



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00023/2015

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 15<sup>th</sup> June 2017

Decision & Reasons Promulgated  
On 6<sup>th</sup> July 2017

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

EL

(Anonymity direction made)

Respondent

**Representation:**

For the Appellant: Ms Aboni, Senior Home Office Presenting Officer

For the Respondent: Mr J Howard, instructed by Fountain Solicitors

**DETERMINATION AND REASONS**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) 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 respondent in this determination identified as EL. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. It is very important to stress that the appellant's daughter, C1, is not and was not responsible in any way for the assaults upon her by her mother. She is not in any way responsible for the lengthy prison sentence her mother received after her conviction for those assaults, to which she pleaded guilty. The level and nature of the contact C1 has with her mother is determined by her Special Guardian and, before that by Social Services, who were and are acting solely in her best interests. The outcome of this deportation appeal by C1's mother is not because of anything C1 has or has not done or said or written but is a consequence of the very serious offences committed by her mother, for which she was convicted, sentenced and imprisoned.

### **Error of Law**

2. EL was convicted and sentenced to a total of 8 years' imprisonment on 15<sup>th</sup> April 2011 for a number of violent offences against her daughter, who is now 9 years old, over a period of time. This child was the subject of a care order but, following the appointment of a Special Guardian, the care order was discharged. Whilst in prison EL gave birth to another child who was removed from her care the day of her birth and, also following care proceedings, is with her birth father. On 6<sup>th</sup> May 2011, EL was informed by the SSHD that it was intended to make a deportation order against her. After reminders EL made representations. Her representations were rejected and, for reasons set out in a decision dated 4<sup>th</sup> March 2014, her protection and human rights claims were refused. A deportation order was signed on 9<sup>th</sup> March 2014.
3. EL appealed on asylum and human rights grounds.
4. The First-tier Tribunal judge reproduced paragraphs A398, 398, 399 and 399A of the Immigration Rules and Part 5A of the Nationality Immigration and Asylum Act 2002 in her decision.

### **Grounds relied upon by the SSHD seeking permission to appeal**

5. Ground 1 - The judge erred in law in allowing the appeal under Rule 399(a) (ii)(c), which does not exist, with reference to s117C Nationality Immigration and Asylum Act 2002.

Ground 2 - The judge materially erred in law in her findings on the risk of re-offending.

Ground 3 - The judge failed to adequately or at all consider the public interest in deportation.

Ground 4 - The judge erred in her approach to the best interests of the children.

Ground 5 -The judge erred in her approach to the test of very compelling circumstances.

Ground 6 - The judge failed to consider properly or at all the s72 Nationality Immigration and Asylum Act 2002 certificate.

I conclude that legal error is not material because the First-tier Tribunal judge dismissed the appeal on asylum and Article 3 grounds (both medical and international protection). No application to appeal the dismissal of the appeal on asylum and Article 3 grounds was made by EL.

6. Although the grounds are set out as six separate grounds asserting errors in the judge's decision, the essence of the challenge pursued by the SSHD is that the judge failed fundamentally to properly address the public interest in deportation; failed to address paragraph 398 Immigration Rules and in particular that the public interest in deportation will only be outweighed where there are very compelling circumstances over and above those described in paragraphs 399 and 399A Immigration Rules; failed adequately to consider s117C(2) Nationality Immigration and Asylum Act 2002 namely that the more serious the offence committed by the foreign criminal the greater is the public interest in the deportation of the criminal; failed to consider adequately whether there were very compelling circumstances other than the Exceptions set out in s117C(4) and (5) of the Nationality Immigration and Asylum Act 2002.
7. In [30] of her decision, the First-tier Tribunal judge recorded that

"Given the 8 year prison sentences, however, [EL's] personal rights to private and family life cannot of themselves displace the automatic deportation presumption and decision".

It seems from this that the First-tier Tribunal judge has considered Article 8 in terms of rights to family and private life rather than a right to respect for family and private life, tainting the limited consideration of factors weighing for and against EL, she undertook. This is the only reference to the length of sentence. The judge has not considered, in reaching her decision, the greater public interest in deporting EL given her serious crime. She refers to EL's personal history, including her rape as a child, her depression, attempted suicide risk and that it was her own child she assaulted as relevant to the issues

"which displace the contention that it is "conducive to the public good" that [EL] be deported."

The judge fails to consider at all that deportation of a criminal offender goes beyond depriving the offender of the chance of re-offending; it extends to deterrence and preventing serious crime generally and to upholding public abhorrence of such offending (see *DS (India) v SSHD* [2009] EWCA Civ 544). The First-tier Tribunal judge failed to assess the public interest in deportation by reference to any analysis of Parliament's and the Secretary

of State's assessment of the strength of the public interest in the deportation of EL and whether the Article 8 claim is sufficiently strong to outweigh that (see *Hesham Ali (Iraq) v SSHD* [2016] UKSC 60).

8. The judge stated in [37] that her primary consideration is the best interests of the two children, especially C1. She found the deportation of EL would not be in their best interest and then proceeds to find that EL meets the Exception to deportation on the basis of the children's family life with EL and the unduly harsh effects upon her children were she to be deported. The First-tier Tribunal judge stated she had considered s117C but only referred to s117C(6). She referred to the crimes being

"bizarre against an apparent background of violence that the appellant appears to have suffered as a child and which was never addressed or treated – an explanation of sorts for the crimes against [C1] – and at a time when the appellant was suffering from mental illness."

Although the best interest of the children carry great weight and are properly regarded as a primary consideration, they are not the primary consideration in the consideration of deportation. The children's rights are not a passport to EL's rights (*Mahklouf v SSHD* [2016] UKSC 59). The more pressing the public interest in deportation the stronger the children's rights will have to be to prevent deportation (*BL (Jamaica) v SSHD* [2016] ECWA Civ 357). The First-tier Tribunal judge failed to engage with these propositions in her assessment of the proportionality of deportation; she restricted her findings primarily to the best interest of the children deporting her would be a "very significant interference with the Article 8 rights of the children". It is only in her final conclusion that the judge referred to the public interest in deportation being outweighed by the significant interference with the Article 8 rights of the children but, reading the decision as a whole, her reasoning both left out of account material considerations and failed to have adequate regard to material considerations.

9. The First-tier Tribunal Judge made only passing reference to the sentencing judge recommending EL for deportation. It is unusual for a sentencing judge to make such an ancillary order because of the deportation framework introduced by primary legislation. When an experienced judge makes such an order, this should be taken into account. The First-tier Tribunal Judge referred to it being "incredible" that there was no psychiatric evidence before the sentencing judge that may have resulted in mitigation of sentence. His Honour Judge Tony Mitchell is an experienced circuit judge. If he had been of the view that a psychiatric report was necessary to him in passing sentence he would have ordered one. In any event, such a report was requisitioned by EL's legal defence team, who appear to have chosen not to put it before HHJ Mitchell. El did not appeal the sentence. First-tier Tribunal Judge Holt's references to the lack of a psychiatric report being "incredible" and that EL's current solicitors

"could ... offer no explanation as to why crucial evidence about the appellant having been raped as a child and matters which would be relevant to her

depression and extraordinary behaviour were not explored in the context of mitigation”

is an impermissible and speculative basis upon which to make her assessment of the proportionality of EL’s deportation.

10. First-tier Tribunal Judge Holt made a finding that

“there is no evidence that the appellant is a risk to anyone apart from herself and possibly her children if she has unsupervised contact with them....There is no evidence that she is a risk to anyone beyond her own family, and in any event there is now a Court Order that precludes her from working with children”.

Whilst this finding is a reflection of the OASys report it leaves out of account the *reason* why she is precluded from working with children and why she has no unsupervised contact with C1. That a court order may prevent her committing violent offences against her child or children in the future is not a factor that weighs in EL’s favour.

11. In short the judge has left out of account material considerations and has placed impermissible weight upon others. I am not satisfied that, had these matters been considered as they should have been, the outcome would have been the same. It follows the errors of law made by the judge were material ones.

12. I set aside the First-tier Tribunal decision and will proceed to remake it.

13. I heard submissions from both parties on 15<sup>th</sup> June 2017 and reserved my decision. I have read and considered the documents relied upon by EL in her appeal to the First-tier Tribunal.

**Remaking the decision**

14. EL, a Jamaican national date of birth 6 November 1976, arrived in the UK on 11<sup>th</sup> October 2000 and was granted leave to enter as a visitor for 6 months. On 5<sup>th</sup> April 2001 she made an application and was granted leave to remain as the spouse of a British citizen until 23<sup>rd</sup> October 2002. On 12 April 2003, after a further application, she was granted indefinite leave to remain. Following the signing of the deportation order, her leave to remain was invalidated.

15. EL was charged with:

Count 1: Wilfully assaulting young person under 16 between 1 March 2010 and 7 May 2010, to which she pleaded guilty and was sentenced to 32 months imprisonment and disqualified from working with children;

Counts 2 and 3: Wilfully assaulting young person under 16 between 1 March 2010 and 7 May 2010 to which she pleaded not guilty. These counts were ordered to lie on file;

Count 4: Cause grievous bodily harm with intent to do grievous bodily harm on 6 May 2010 to which she pleaded guilty and was sentenced to 64 months consecutive.

Count 5; wilfully assaulting young person under 16 between 5<sup>th</sup> May and 8<sup>th</sup> May 2010 to which she pleaded guilty and was sentenced to 2 years concurrent.

Count 6: Assault occasioning actual bodily harm on 9 December 2008 to which she pleaded not guilty. The count was ordered to remain on file.

Count 7: wound with intent to do grievous bodily harm. She pleaded guilty to the lesser offence of unlawful wounding between 22 October 2008 and 21 October 2009. She was sentenced to 32 months concurrent.

Count 8: wound with intent to do grievous bodily harm. She pleaded guilty to the lesser offence of unlawful wounding between 22 October 2008 and 21 October 2009. She was sentenced to 35 months concurrent.

Counts 9: Wilfully assaulting young person under 16 between 22 October 2008 and 21<sup>st</sup> October 2009 to which she pleaded not guilty. The count was ordered to lie on file.

Count 10: Wilfully assaulting young person under 16 between 22 October 2008 and 6 May 2010 to which she pleaded not guilty. The count was ordered to lie on file.

16. Thus on 15<sup>th</sup> April 2011 she was sentenced to a total of 8 years' imprisonment, recommended for deportation and disqualified from working with young children.
17. EL has two children: C1 born in the UK on [ ] 2001, a British Citizen and C2 also born in the UK and a British Citizen. C1 lives with her Special Guardian with whom she was originally fostered. The Special Guardian can exercise parental responsibility to the exclusion of EL, who retains parental responsibility as her birth parent. C2 lives with her birth father, having been removed from the care of EL on the day of her birth. According to EL's witness statement she sees C1 once a week on Sunday and they speak on the phone every day; she sees C2 every Thursday for 5 hours and speaks to her on the phone every day. There is no supporting witness statement from the Special Guardian or from C2's father. Social Services in June 2016 refer to one weekly telephone call and one supervised visit every four weeks; EL does not address the contradiction between her statement and what social services say.

18. The OASys Assessment dated 6<sup>th</sup> June 2015 sets out EL's account after an initial interview on 30 June 2011. She is recorded as stating that she became angry when she lost her employment in November 2008. She admits to incidents of punishing C1 with a belt, to striking C1 on her right cheek with a hot iron leaving burning to her face in May 2010, to throwing the TV remote control striking C1 on the forehead causing an injury that required hospital treatment. EL is recorded as denying the allegations made against her of having drilled C1's knee and pubic bone and of leaving C1 outside naked with her body covered in clothes pegs. She is recorded as failing to suggest a reasonable account of how those injuries were sustained. C1 was aged 7 when the abuse started and 8 when she was placed in the care of social services. The report recounts EL stating she felt angry with herself and being unable to control her anger; that although there is a different culture of punishment in Jamaica where she was brought up she stated that it was not an excuse for her behaviour but it contributed to the way she acted. The report, prepared whilst EL was in detention awaiting release on licence/immigration bail, records that although EL accepts "much of the blame for the majority of the offences using factors in her life to justify her actions" she continues to deny using the drill and leaving C1 outside, naked and covered in clothes pegs. The report sets out the history of contact between C1 and EL: initially, through court order, 3 supervised visits a year and three letters a year plus birthday, Easter and Christmas; in 2013, she was having more telephone calls (once a month) and possibly slightly more supervised contact visits in prison; in February 2014, it is recorded that there are fortnightly telephone calls and visits at least once a month/every fortnight. In May 2015 Social Services stopped all contact (from EL's witness statement dated 20 September 2016, she now sees C1 every Sunday and they speak on the phone every day). The Report confirms there have been no poor temper control or aggressive behaviour incidents whilst in prison. She has enhanced status on IEPS and worked in a trusted position in the prison. The report records that EL is at medium risk of reoffending against children when in the community and at low risk of offending against the public, known adults, other prisoners and staff.
19. A letter from Nottingham City Council Children and Families team dated 11 February 2016 records that

"after initial difficulties, direct contact between [C1] and [EL] was believed to be a positive experience for [C1]. It was noted that her relationship with her mother improved over time.....In February 2014 [C1's] foster carer obtained a Special Guardianship Order for [C1], and at this point her case was closed to Nottingham City Council....The Probation Officer [in March 2015 when EL had applied to be released on bail] was querying the fact that direct contact was taking place between [C1] and her mother, as this is unusual in a case where a child has suffered significant abuse....There were worries about the emotional impact on [C1], who had described feeling guilty and responsible for her mother's imprisonment and her own consequent separation from her birth family. At times [C1] had also suggested that she herself had caused some of the injuries she'd suffered by her mother....All contact between [C1] and [EL] was stopped until an up-to-date risk assessment could be completed....It was noted between April to October 2015 there was a deterioration in [C1's] mood and behaviour....In view of [C1's] expressed wishes, her emotional well-being and the relationship she appeared to have built with [EL] over time it was believe to be in her best interest to

re-establish contact.....During the contact sessions [EL] talks positively to [C1] and encourages her to behave well at home and at school. She has also shown concern and expressed appropriate physical affection to [C1]....[C1] seems more settled emotionally.....the impact on [C1] of EL being deported is uncertain. [C1] does appear to have a strong desire to see her mother, and to be part of her birth family. [C1's] behaviour and emotional wellbeing seemed to deteriorate when contact was stopped between April and October 2015....therefore it seems likely that she would experience her mother's deportation as a loss."

20. In an updating letter dated 16 June 2016, Nottingham City Council stated that the plan at that time was for 1 weekly telephone call and a supervised visit every four weeks between EL and C1. The Social worker states that the

"option of a re-referral to CAMHS for [C1] has been discussed when/if [EL] is deported to Jamaica. My main concerns regarding [C1] and her contact with [EL] are that it remains a positive experience for her, that she is supported appropriately in terms of her feelings and that contact is safe and supervised by an appropriate adult."

There is no indication by social services that contact will, even at some undefined future time, become unsupervised.

21. EL does not, in her witness statement dated 20 September 2016 now acknowledge her guilt of the drilling incident or the clothes peg incident. She does not refer to her motivation in committing the offences for which she pleaded guilty but refers to having received counselling and suffering from depression. She says she was suffering from depression when she committed the offences. The psychiatric report dated 31 March 2011 prepared for the court upon instructions from her legal team was not produced to the sentencing judge on 11<sup>th</sup> April 2011. It confirms EL is fit to plead, appear in court and be sentenced. It states that she does not suffer from a serious depressive illness as such and that her low mood is

"primarily explainable as a reaction to the situation she now finds herself in."

Dr Hayes states that she may well have been feeling in low mood and dissatisfied with her life at the time of offending but this could not

"explain her alleged behaviour to her daughter. In summary there is no psychiatric evidence for her offending by way of mental illness. It is likely that further exploration would identify traits within her personality which allowed her to carry out the acts she did."

22. Dr S N Mohamed prepared a psychiatric report dated 23 August 2016. He was not provided with the report from Dr Hayes, which had been prepared shortly after her conviction and before sentencing. Dr Mohamed describes her account of her background. He concludes that she

"seems to have been suffering from depressive episodes for a number of years....she could well have been suffering from depression during her commitment of the offences against her own child...she will in all probabilities fall into deeper depression with more severe consequences, if she is forced to return to Jamaica, at this stage."



Dr Mohamed does not record any discussions he had with EL about her offending; he had sight of the OASys report which refers to the refusal by EL to accept that she was guilty of the drilling and clothes peg abuses. He does not record that any depression she may have been suffering from could have led to the commission of the offences for which she was convicted. He does not identify any traits in her personality that could have led to her committing the offences she did. He reports that EL told him that she

“has been in touch with [her daughters] regularly until quite recently”.

This reference to what appears to be a reduction in contact is not explained in EL’s witness statement or elsewhere.

23. A letter in support was relied upon from [DP]. It refers to the appellant and her having been friends for over 11 years and that EL has in all that time been law abiding and of good character. [DP] states

“... we all fall down sometimes and we deserve a second chance....[EL] is a good person and what happened was completely out of character”.

I have placed no weight at all upon this witness statement – EL is not law abiding or of good character. What she did to her daughter was not a one-off incident of abuse but abuse stretching over a period of time. The witness statement is incorrect on its face and, if the writer has known EL for 11 years she must have known that. I can place no weight on her opinion when the basis of that opinion is so fundamentally factually flawed. A letter from her husband [WP] also describes EL as kind hearted and caring. This is so plainly contrary to the fact of EL’s serious assaults on her daughter that I have placed no weight upon it.

24. A letter from [DG] dated 15<sup>th</sup> April 2015 states that she has known EL since 2004. There is reference in that letter to EL “helping out” as a classroom assistant for an autistic child at Saturday school. It is not clear if this was before her conviction or after her release on licence. If the latter, it is surprising given that she is disqualified from working with children as part of her sentence. The letter refers to EL’s stressful health issues but makes no comment whatsoever about the effect of her actions on EL’s children – a matter which, given she has known her since 2004 I would have expected some reference to be made. This letter is of no assistance to me in reaching my decision given the lack of any apparent insight into the consequences to EL’s children of EL’s criminal behaviour.
25. I have placed no weight on a letter from [AG] dated 30<sup>th</sup> March 2015 who describes EL as a

“lovely woman kindhearted, very caring, hardworking and forever going out of her way to help in anyway she can a woman of good character and happy that she’s in my daughters and grandchildren’s life....She is wonderful mother caring and raising her daughter doing the very best she can”.

EL is clearly not a woman of good character; she is not raising her daughter and she is not a wonderful mother.

26. Similarly I have not placed any weight on a letter from [CJ] dated 15<sup>th</sup> April 2015 who describes EL as a person of good character. I have placed no weight upon the letter from EL's mother – she is in Jamaica and has not seen EL for many years. There is no indication she has ever met or spoken to or written to either of the children; there is no indication that she has seen EL with her children. I can place no weight on her assessment of EL as a person or as a mother.
27. I am prepared to accept the appellant may have been depressed at the time of the offences although the psychiatric report prepared at that time was not conclusive in that diagnosis. The most recent report by Dr Mohamed does not identify any traits in EL's personality or character that could have led her to commit the offences she did. That was a matter left open by Dr Hayes for further investigation. In neither report is it even suggested that depression could have been either a cause or have contributed to the commission of such serious offences. The most recent report does not attempt to investigate why she has been denying her responsibility for some of the acts she is accused of committing and to which she pleaded guilty. Had there been any indication at her trial, before a very experienced Circuit Judge and where she was represented by experienced counsel, that EL may not have been guilty of the offences as charged, or that the psychiatric report prepared by Dr Hayes should have been produced and that it would have had an effect either upon her plea, her conviction or her sentence, it is inconceivable that such matters would not have been raised and considered.
28. In his sentencing remarks HHJ Tony Mitchell says:

“The facts outlined tell an horrendous story of child abuse by you upon your own child over a period of time that culminated in the dreadful injury to her face that you made her lie about consistently...just hearing it outlined that you took a drill and drilled your daughter's knee and then made her clear it up and, not being satisfied, you drilled her pubic bone. To frighten her is your explanation, not with the intention of causing harm and yet there is nothing before me to suggest that your mental state would have made you possibly imagine that you would not be causing harm.....Failing to ensure that your daughter received help when before your own eyes was the clear evidence of serious burns, whatever sentence I impose it is utterly unforgiving, deplorable and depressing....I have taken account in giving you full credit, as you will see and hear, for the guilty pleas that you entered.”
29. The inescapable fact is that EL's guilty plea was an acceptance by her at trial of having drilled her daughter's knee and public bone or, if she had denied committing those offences in her written plea, there would have been a Newton hearing to establish the basis upon which she was to be sentenced. There is no scope for EL to claim that she was not responsible for having drilled her daughter's knee and public bone.

30. HHJ Tony Mitchell confirmed in his sentencing remarks that had EL not entered guilty pleas he would have sentenced her to a total number of 12 years' imprisonment. Because of her guilty pleas, the sentence was reduced to a total of 8 years.
31. The respondent takes the view that there is no family life between EL and either of her children; she is not their carer and the limited contact she has does not amount to a parental relationship, even if she retains parental responsibility.

### **Conclusion**

32. EL has, at least until May 2015, continued to deny the offences of using a drill on her daughter's knee and pubic bone and leaving her outside naked with clothes pegs over her body, despite this being in her daughter's statements for the criminal prosecution. It is unambiguously clear from the judge's sentencing remarks that she was sentenced on the basis that she did drill her daughter's knee and pubic bone and it is simply not open to her to ask this Tribunal to go behind what would have been either an agreed basis of plea or a finding by the judge that the appellant had done those things. Although EL accepts much of the blame, she uses factors in her own life to minimise her liability for those actions. There is no evidence that she does now accept full responsibility.
33. The report by Dr Mohamed and the most recent social service report appear to indicate that contact between EL and the children is not as EL asserts in her witness statement, made at around the same time. There is no supporting witness statement from either the Special Guardian or C2's father. There is no evidence to suggest that C2 would suffer significantly if she did not have face to face contact or, if that face to face contact ceased, that any distress caused could not be managed with appropriate care and intervention from her primary carer. The evidence plainly states that if C1 were to cease face to face contact, intervention would be necessary and this has already been mooted; her Special Guardian and social services are alive to this.
34. I have significant doubts that supervised contact between C1 and EL, even if it is once a week, amounts to a genuine parental relationship. The Special Guardian is authorised to take all decisions in connection with C1 without consulting EL. There is no evidence that there is any such consultation in any event. Even if there were and even if I were to accept that the relationship between C1 and EL amounts to a genuine parental relationship, there is no possibility at all that EL's deportation would cause or result in C1 having to leave the UK. Even if face to face supervised contact (or even some unsupervised contact in the future) were to increase, there would be no possibility of C1 having to leave the UK.
35. In relation to C2 there is no evidence that her father consults EL about her upbringing. Face-to-face contact once a week of the nature described by EL (shopping, chatting, bowling and similar activities) does not amount to a

genuine parental relationship. But if I am wrong and it does amount to a genuine parental relationship, or became so in the future, there is no possibility at all of C2 having to leave the UK if EL is deported. She is settled and cared for by her father. There is no suggestion that she will live with her mother – with whom she has not lived since her birth to her mother in prison.

36. The length of EL's prison sentence requires there to be compelling circumstances over and above those set out in Exceptions 1 and 2. None have been suggested. At most there is concern at the possible psychological harm EL's deportation might cause C1 but it has not been even suggested that this could not be properly handled in the UK by appropriate intervention.
37. It is of course in the best interest of a child that she is able to maintain contact other than by telephone or Skype with a parent and the best interests of children carry great weight in deciding a deportation appeal. Social Services and now the Special Guardian facilitate supervised access but that is a far cry from amounting to compelling circumstances over and above the general best interest of a child and the potential consequences to that child – which can be managed. There is no evidence of any compelling circumstances at all which could begin to weigh in the balance in favour of not deporting EL.
38. Furthermore, EL was convicted of very serious offences against her daughter C1, for which she still does not admit full responsibility. It is well established that the more serious the crime the more pressing the public requirement for deportation and the greater the children's interest will have to be to find that deportation is a disproportionate interference in either the child's or EL's right to respect to private and/or family life. The seriousness of the crimes committed by EL against C1 cannot be underestimated. Had she not pleaded guilty she would have been sentenced to 12 years' imprisonment. Even if she admits full responsibility sometime in the future, that cannot minimise or reduce the seriousness of the crimes or the pressing public interest in her deportation.
39. EL's claims to be at risk of serious harm if removed to Jamaica were rejected by the First-tier Tribunal and there has been no appeal against those findings. There was no credible evidence that there are any obstacles never mind significant obstacles to her reintegration into Jamaica where her mother and brother live. Such medical attention and medication as EL requires is available in Jamaica, albeit not necessarily at the same standard as is available to her in the UK.
40. EL had enhanced status in prison; there were no disciplinary matters against her and the OASys report generally commends her for her developing insight and increased ability to manage her emotions and temper. She has worked and there are no complaints about her behaviour. She is assessed at low risk of offending. That she has managed, during her time in prison and whilst on licence to positively change her attitude and

behaviour does not and cannot be enough to outweigh the public interest in her deportation given the seriousness of the crimes and the length of her prison sentence. That she is at low risk of committing crime in the future does not in any way diminish the nature and seriousness of the crimes she has already committed. That is not to say that everyone who is convicted of offences and sentenced to 8 years' imprisonment should be deported. The factors that weigh in favour of EL include that she has supervised contact with the child she physically assaulted, that she has contact with her younger daughter, that she has developed anger management techniques and changed her behaviour and attitude, that she is at low risk of re-offending, that she previously had indefinite leave to remain, that it is in the best interest of the children that she continue to have some face-to-face contact with them and that she suffers from depression.

41. The factors that weigh against EL include the public revulsion in respect of the offences for which she was convicted, the very serious nature of those crimes, her restricted acknowledgment of her responsibility for those crimes, and the lack of compelling circumstances that militate against her deportation.
42. Taking all these matters together I am entirely satisfied that the balance between the competing interests in play is capable only of being struck against EL. Even if she has, or develops a genuine parental relationship with both children in the near future, all that can possibly be said in her favour is plainly and significantly outweighed by the public interest in her deportation.

Conclusions:

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

I set aside the decision

I re-make the decision in the appeal by EL on human rights grounds by dismissing it

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 5/7/2017

Upper Tribunal Judge Coker