts that S and T are both minors (they are currently 11 and 8 respectively), and that they have a genuine and subsisting parental relationship with their mother. It is further accepted that since they are both British, they are "qualifying children" as defined by s117D(1)(a) of the Nationality Immigration and Asylum Act 2002 (as amended).
20. There are two distinct limbs to paragraph 399(a). In order for KH to succeed in her appeal she must satisfy me, on a balance of probabilities, that it would be

unduly harsh for the children to live without her in the United Kingdom, *and* that it would be unduly harsh for S and T to leave the UK and travel to Jamaica.

21. LG has been served with a decision to deport pursuant to s.3(5)(b) of the Immigration Act 1971. That provides:

(5) A person who is not a British citizen is liable to deportation from the United Kingdom if—

(a) the Secretary of State deems his deportation to be conducive to the public good;

or

(b) another person to whose family he belongs is or has been ordered to be deported.

22. There has of course been no deportation order signed. KH has not, at least not since she became LG's mother, been deported. Mr Al-Hadi however took no issue with the legality of the decision. He was apparently happy to proceed on the basis that LG's appeal stood and fell with her mother's, and advanced no discrete submissions on her behalf. That is therefore the approach that I shall take. I note that MacDonald² cites the Court of Appeal authority of Ibrahim v Immigration Appeal Tribunal [1989] Imm AR 111 (CA) to the effect that s3(5)(b) should be given a broad interpretation:

“The power can be exercised where a decision to deport has been taken against the head of the family. No actual deportation order is necessary”.

The Evidence

23. I heard oral evidence from KH. She adopted her witness statements dated 11th June 2016 and 6th May 2017. Her account is as follows.

24. KH was born in Kingston, Jamaica in 1980. As a teenager she met and formed a relationship with a boy who lived locally. In 1996 she became pregnant with his child. Shortly before the baby was due her boyfriend was shot dead. In her oral evidence KH told me that where they lived there had been a lot of gang warfare. He had not been directly involved but had come from the 'wrong street'. He was shot dead in his own home. KH's first child, SJ, was born in Kingston in November 1996. KH was afraid for her and her child's safety, and resolved to leave the area.

² Immigration Law and Practice, 6th ed 16.40

25. In February 1999 KH's mother came to the UK. She sent for KH and SJ. KH explained that when her mother sent her the money for the ticket she had thought that she and SJ could both travel on one ticket, because he was on her passport. When she realised that she had to leave him behind she arranged for him to be cared for by a friend. She arrived in the UK in June, with the immediate aim of raising the funds to bring her son here to join her. KH was given leave to enter the UK for 6 months as a visitor³. She went to live in Nottingham with her mother.
26. KH explained that she had not long been here when she was introduced to someone who suggested that she could make money by doing "some selling" for him. The selling in question involved KH being supplied with pre-wrapped bags of heroin and a mobile phone. She was told that people would call her and arrange collection. She explained in her oral evidence that the bags sold for between £10 and £20, depending on size. She did not directly keep the money, she was required to pass it on to the man who was supplying her with the bags. He would then pay her a 'wage'. She was open for business every day. How much she sold depended on whether the phone rang. Some days she sold nothing, some days she had up to 15 customers. She did this for 4-5 months. She stopped because she was caught. She had however succeeded in her objective of obtaining enough money to bring SJ to the UK. He was brought to the UK in September 1999. After KH was arrested he lived with her mother in Nottingham.
27. KH was convicted on the 13th April 2000 and sentenced to prison. In October 2000 she received a further conviction, for common assault. She told me that this arose from a fight that she had with another woman whilst she was in prison. KH claimed asylum during this period. She tried to avoid deportation by claiming a fear of the gangs in her home area. This was rejected and she was removed from the UK in January 2002.
28. On the 12th October 2002 KH came back to the UK. She gained leave to enter using someone else's passport. After her arrival she assumed that identity. She obtained a national insurance number, and did care work. She met FBC in Nottingham and had a brief relationship with him. In 2005 they met again and got back together. She and SJ moved to Leeds to live with him. In May 2006 S was born. T was born in June 2009. They all lived together as a family unit until September 2011 when KH and FBC split up. After the children were born KH gave up the care work and was supported financially by TBC, who always worked.
29. In the period immediately after the relationship ended KH and the children lived close by to FBC in Leeds. The three children continued to see him on a

³ At that time Jamaican nationals did not require visas, and could be given leave to enter on arrival.

regular, if not daily basis. In November 2012 KH and the children moved to Manchester. From this point on S and T would see their father every other weekend and often in the holidays. They would go on the train to Leeds and he would also come to Manchester to see them. They continued to have a close and loving relationship with him. This continued until he had a devastating stroke, on the 15th April 2016.

30. KH told me that both children have been badly affected by their father's illness. S has become withdrawn and anxious. KH recently received a telephone call from a teacher at school who said that S had broken down at school and that she had had a long talk with her about the stresses she was facing at home. S expressed concern about her mother facing removal, and said that she is very distressed about her father's condition. She hates seeing him in a wheelchair and finds it very upsetting when she can't understand what he is saying. KH said that FBC's speech is improving now but it is still hard to make out what he is saying, particularly on the telephone. S has been doing well at school generally and is due to start secondary school in September. T's behaviour has also changed. He was quite settled at school previously but now he does not play like he used to and he has told KH that he is very worried. His school have referred him to CAMHS⁴ for support. He has been "lashing out" at school and they have expressed concerns about his behaviour.
31. The children continue to live with KH and their elder brother SJ in Manchester. SJ is now 21 years old. KH said that he has a very close relationship with his brother and sister. SJ has indefinite leave to remain in the UK and intends to remain living here.
32. The family have other family members in this country. KH has her mother, step-father, sister and brother who all live in Nottingham. Her brother has two children who live with their mother. KH said that she and the children do see these relatives on a regular basis, but not often. The children probably see their grandmother the most, about once per month when she comes to Manchester. KH's mother has got indefinite leave to remain, and has just applied to naturalise as a British citizen. Her sister and brother both have ILR.
33. KH said that she has very little connection with Jamaica now. She does still have friends there but she has not seen them for many years. She has relatives, but these are all distant. All of her close family are either in the UK, or the United States of America. Since leaving Jamaica in 2002 KH has returned there twice. In summer 2010 she and FBC took the children for four week holiday to meet FBC's parents. His father has since passed away. His mother is still there but she has only ever met her grandchildren twice; one on that trip, and once when she came to visit the UK. KH does not keep in touch with her. KH also

⁴ Child and Adolescent Mental Health Services

visited Jamaica in September of that year. Her brother had been living in America and had fallen ill and died; she went for one week in order to attend his funeral.

34. In respect of her offending, KH told me that she has nothing but regret. She wishes that she could take the whole thing back and start over. She was young but she does not regard that as an excuse. She now understands the very detrimental effect that hard drugs such as heroin have on the individuals who use them, and on how that can impact upon society as a whole.
35. I was given statements in support of the appeals by KH's mother, sister, brother, stepfather and adult son. All aver that S and T are happy and settled in the UK, that SH is a good mother and that they have nothing to return to in Jamaica.
36. I have been shown a letter from School Liason Officer at the children's primary school. It is dated 20th April 2017 and states that it is the school's view that it would be in the children's best interests to remain with their mother. It reads:

"The children are settled here in Manchester and have been attending this school since 01.10.2015. [T] is having difficulties with his behaviour and has been referred to CAMHS to gain support with this. Mum has worked with school and is very approachable and we have built a good relationship with her. [KH] brings [LG] to Play and Stay and is a proactive member of the group. I would say [KH] has her children's best interests at heart and to separate them would be detrimental to her and the children, particularly [T] at this time when he needs stability".

37. Mr Al-Hadi further relies on an updated letter from the clinicians with care of FBC. On the 7th April 2017 Dr Elizabeth Iveson, Consultant Stroke Physician at the Christchurch Neurological Rehabilitation Centre has written in the following terms:

"[FBC] has had a stroke which has affected his balance, coordination and speech. He has made some progress with intensive neurological rehabilitation but is still requiring the assistance of 2 people to transfer from bed to chair, he requires help of 2 people to wash and dress and is unable to make meals independently.

He is likely to be receiving inpatient neurological rehabilitation for another 3 months, the future aim is for him to be discharged to his home environment in Leeds with a care package. [FBC] has been referred for 2 carers 4 times per day to help with his personal cares. He is not in a position to look after his own children and is unlikely

to be so in the future. His mood is very variable and is affected by the thought of not seeing his children on a regular basis”.

My Findings

38. I begin by considering the best interests of the British children at the heart of these linked appeals.
39. I am satisfied, having regard to the evidence of Dr Iveson, that it would not be possible, or at least it would be extremely undesirable, for these children to live with their father. He is very unwell, and requires the care of others. She believes it to be unlikely that he would be in a position to look after the children in the future. It would not be appropriate for me to go behind that medical opinion. The reality is that life with father, for S at least, would very likely result in her taking on a caring role. That would be wholly contrary to her best interests.
40. The children could, with considerable difficulty and financial constraints, go and live with grandma in Nottingham. There has been no social services assessment of that household, but presumably this could be arranged. They do not have the room, but presumably they could move. They do not have the money to look after two children, but presumably they could claim benefits. None of these adults have confirmed that they would be willing to take on the children, but presumably they could be persuaded to do so. Mr Harrison reminded me that grandma did look after SJ when KH was in prison, and that today she has the benefit of her husband, daughter and son all close by to support her. I have therefore considered this as an alternative care arrangement. The children obviously know these family members, and have grown up with regular contact with them. They see their maternal grandma approximately once a month and I have no reason to suppose that they have anything other than a warm and loving relationship with her. Whilst I accept that there would be a series of financial and practical difficulties in the children going to live with these family members in Nottingham, I am satisfied that it would be *possible*.
41. I am not satisfied that moving to live with grandma would however be in their best interests. These are children who have faced some very challenging life events. Their parents split up with they were, respectively, 5 and 2. Their father suffered his stroke when they were 9 and 6. It is clear from KH's evidence (uncontested on this point) as well as the evidence of the school, that seeing their father transformed from a healthy adult into someone entirely dependent on the care of others has been a very traumatic experience for them both. The school has emphasised the need for stability, and in the circumstances I consider that to be is self-evident.

42. KH has been their carer since birth, they have always lived with her and there is no reason to believe that she is anything other than a good mother to them. Although Mr Harrison was at pains to point out her appalling history of criminality, deception and the circumvention of immigration control, I did not understand the Respondent to be making a case to the contrary. The evidence from the wider family, and the school, certainly supports that view. Having had an opportunity to hear directly from KH myself I am wholly satisfied that she loves her children and that they are her priority. I even accept that - perversely and stupidly - she believed she was doing the right thing for her son when she started dealing in heroin. That sordid fact marks her out as a criminal, but it does not negate the fact that she loves her children. There is generally an assumption that it would be in the best interests of young children to remain with their mother, in this case there are additional reasons why that is so. The children have already suffered the disruption that divorce always brings. It would appear that both their parents made a concerted effort to insulate them as far as possible from this turmoil, ensuring that they could continue to see their father as often as possible. Their close relationship with their father meant that his stroke has been particularly difficult for them. I agree with the primary school that now more than ever these children need the stability that being with their mother, in their own home, can give them.
43. Mr Al-Hadi submitted that life in Jamaica would be "alien" and "harsh" for these children. I do not attach any significant weight to that matter. It is true that the children have never lived in Jamaica, but I consider it to be unlikely that they would have no knowledge or awareness of Jamaican culture given that their mother, grandmother, aunt and uncle are all first generation migrants from that country, and their father is of Jamaican origin himself. Children can, and do, adapt to their environments, particularly where their primary carer is with them. I accept that life in Jamaica would be different, but I am unable to say that simply by virtue of it being Jamaica that life there would be contrary to their best interests. Mr Al-Hadi did not support his submission with, for instance, any reference to the health or education systems there, nor to the likely socio-economic circumstances that these children would find themselves in.
44. I am nevertheless satisfied that it would be contrary to the best interests of S and T if they were to go to Jamaica with their mother. The principle reason why, and one that I have attached significant weight to, is the fact that their British father remains in this country. He is entitled to have regular contact with his children, and I am wholly satisfied that it is in their best interests that the close bond that they have with him is not reduced to intermittent contact through "modern means of communication" and the occasional holiday. It is clear that the adults in this family have made a concerted effort to ensure that the breakdown of their relationship does not interfere with the children's relationships with FBC. They are close to him, and have continued to see him

on a regular basis throughout his period of illness. It is firmly in the best interests of the children that their relationship with their father continues as it is now.

45. Against these findings, I must weigh the public interest in the deportation of KH.
46. KH received a sentence of 33 months in a young offenders institution for possession of heroin with intent to supply. Before me she gave candid evidence of how that operation worked. She was by no means the person who profited the most from it. She was in effect paid a wage by another dealer, to whom the takings were all handed over. She was not involved in the importation or large scale distribution of the drug. She was however a key part of the supply chain. She had day to day contact with the users who were her customers, and it must have been all too evident the extent to which they were affected by their addiction. By her own admission she did this "work" for 4-5 months, selling up to fifteen wraps per day. She stopped because she was caught. This is a matter that weighs very heavily in the balance against her.
47. Eight months after her deportation in 2002 she re-entered this country using someone else's passport, an identity that she was to assume for the next 12 years, even using it to obtain discretionary leave in the UK, and using it when she registered the births of her two British children. To say that this showed a flagrant disregard for the law would be an understatement. KH behaved as if her removal was an irrelevance, and as if the immigration laws of this country had no application to her. She applied for a national insurance number, worked, and generally got on with her life as if her criminal conviction and deportation had never happened. These are matters that weigh very heavily in the balance against her.
48. It does not appear to be disputed by the Secretary of State for the Home Department that the deportation of KH is likely to have a harsh impact on her children. I must determine whether it would be "unduly" so. The more serious the criminality the more serious the detrimental impact on the children would have to be if the public interest were to be outweighed. "Unduly" has been held to import a high test: put another way I must be satisfied that the effect on the children would be "inordinately bleak" or "excessively harsh".
49. This was not an easy case to determine. KH has, I have found, shown a flagrant disregard for the laws of this country over a prolonged period, and this adds to the already heavy weight attracted by her sentence of 33 months for dealing heroin. I have little doubt that she would have continued to exercise deception by living in her assumed identity indefinitely, had she not been caught. It would however be wrong to disregard the context of these events. The KH who decided to deal in heroin was a young woman who had faced some

considerable challenges in the preceding years. Becoming pregnant at the age of 16, bereaved and finding herself to be a single mother just weeks after her 17th birthday, she set about her migration to the UK with the deliberate aim of getting her son out of Jamaica. I accept that this was her primary motivation. Similarly, I accept that her decision to return to this country after her deportation was driven by her wish to be reunited with SJ. Her behaviour since, in maintaining the deception, has been fuelled by her desire to remain here with her children. None of that provides KH with an excuse, nor mitigation. It does not lessen the weight to be attached to the public interest in any way. What it does do is serve to underline her commitment to her children. The decisions that this relatively uneducated and young woman took were stupid, misguided and criminal, but I accept that they were not driven simply by self-interest.

50. The reality is that these children have already suffered a very significant detriment by the loss of a healthy father. Having had a parent who was able to take a full and active role in their lives they must now face a period of readjustment, where the father who once cared for them will be replaced by a father who will, by necessity, need to look to them for assistance. It was clear from the evidence of KH as well as that of Dr Iveson that S and T will still be able to benefit from regular contact with their father; he continues to love and support them, but the relationship will be of a qualitatively different nature. The consequences of FBC's stroke for this appeal are profound. I accept that it has made the bond between S, T and their mother even stronger, if that is possible in the context of such young children.

51. Applying all of this to the two limbs of paragraph 399(a) I find as follows.

52. It would be unduly harsh for the children to travel to Jamaica with their mother. I place no weight, or at least very little weight, on Mr Al-Hadi's assertions about how difficult they would find life there. That might be true but I was given no evidence at all upon which to base a finding about that. I do accept that it would be deeply disruptive for them, and that this would be very much contrary to the best interests of children who have already faced divorce and the trauma of their father's sudden illness. More importantly it would make their continued relationship with their father extremely difficult. In light of Dr Iveson's evidence I consider it to be very unlikely that FBC will be able to travel to Jamaica. I accept that KH has no close family members left in Jamaica who would be able to bring the children back here on a regular basis (for obvious reasons KH herself would be unable to act as a travel companion). That responsibility would therefore fall on the children's respective grandmothers, the mother of FBC whom they hardly know, and the mother of KH who lives in Nottingham. Whilst it is entirely possible that these women would be willing and able to facilitate the children's relationships with their father, I consider it likely that such visits would be few and far between, given the cost and logistics

involved. The 'modern means of communication' that are a feature of life for so many dislocated families are not available here, given the evidence about how difficult it is for FBC to make himself understood, particularly over the phone. I find that the children's relationship with their father would be all but nullified if they were to leave the UK for Jamaica. I remind myself that it is neither S nor T, nor indeed FBC who have committed any criminal offences nor breached immigration control, yet it is they would bear the consequences in this scenario. In all of the circumstances, I consider that this would be excessively harsh for the children.

53. I am satisfied that it would be unduly harsh for the children to remain in the United Kingdom without their mother. Their father is unable to care for them in the short to medium term. It may be that at some point in the indeterminate future he would be well enough to do so, albeit with significant input from social services, but I reject Mr Harrison's suggestion that this might be reasonably foreseeable. He was right to point out that the medical evidence was limited – Dr Iveson was apparently unable to offer a long-term prognosis- but I do not propose to fill that lacunae with my own speculation about the extent to which FBC might recover. The evidence before me indicates that he is not well enough at present, and nor will he be so after he is discharged from hospital in three months' time. The alternative would be for the children to live with their maternal grandmother in Nottingham. I have no evidence at all about the suitability of such an arrangement, but even assuming that she at all times behave as you might expect, offering these children a warm and loving home, I have serious concerns about how separation from their mother would affect these children. Absent direct abuse or neglect most young children are likely to suffer detriment if separated from their mother, but I am satisfied that for these children such separation would be inordinately bleak. The secure and happy life that they enjoyed in their early years – living with mum and dad in Leeds – has slowly but surely crumbled around them. It is very difficult to imagine how hard it would be for them if their mother were to be removed. Many children whose mothers are facing deportation have already known a prolonged separation from her by the time that the matter comes before this Tribunal. Not so these children, whose mother went to prison and served her sentence long before they were born. They have only ever known life with her, and I am satisfied that separation from her would be excessively, or unduly harsh. It follows that the appeal of KH must be allowed, and so too the appeal of LG.

54. I might add this. At the outset of these proceedings I was very much minded to dismiss this appeal, so substantial the weight to be attached to this history of offending behaviour. In the end the balance was however tipped by the requirement that I pay close attention to the best interests of these children, to the circumstances surrounding them, and that of their mother's criminality. I had an opportunity to hear directly from KH at the hearing. Although this played a negligible role in my decision making, I should record that I was left

with the impression that she was relieved to have been uncovered. I have no doubt whatsoever that she experiences profound regret for her actions – for all of her actions, and for the impact that they have had on all of her children.

Decisions

55. The determination of the First-tier Tribunal contains an error of law such that must be set aside.

56. The decisions in the appeals are remade as follows:

“the appeals are allowed on human rights grounds”.

57. There is an order for anonymity.

Upper Tribunal Judge Bruce
25th May 2017