



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04617/2019

THE IMMIGRATION ACTS

Heard at Manchester (via Microsoft Teams)
On 2 July 2021

Decision & Reasons Promulgated
On 12 August 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NMW
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Harvey instructed by Kesar & Co Solicitors.

For the Respondent: Mt Tan, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. Following a remote hearing on 21st January 2021 the Upper Tribunal set aside a decision of the First-tier Tribunal for the reasons set out in the Error of Law decision dated 10 February 2021, a copy of which appears as an annex to this decision as it contains details of the Crown Courts sentencing remarks following the appellant's conviction at Croydon Crown Court on 18 September 2015, following a guilty plea of importing Class A drugs into the United Kingdom from Jamaica [2], the basis of the

Secretary of States challenge to the decision of the First-tier Tribunal [7-10], and analysis of the error of law on the one remaining issue, the alleged failure of the Judge to have considered the country guidance case of AB (protection-criminal gangs-internal relocation) Jamaica [2007] UKAIT 00018; reference to relevant sections of which is set out between [12 – 15] of the Error of Law finding.

2. The Resumed hearing was attended by the advocates only (remotely) who agreed the matter could proceed by way of submissions only.

3. As the First-tier Tribunal allowed the appellant's appeal on asylum grounds there was no consideration of the Humanitarian Protection aspect although it is accepted by Ms Harvey that this stands or falls on the same issues, or the article 8 ECHR, which it was submitted by Ms Harvey stands alone for reasons which are discussed further below.

4. The Tribunal is also grateful to the advocates for the efforts that they have made in trying to obtain relevant evidence, including making enquiries of professional associates in Jamaica. The fact no definitive evidence has been obtained from any such source or from the Jamaican authorities themselves is not as a result of the lack of effort made by the advocates or professional advisers.

Appellants Skelton Argument

5. A skeleton argument was received from Ms Harvey on the 2 July 2021 in the following terms:

IN THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

PA/04617/2019

BETWEEN:

NW

(Name anonymised for the purposes of this decision)

Appellant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

SKELETON FOR THE RESPONDENT

Anonymity direction

1. The Tribunal is asked to preserve the anonymity of the appellant and not to name G in the determination, as has been done to date.

Proceedings to date

2. On 22 February 2021 Upper Tribunal Judge Hanson allowed the appellant Secretary of State's appeal against the decision on First-tier tribunal Judge Cockrill of 25 February 2020 who allowed the appellant's appeal on asylum grounds as an exception to her deportation from the UK. He held that First-tier Tribunal Judge Cockrill erred in law in failing to consider the availability of the witness protection and the country guidance case of AB in the absence of providing adequate reasons for not having done so. He also recorded the lack of consideration and findings concerning any prospective violation of a non-derogable human right.
3. Upper Tribunal Judge Hanson set aside the determination of First-tier Tribunal judge Cockrill but preserved her findings pertaining to:
 - a. The appellant's experiences in Jamaica;
 - b. Her immigration history;
 - c. Family composition.
4. Upper Tribunal judge Hanson also preserved the positive finding from the National Referral Mechanism, subsequent to the determination of First-tier Tribunal judge Cockrill.
5. There was no challenge to the decision that the appellant did not constitute a danger to the community for the purposes of s 72 of the Nationality, Immigration and Asylum Act 2002, a matter which was not pressed by the Secretary of state's representative at the hearing before the First tier and which in any event must now be viewed in the light of the finding in the national referral mechanism that the appellant is a victim of modern slavery for the purposes of *forced criminality*. Although not expressly the subject of a preserved finding, this matter is understood not to be issue.
6. Upper Tribunal judge Hanson held "It may be that a proper examination of the evidence may result in the appeal being allowed but it cannot be established at this time that the outcome of the appeal will be the same".
7. The appellant made an application under rule 15(2) to submit further evidence in the form of a 33-page bundle on witness protection. This was granted on 28 June 2021.
8. On 1 July 2021 the Home Office Senior Presenting Officer, Mr Tan, confirmed that he did not require to cross-examine [NW]. The case will thus proceed by submissions only and the appellant is not required to attend: as envisaged by Upper Tribunal judge Hanson in his directions.

The appellant's case

9. The appellant maintains her case that to return her to Jamaica would be a breach of her rights:
 - (i) Under the 1951 Convention relating to the status of refugees;

- (ii) To humanitarian protection because of the risk of violation of her rights under Articles 2 and 3 of the European Convention on Human Rights
- (iii) Of her rights under Article 8 of the European Convention on Human Rights,

Facts

10. The preserved facts are:

- a. The appellant is a victim of modern slavery
 - i. in Jamaica and the United Kingdom between 12/2013 and 21/01/2014 for the specific purposes of forced criminality
 - ii. in Jamaica between 1975 and 1983 (from when the PV was aged 8-9 until 15-16) for the specific purposes of sexual exploitation (National Referral Mechanism decision of 28 July 2020);

Experiences in Jamaica

- b. As regards the core elements the appellant has basically given a true narrative
- c. The appellant was offered a taxi ride as described
- d. She went in this taxi with her daughter;
- e. A diversion took place;
- f. She was then subjected to a violent rape;
- g. This act of rape was one designed to frighten her and to coerce her therefore into carrying this unlawful drug into the United Kingdom in a bra that was provided.
- h. She had no alternative but to comply knowing that those that had assaulted her and had acted in that violent manner towards her knew where she was living and they knew about her family;
- i. She pleaded guilty (;
- j. She would be seen as someone who informed on G;
- k. She has been subjected to a number of deeply disturbing experiences in her life. She has been repeatedly the victim of abuse and violence;
- l. She has a subjective fear of G and his criminal associates;
- m. People close to her have been murdered;

Immigration history

- n. Given leave to remain as a student on 2 August 2002
- o. Granted indefinite leave to remain as the spouse of a British citizen on 18 January 2006
- p. 19 October 2015 notified of liability to deportation

Family circumstances

- q. 1976-1983 Sexually abused by stepfather as a child
- r. 1976-1983 Sexually abused by stepfather as a child
- s. 2 December 1985 birth of son [R] by [RH] (abusive relationship)

- t. 26 February 1987 birth of daughter [N] by [RH]
- u. C. 1989 son born by [T]
- v. Daughter [O] born 18 October 2002
- w. Married to [RW] 25 October 2003.
- x. Daughter [Z] born 2 October 2008
- y. Son [R] murdered in Jamaica in 2009. His father died in 2019.
- z. The relationship with [RW] was abusive and they are no longer together but her daughters maintain their relationship with their father.

Asylum

11. The outstanding issue is that of internal relocation and whether there is anywhere in Jamaica that the appellant could be safe as a result of State protection, specifically the witness protection programme, in the light of the country guidance case of **AB (Protection-criminal gangs-internal relocation) Jamaica CG [2007] UKAIT 00018**.
12. The headnote in **AB** records:

[...] unless likely to be admitted to a witness protection programme a person targeted by a criminal gang will not normally received effective protection in their home area.
13. The evidence in the appellant's supplementary bundle attests that the appellant would not be admitted to the witness protection programme. Senior Deputy Director of Public Prosecutions is reported on 24 October 2019 by Radio Jamaica as saying that

"it is only law abiding people that the witness protection will take on. If you have a charged or if you're suspected of being charged the protection is not eager to take you on" [supplementary bundle at 2]
14. National Security Minister Dr Horace Chang subsequently acknowledged [supplementary bundle at 8] that

"The system still has a problem dealing with those individuals [who are convicted already or in the system]. So, someone who is convicted but provides critical information, that poses a challenge how to deal with them. We may have to look at some legal challenges to allow for indivual who have been convicted to be treated in a particular way. In fact, the whole question of plea-bargaining has to be examined by the Ministry of Justice.
15. The appellant has been convicted and thus would not be admitted to the programme.
16. This is tacitly acknowledged in the Home Office country policy and information Note **Jamaica: fear of organised criminal groups** of August 2019 with its reference to "legitimate witnesses" (Appellant's bundle).

Witness protection programme

The Jamaica Ministry of National Security stated on its website ‘The Justice Protection Unit is a covert operation managed by the Ministry of National Security. Its main objective is to enlist legitimate witnesses of major crimes whose safety and security is at risk. The Programme seeks to offer protection for these witnesses and provide support for the functioning of the wider criminal justice system’.

17. Reports emphasize that the programme is designed for those “involved in the criminal justice process” [supplementary bundle at 7 and *passim*]. It is, as its name suggests, for witnesses. G is at large. There are no live proceedings against him in Jamaica, or indeed anywhere since he was sentenced in absentia in the UK.
18. That the programme is for those involved in “live” cases is also acknowledged in the Home Office bundle. At 8.1.4 it records reports that a woman and child were evicted and removed from the Witness Prevention Programme as soon as the case she testified in concluded.
19. **AB (Protection-criminal gangs-internal relocation) Jamaica CG [2007] UKAIT 00018**, has not been superseded. It is summarised in the Home Office country policy and information Note **Jamaica: fear of organised criminal groups** of August 2019 (Appellant’s bundle country information thus:

2.4.5 If a person is of interest or vulnerable to an OCG [organised criminal gang] because of their particular circumstances, decision makers must establish that an OCG’s behaviour and capabilities poses a real and serious threat to the person which amounts to serious harm.
20. The tribunal in **AB (Jamaica)** at paragraph 159 questioned whether criminal gangs would be able to track their victims down.
21. In the appellant’s case the answer is yes given the extensive coverage her case has received (see Appellant’s bundle at 6).
22. G’s gang has been involved with the import of significant amounts of cocaine, based simply on the amount that the Appellant was carrying. This is evidence that they have significant funds. G was able to jump bail and, it would appear, return to Jamaica, evidence again of considerable resources, possibly involving corruption.
23. In those circumstances he is well placed to trace the appellant.
24. In **AB (Jamaica)** the tribunal held that criminal gang, at least the major ones, are well organised and have considerable resources and networks (paragraph 158). It held that it is not reasonably likely that they would be told to look out for specific individuals except in high profile cases (paragraph 158). It emphasised that the precise question of protection for informers was not before it and that lacked evidence on the point (paragraph 154).
25. Not only is this a “high profile” case, as witness the extensive press coverage, it is a case in which G is still at large, and wanted because he has been sentenced *in absentia* in the UK to 13 years in Rison. The tribunal accepted that Jamaica is a relatively small country, with good transport networks (paragraph 161).
26. The tribunal identified that the witness protection programme could provide effective protection (paragraph 159). and that it would be “very important” in Jamaican cases concerned with criminal gangs to analyse whether the individual

concerned will be able to receive assistance from this programme (paragraph 162-163). As set out above, that would not be available to the appellant: she would not be admitted to it.

27. The tribunal did not rule out that the economic and social conditions faced by those in the witness protection programme might make it unreasonable for person with unusual individual circumstances to be admitted into the programme (paragraph 162). For all the reasons given below in the section on Article 8 this is the case for the appellant: given her mental and physical health and her history in Jamaica which includes sexual abuse of her as a child, rape at different points in her life, and the murder of her son. For those same reasons, if contrary to the submission above, it is accepted that she could relocate internally outside the programme, it would be unreasonable and unduly harsh to expect her to do so (paragraph 165).
28. The US Department of State Trafficking in persons report of June 2019 (Appellant's bundle at 5-1) that there was one conviction of a trafficker in the reporting period, for trafficking for forced begging (Appellant's bundle 5-110). Efforts to protect victims are described as "weak" Few victims were referred to shelters (5-12)

Summary of the appellant's asylum case

29. The appellant fears resection as a member of the social group's former victim of modern slavery and former victim of gangs in Jamaica. The characteristics of having been trafficked, and of having been a victim of gangs, are immutable by reason of their historical permanence. They are part of a person's past and cannot be shaken off, whatever that person's future conduct (see In **SB (PSG, Protection, Reg 6) (Moldova) [2008] UKAIT 2**, Upper Tribunal judge Gill).
30. The persecution feared is harassment, violence, arbitrary detention, rape and torture, at the hands of G and his gang in Jamaica.
31. Dr Jennifer Fleetwood has provided expert evidence in this case. She is an expert on the internal tonal drug trade and drug mules (see appellant's bundle page 63).
32. It is stated in the Home Office country policy and information Note **Jamaica: fear of organised criminal groups** of August 2019 that Jamaica's high murder rate is because most murders in Jamaica are committed against those involved in gang related activities (2.2.4.4).
33. [NW] has been involved in the activities of an organised criminal gang and, until he skipped bail, faced trial G. She pleaded guilty. Her case achieved considerable notoriety in the UK and Jamaica, perhaps because the police gave the newspapers photographs of the bra stuffed with cocaine (Appellant's bundle before the first tier at 6). She continues to pose a threat of exposure to G and to the gang. She lacks for associations and influence that might protect her and therefore the simplest responses are to intimidate her through future ill-treatment, including rape, or to kill her.

Humanitarian protection

34. For all the reasons that found her claim for asylum, the appellant also qualifies for humanitarian protection.
35. The prevalence of poverty in Jamaica is high (19.3% in 2017 (page 7-23 Appellant's bundle). It is recorded that the 2015 Economic and Social Survey of Jamaica reported a 63.1% rate of labour force participation, falling to 56.3% for women (page 7-44, Appellant's bundle). Welfare security is described a "rudimentary" with the majority of the low-income population struggling to survive (Appellant's bundle at 7-50).
36. In the light of all the above, in the specific circumstances of her case, the appellant's fear of persecution is well-founded; throughout Jamaica is well founded the Jamaican state, through a combination of corruption and lack of resources, will be either unwilling or unable, depending on the particular instance, to protect her, and G's gang will be in a position to find her wherever in Jamaica she goes, because she is notorious. It is in their interests, quite apart from questions of revenge, to silence her.
37. G, sentenced to 13 years in absentia managed to leave the UK and remain at large in Jamaica ever since, the value (£180,000) and purity of the cocaine the appellant was forced to smuggle all attest to the power and influence of the gang.
38. In paragraphs 181 to 187 of AB, the Upper Tribunal considers social and psychological factors that might render a person's internal relocation options "unduly harsh". These, discussed under Article 8 below, apply in the appellant's case.

Article 8

Part 5A of the Nationality Immigration and Asylum Act 2002 and s 55 of the Borders, Citizenship and Immigration Act 2009

53. Part 5A provides (insofar as material)

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

I 17B

- (1) The maintenance of effective immigration controls is in the public interest.
 - (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
 - (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
 - (4) Little weight should be given to—
 - (a) a private life, or
 - (b) a relationship formed with a qualifying partner,
 that is established by a person at a time when the person is in the United Kingdom unlawfully.
 - (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- [...]

I 17C Article 8: additional considerations in cases involving foreign criminals

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where-
 - (a) C has been lawfully resident in the United Kingdom for most of C's life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
- (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

54. The Borders, Citizenship and Immigration Act 2009 provides at s 55 (insofar as material)

55 Duty regarding the welfare of children

(1) The Secretary of State must make arrangements for ensuring that—

- (a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
- (b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.

(2) The functions referred to in subsection (1) are—

- (a) any function of the Secretary of State in relation to immigration, asylum or nationality;
- (b) any function conferred by or by virtue of the Immigration Acts on an immigration officer; ...

(3) A person exercising any of those functions must, in exercising the function, have regard to any guidance given to the person by the Secretary of State for the purpose of subsection (1).

[...]

(6) In this section—

“children” means persons who are under the age of 18;

55. The Immigration Rules cover the same ground as s 117A to 117E of the 2002 Act:

A398. These rules apply where:

- (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom’s obligations under Article 8 of the Human Rights Convention;
- (b) a foreign criminal applies for a deportation order made against him to be revoked.

398. Where a person claims that their deportation would be contrary to the UK’s obligations under Article 8 of the Human Rights Convention, and

[...]

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

This paragraph applies where paragraph 398(b) or (c) applies if –

- (a) the person has been lawfully resident in the UK for most of his life; and
- (b) he is socially and culturally integrated in the UK; and
- (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

56. The appellant has been found to be a victim modern slavery by forced criminality. Her offending was forced: the result of coercion and violence as described in her account, accepted by the First-tier tribunal judge whose findings have been preserved. This is a compelling circumstance which should lead to her offending being viewed differently from the purposes of s 117C from that of other foreign criminals.

39. The Appellant was a person of good character prior to her conviction. Since her offence she has committed no further offences, whether in prison in the community.

40. Her probation officer, Becky Shepherd, states (Respondent's bundle at 106)

"[NW] has engaged well in supervision and has been open and insightful in discussing her circumstances.

[...]

I have assessed [NW] as presenting a very low risk of reoffending and a very low risk of harm to the public, utilising the Probation Service assessment and risk management tool OASys, an actuarial and dynamic assessment which is very thorough.

[...] so she can be a good mother and a productive and pro-social member of society, as her behaviour and attitude since release from custody have given me every reason to expect from her future conduct.

57. The appellant speaks English. Her older daughter, [O], is now 18 years old but her daughter [Z] remains a qualifying child. She kept in touch with [Z] and [O] throughout her time in prison. Her relationship with them is accepted (refusal letter paragraph 121).

58. [O] has provided a detailed statement, focusing in particular on the effect of her mother's deportation on her younger sister. The children's fears for their mother if she returns to Jamaica are a relevant part of the impact upon them. They will be in constant fear for her and the stress and anxiety under which they currently labour, described very clearly by [O], will continue.

59. The effect on children must be taken into account: **Beoku Betts v Secretary of State for the Home Department [2008] UK HL 39** and the starting point must be their best interest.
60. In **ZH (Tanzania)** Lady Hale, giving the judgment of the court, held:
33. We now have a much greater understanding of the importance of these issues in assessing the overall well-being of the child. In making the proportionality assessment under article 8, the best interests of the child must be a primary consideration. This means that they must be considered first. They can, of course, be outweighed by the cumulative effect of other considerations. In this case, the countervailing considerations were the need to maintain firm and fair immigration control, coupled with the mother's appalling immigration history and the precariousness of her position when family life was created. But, as the Tribunal rightly pointed out, the children were not to be blamed for that. And the inevitable result of removing their primary carer would be that they had to leave with her. On the facts, it is at least as strong a case as *Edore v Secretary of State for the Home Department [2003] 1 WLR 2979*, where Simon Brown LJ held that "there really is only room for one view" (para 26). In those circumstances, the Secretary of State was clearly right to concede that there could be only one answer.
61. The case of **Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60** addresses paragraphs A398 to 399:
29. Where children are involved, their best interests are said by the court to be of paramount importance (by which it does not mean to say that they are determinative: see *Jeunesse*, para 109). Whilst alone they cannot be decisive, they must be afforded significant weight. Accordingly, national decision-making bodies should in principle advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to these best interests of the children directly affected by it (*Jeunesse*, paras 108-109)
62. [Z] interests are a primary consideration and to cause her to be separated from her mother and to suffer because of her fears for her would be unduly harsh.
63. If that the effect on her would be unduly harsh is not accepted, nonetheless in **NA (Pakistan) v Secretary of State for the Home Department (2016) EWCA Civ 662** the Court of Appeal held at paragraph 111:
111. In deciding that it should address itself to the question whether, despite the fact that MY could not bring himself within Exception 1 or Exception 2, "very compelling circumstances" existed which would make deportation unduly harsh and hence disproportionate, the Upper Tribunal correctly rejected the primary submission made by counsel then appearing for the Secretary of State (Mr Richards), recorded at para. [46], that if the requirements of neither of the Exceptions could be satisfied, "that is the end of the matter" and section 117C(3) mandates upholding the deportation order. That is an interpretation of section 117C(3) which Mr Tam conceded before us must be wrong. We have explained above the correct interpretation to be given to section 117C(3), in line with para. 398 of the 2014 rules.
64. The effect on [O] must be considered cumulatively with the effect on her minor sister.
65. The effect on the appellant herself must be considered cumulatively with the effect on her children. It is accepted that the appellant has lived in the UK since 2002. Article 8 encompasses the physical, moral and psychological integrity of a

person ***Bensaid v. The United Kingdom (Application No. 44599/98, Judgment of 6 February 2001)***.

66. If the appellant returns to Jamaica, she will be extremely fearful of G and his gang. Her experiences in Jamaica since childhood have been traumatic and have given her no reason to consider that the police will be able to protect her.
67. For the appellant to live in fear in Jamaica would be a flagrant breach of her rights under Article 8 of the European Convention on Human Rights and bring her within the ambit of Article 8 in accordance with the judgment of the Supreme Court ***R(Ullah) v Special Adjudicator R(Do) v Secretary of State for the Home Department [2004] UKHL 26***.
68. Not only through her relationship with her family but through her work and study, the appellant is integrated into the UK.
41. The appellant is mentally ill. There are expert reports from psychologist Mirjam Klann Thulesse who has specialised in work with survivors of human trafficking since 2007 (Appellant's bundle 2-33 to 2-35), Psychiatrist Dr Abigail Seltzer, who specialises in traumatic stress.
42. Dr Seltzer diagnoses post-traumatic stress disorder (paragraph 89 of her report, Appellant's bundle at 2-7). She relates this to the rape (paragraph 96 page 2-17). She states "There is no doubt that she has developed PTSD as a result of her rape by the taxi driver in Jamaica", although she attributes [NW] overall low mood to the results of her conviction and immigration situation (Appellant's bundle at 2-22, paragraph 117).
43. The psychologists in HMP Bronzefield assessed the appellant (pages 2-88 to 2-89, Appellant's bundle)
44. Dr Seltzer describes her daily functioning as poor because of "pain and low mood" (paragraph 116, page 2-22 Appellant's bundle before the first-tier). She identifies that there is a psychosomatic element to Ms Williams' pain which is because of her belief that it is linked to the trauma of her rape (paragraph 118 at - 23).
45. Dr Seltzer identifies that the appellant was not a particularly able scholar and raises the questions of learning disability and dyslexia, although without being able to comment on these (paragraph 94 2-17).
46. The cumulative effect on the appellant and her children of her departure, set against the lack of public interest in the removal of the appellant, constitute very compelling circumstances militating against the appellant's deportation.
47. Ms Thullesen identifies the appellant to be at risk of future exploitation (paragraph 122 at page 2-67 of the Appellant's bundle). She considers that she requires long term intervention to address her multi-faceted psychological needs (paragraph 123). The psychotherapists in HMP Bronzefield had similarly identified a likelihood of ongoing needs related to trauma (Appellant's bundle at 2-89). The appellant was prescribed sertraline (tab 3-1, Appellant's bundle)
48. To these must be added the pain that the appellant experiences. That it may have a psychosomatic element, as Dr Seltzer concedes, makes it no less real pain.

49. The appellant is at risk of exploitation in Jamaica because she is at risk of poverty and will have few resources. The documents at tab 7 in the Appellant's bundle before the First-tier evidence the poverty in the area where her children live and in Jamaica as a whole.
50. These factors must be assessed cumulatively. The appellant's children would be petrified for her if she returned. She too would be terrified and this will affect both her mental and physical health. She is integrated within the UK where she has lived for 20 years, brought up a family, worked and studied.
51. On the Article 8(2) side of the scales, in addition to the offence constituting forced criminality must be placed that she has served her sentence and is now assessed as presenting a "very low" risk, both of reoffending and of harm.
52. In all the circumstances, deportation is not proportionate. It would be a breach of the Appellant's rights and those of her family members under Article 8 of the European Convention on Human Rights and thus contrary to s 6 of the Human Rights Act 1998.

Summary

53. The appellant fears persecution as a member of the social groups formerly trafficked persons and former victims of gangs. Her account should be accepted.
54. The evidence demonstrates a risk from G and his gang and a lack of State protection against this. The appellant's case has received widespread publicity and she is known to have pleaded guilty. She is easy to identify and the gang has reason to seek her out to silence her. There is no internal relocation open to her and no effective protection. Her physical and mental health is poor and she is at risk of exploitation.
55. For the same reasons she qualifies for humanitarian protection.
56. There are very compelling circumstances militating against the deportation of the appellant: that her criminality was forced in circumstances of modern slavery, her relationship with her children, mental and physical health and length of residence in the UK. She and her children would live in fear were she returned. She is at risk of exploitation because of the extreme poverty she would face in Jamaica.
57. It would be a breach of the rights of the appellant and her children under Article 8 of the European Convention on Human Rights to remove the appellant from the UK and separate her from her children.
58. The decision to deport the appellant is not necessary in a democratic society, is not proportionate under Article 8 of the European Convention on Human Rights and is in breach of s 6 of the Human Rights Act 1998.

Alison Harvey
No5 Chambers, London
1 July 2021

Discussion

6. The protection claims: there is no suggestion the appellant faces a real risk of persecution from the state authorities in Jamaica her fear, as outlined above, being from nonstate actors, specifically the criminal gang of which G was an associate/member, who involved her in the importation of the Class A drugs to the United Kingdom, more particularly set out in the skeleton argument above.
7. The question to be considered is therefore whether the appellant will be able to benefit from a sufficiency of protection from the authorities within Jamaica.
8. Ms Harvey's submission is that as the appellant's home area is in Kingston, where a lot of the drug gangs are based and where drug-related gang-related violence is prevalent, her presence living in the community will be discovered, leading to a risk of harm specifically following G's conviction and sentencing to a substantial period of imprisonment in absentia, following his "jumping bail".
9. Although it was acknowledged there is no specific evidence G has returned to Jamaica as that is the country from which he originates and as there is no evidence he has been located in the United Kingdom by the police, I have approached this matter on the basis that, notwithstanding he was on bail from the criminal courts for a serious offence in the UK, he was somehow able to leave the United Kingdom and has returned to Jamaica.
10. There is no evidence of a request or otherwise from the UK authorities to the Jamaican authorities to locate G in Jamaica, which, in light of the fact his biometrics would have been taken at his arrest, including fingerprints, would have made identification by the authorities relatively straightforward if he was located, although it is not likely any such inter-governmental communication regarding such an issue will be available in the public domain.
11. With relation to the question of whether the appellant will be admitted to the Witness Protection Programme (WPP) if she is returned to Jamaica; the mechanics regarding how the WPP works is referred to in summary at [17 – 21] the error of law decision below. The name of the programme clearly indicates it is to protect witnesses who have come forward to the authorities, who the authorities deem require protection.
12. Ms Harvey on behalf of the appellant argued she would not be admitted to the WPP as it only provides protection for witnesses in live cases and there are no live cases relevant to this appellant. Whilst that statement may be correct at the date of hearing the reason there is no live case involving the appellant is that she has not yet made a complaint to the authorities in Jamaica. As noted at [16] of the error of law finding, the claim of a similar nature made at that stage was not made out as the appellant is a witness to the attempted importation of drugs to the UK by G and/or his associates, being trafficked by a gang for such purposes by the use of violence, and being a victim of rape, all of which contravene the criminal law of Jamaica. It was not made out the appellant's complaint to the police would not be accepted and acted upon which will result in the creation of a live case.
13. It is not made out that if the appellant was returned to Jamaica in the normal course of a deportation removal, that G or any of his associates will be aware

that she had been returned. The key event is for the appellant to make contact with the police in Jamaica, which it has not been made out she would not be able to do as she will be aware of the date she was being returned, and so able to make a formal complaint at that point when the process set out from [17] of the error of law finding will be activated.

14. Although the material provided by the appellant for the purpose of this hearing refers to funding issues, that is a common complaint of many involved in the criminal justice system of most countries with an effective programme but has not been shown to undermine the effectiveness of the WPP per se, when all the available information is considered as a whole. The evidence does not suggest that the WPP, even if under financial constraints, is not able to deliver effective protection for those deemed to require it.
15. In relation to the submission the appellant would not be able to take advantage of the WPP as she herself has been convicted, referred to as the requirement to only protect those genuinely in need who could come to the criminal courts with "clean hands", one assumes to maximise the chances of conviction and any action to be taken, insufficient material was made available to the Tribunal to show that whilst this may be an issue of concern to the authorities in Jamaica in relation to others convicted in Jamaica, that the principles and constraints that may arise have equal application to an individual convicted in the United Kingdom for an offence committed here.
16. There is no evidence the appellant has committed any criminal offence in Jamaica. The offence for which she was convicted was of importing a substantial amount of Class A drugs into the UK.
17. As Mr Tan submitted, the issue in relation to the feasibility of appellant's return and protection offered through the WPP also needs to be considered in light of evidence concerning the reach of the gang the appellant fears.
18. There is no evidence the appellant has ever been involved in gang activities. In relation to gang activities since the promulgation of the decision of the Upper Tribunal in AB, Mr Tan referred to the CPIN, August 2019, Jamaica: Fear of Organised Crime Groups, at section 2.2.5 and section 7 in support of his submission that measures have been put in place to deal with gang activities.
19. At 2.5.3 to 2.2.5 it is written:

2.2.3 In the Country Guidance case of AB (Protection-criminal gangs-internal relocation) Jamaica CG [2007] UKAIT 00018, heard on 19 December 2006 and promulgated on 22 February 2007, the Tribunal found that the authorities in Jamaica are in general willing and able to provide effective protection. However, unless reasonably likely to be admitted into the Witness Protection Programme (WPP), a person targeted by a criminal gang will not normally receive effective protection in their home area [headnote].

2.2.4 When referring to persons being 'admitted' into the WPP, the Tribunal did not consider that the test can be what the person's preferences are or whether there are hardships that will be involved (for example, having to live for at least some period of time in difficult circumstances). The test is simply whether, if they sought access to it, they would be admitted to it (para 163).

2.5.4 The Tribunal in AB also found that: 'So far as the likely economic and social conditions faced by those within the Programme, whilst we do not rule out that unusual individual circumstances may make it unreasonable for them to be admitted into the programme,

there is nothing to suggest that programme participants are generally exposed to destitution or unduly harsh living conditions' (para 162).

- 2.5.5 Since AB was promulgated the government has introduced a number of legislative and policy measures to strengthen the rule of law and combat general and OCG-specific crime, including the 'Anti-Gang Act' 2014 which defines and criminalises OCGs. As of November 2018, there had been reportedly 448 cases of arrest under the act but only 2 convictions (see Government response).

20. In relation to the WPP it is written in that same document:

8. Witness protection programme

- 8.1.1 The Jamaica Ministry of National Security stated on its website 'The Justice Protection Unit is a covert operation managed by the Ministry of National Security. Its main objective is to enlist legitimate witnesses of major crimes whose safety and security is at risk. The Programme seeks to offer protection for these witnesses and provide support for the functioning of the wider criminal justice system'.
- 8.1.2 The Gleaner reported in an August 2018 article that: 'Citizens who sign up for the witness protection programme must follow the rules set down by the experts in order to have their safety guaranteed, attorney Peter Champagnie has said. "All in all, it is a good programme, and it ought to be encouraged. The witness-protection programme in Jamaica is one where a threatened witness, who can be harmed makes an application for protection. That protection comes under the auspices of the Ministry of National Security, and it is very safe, except for one or two instances in the past where witnesses leave the programme and were harmed afterwards...'.
- 8.1.3 The Jamaica Observer reported in an April 2018 article, that a witness who testified against a murder committed by his nephew was 'supposedly' kicked out of the programme for not complying with the programme's rules, which prohibited him from visiting Kingston. The witness stated that the programme did not provide enough money for him and his family and therefore needed to take a job driving into Kingston. He described the programme as 'bad' and 'horrible'.
- 8.1.4 A report by a Jamaican news website, The Star, stated in December 2017 that a woman and child were evicted and removed from the Witness Prevention Programme as soon as the case she testified in concluded.
- 8.1.5 The USSD Jamaica 2017 Human Rights report observed: 'There is a witness protection program, but many eligible witnesses either refused protection or violated the conditions of the program. While the JCF reported that no participant in the witness protection program was ever killed, the program suffered from a number of problems. The government allocated approximately \$1 million in additional funds for the program in February.'
- 8.1.6 The Gleaner observed in an article published in February 2017, that 12 million dollars was planned to be invested in the Witness Protection Programme for the upcoming financial year. This was expected to strengthen the programme in order to improve the prosecution of crimes and organised criminal networks.
- 8.1.7 There is no information on the witness protection programme in the USSD 2018 Human Rights report for Jamaica.
- 8.1.8 Regarding witness protection, The Office of the Director of Public Prosecutions (DPP) in Jamaica sets out mentioned that there are 'several ways to protect witnesses', which include:
- Criminal proceedings can be taken against the intimidators who could then face jail; and
 - In extreme circumstances witnesses can be relocated.'
- 8.1.9 The same source stated: 'The principle of open justice can sometimes act as a bar to successful prosecutions, particularly in homicides, organised crime and gun crime. Witnesses may fear that if their identity is revealed to the defendant, his associates or the

public generally then they or their friends and family will be at risk of serious harm. 'In most cases the police will establish whether a witness is in fear and should inform the prosecutor. Ideally, a discussion about the type of 'protection' that should be applied for will take place between the police and the prosecutor at the pre charge stage. Occasionally information about a witness being in fear may come from another source. 'When informed that a witness is fearful of giving evidence, prosecutors must liaise closely with the Justice Support Unit and the Justice Protection Unit to consider the range of options available to them both at common law and by virtue of statute. Prosecutors should seek to ensure that, wherever possible, the witness's fear is allayed and that they are given the requisite protection. Prosecutors must also ensure that the witness's rights under the ECHR are acknowledged and protected.'

- 8.1.10 Furthermore, the DPP mentioned: 'There are certain situations where proceedings can be heard in camera, i.e. in private, when the public are excluded and the doors of the courtroom are closed. Thus in cases of sexual offences or cases where a gun is used, those matters are dealt with in camera...'

The question for the court to decide is whether a sitting in private is necessary for the administration of justice, for example if there is a possibility of disorder. A decision to sit in camera is not justified merely on the ground that a witness would find it embarrassing to testify.'

21. It is understandable and not irrational that if a person is admitted to a protective scheme but fails to comply with the terms of that scheme, that their continued involvement in the scheme may be deemed to be inappropriate. If a person is told they cannot enter a specific area as part of the WPP but chooses to enter that area they must face the consequences; but that does not establish that if the appellant was admitted to the programme the same would apply to her.
22. In relation to the observation of one individual being released from the programme after the conviction of the person against whom she testified, this appears to relate to one person with no evidence of the nature of the case concerned or whether there was any assessment that she will continue to face ongoing risk from those against whom she testified. The volume of evidence shows that if protection is required it will be provided, and the country information does not indicate that all those who enter the WPP seeking to benefit from the assistance and support provided will lose the same once the cases ended, unless there is no longer any need for it. The material clearly indicates a desire to encourage individuals to assist the prosecuting authorities in Jamaica, which must include an acceptance by those who come forward of the credibility of the protection the scheme offers which, the information as a whole shows, has been established. There was nothing to show that even if the appellant is admitted to the witness protection programme once any charges arising from her claim against G or the taxi driver who was involved in her rape had been disposed of by the criminal courts, that she will be effectively without any further ongoing protection from the authorities in Jamaica.
23. As noted above, there is insufficient evidence to support the appellant's contention that just because she has been convicted in the United Kingdom this will exclude her from being accepted as a credible complainant in relation to the criminal events that occurred within Jamaica.
24. Whilst the appellant claimed that details of her family were taken from her in Jamaica there is no evidence of any action being taken against family in the

United Kingdom, notwithstanding the appellant pleading guilty and being involved in the proceedings relating to the conviction of G.

25. As noted in AB, protection is available, and it is for the appellant to establish that she would not be admitted to the witness protection scheme. I find on the evidence the appellant has not discharged the burden upon her to show that she will not be admitted to the WPP on return to Jamaica or that the scheme will not be able to provide her with adequate protection from those whom she fears. I do not find the appellant has established that she will be abandoned by the programme once admitted, in the absence of any deliberate breach by her of the conditions of her admission and protection, or that she will be placed in a position of harm once the proceedings had been concluded.
26. As Mr Tan noted, the country information shows that most of the criminal gangs operate in Kingston and the urban areas where the appellant has family ties. It was not made out they will be aware of her return to other areas, especially if she was relocated with the assistance of the authorities.
27. I find that as there is a viable sufficiency of protection available to the appellant within the WPP her protection claim must fail. The appellant has failed to establish a real risk sufficient to entitle her to a grant of international protection for the reasons claimed on the basis of the reach of those she fears in Jamaica or upon her assisting the Jamaican authorities in relation to their conviction.
28. The next question therefore is whether it is reasonable in all the circumstances to expect the appellant to make use of what is, in effect, an internal relocation option away from her home area. The appellant argues it is not reasonable partially on the basis of a disagreement with the availability of protection from those she fears, who it is argued are clearly a gang of resources with the appellant having been convicted of having approximately £180,000 worth of cocaine in her bra and the publicity that was generated, including photographs, in relation to the same.
29. Within the WPP consideration will be given to the ability to protect the appellant which, according to the information, can even include a placement abroad. It was not made out the ability of those she fears to physically identify the appellant is a new factor, as involvement with G as recorded in the papers is that he travelled to the UK with her and was clearly one piece of the jigsaw that originated in Jamaica and ended with the appellant's arrest in the UK.
30. The country material relied upon by the appellant speaks of the structure of the drug gangs being that those such as the appellant being the "mules" who will have no contact with the hierarchy of the drug gang other than with their "minder" who is specifically tasked to ensure that they do what they are being paid or asked or made to do, i.e. import the drugs to the UK. There is a positive finding in the appellant's case that she was trafficked and therefore made to act as she did.
31. The evidence indicates that G is more likely than not to be the "minder" who may be in contact with a person higher up within the drug gang if he returned Jamaica, but it was not establish they would have any awareness that the appellant was returned to Jamaica, or where she was if she was in the WPP, even though the appellant's conviction had been highlighted in the newspapers.

The appellant was convicted in 2014 and it is not made out that news articles published at that time will be available in Jamaica to enable individuals to locate the appellant per se.

32. I do not find it made out that the evidence supports a finding that objectively, whatever her subjective beliefs, the appellant is a person who will be of interest or vulnerable to an organised criminal gang as a result of her particular circumstances. It is not made out that the gang of which G may be part has been shown to pose a real and serious threat to the appellant within the WPP which amounts to serious harm.
33. The asylum, humanitarian protection and Article 2 and 3 ECHR aspects of the appellant's claim, based as they are upon the core assertion of real risk that has not been found to be made out, are dismissed.
34. The UK Borders Act 2007, section 33, provides exceptions to a decision to deport an individual from the United Kingdom, the relevant parts of which are in the following terms:

33 Exceptions

- (1) Section 32(4) and (5)—
 - (a) do not apply where an exception in this section applies (subject to subsection (7) below), and
 - (b) are subject to sections 7 and 8 of the Immigration Act 1971 (Commonwealth citizens, Irish citizens, crew and other exemptions).
- (2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach—
 - (a) a person's Convention rights, or
 - (b) the United Kingdom's obligations under the Refugee Convention.

35. Whilst the claim under the Refugee Convention and/or claim to entitlement to a grant of humanitarian protection or to Article 2/3 ECHR leave on the basis of the protection issues has not been shown to assist the appellant, it is necessary to carefully examine the other aspect of the claim, namely whether returning her to Jamaica even within the protection of the WPP would breach her rights pursuant to article 8 of the European Convention on Human Rights or those of her family members.
36. Ms Harvey referred to the chronology, showing that the appellant had been sexually abused by her stepfather and later by her partner in Jamaica, that her son was murdered in Jamaica in 2009, although not in connection with G or by any of his known associates. It was argued the level of violence generally in Jamaica is an understandable concern for the appellant who has one daughter of her own still in Jamaica.

37. In relation to the impact of past experiences upon the appellant, reliance is placed upon a number of expert reports.
38. The first of these is a letter from Central and North West London NHS Foundation Trust, written by a trainee Clinical Psychologist, but countersigned by Dr Rebecca Lockwood, a Chartered Clinical Psychologist, dated 2 September 2014 following the appellant's referral to the Mental Health In-reach Team at HMP Bronzfield. The appellant was assessed on 21 July 2014, which concluded that the appellant was likely to continue to have ongoing difficulties associated with trauma.
39. A second report, written by Dr Jennifer Fleetwood, based at the Department of Criminology of the University of Leicester dated 4 June 2015 was commissioned to provide background knowledge on the subject to drug mules and drug trafficking, rather than to deal with the appellant's individual psychological presentation. This report refers to drug mules and minders who travel alongside them to control them, such as G, which following assessment led to it being concluded that it is common practice in the international drug trade regarding the management of drug mules and the use of coercion and force, that the appellant's version of events in Jamaica is plausible, drawing on available knowledge of drug trafficking, that the appellant's experiences were consistent with the definition of her being a victim of trafficking to the UK. She was transported against her will and raped in order to gain power and control over her leading to her being forced to commit a criminal act, namely trafficking cocaine into the United Kingdom, due to the use of force.
40. A psychological report has been provided written by a Dr Thullesen, dated 5 June 2015. In the heading entitled 'Psychological and health effects' the author confirmed she does not intend to make a psychological diagnosis of the appellant but found it was clear she had been greatly affected by her traumatic experiences and agreed with an earlier report that prison has had a detrimental impact upon the appellant's mental health. Dr Thullesen's conclusion at [126 - 127] are in the following terms:
 126. In conclusion, I find indicators of trafficking, for the purposes of financial gain, within []'s account to be plausible and consistent with other victims I have assessed and supported. This is based on my knowledge of assessing and working with victims of trafficking whilst at the Poppy Project, the Refugee Council and as an Independent Consultant. It is also based on the particulars of []'s case, taking into consideration all the evidence available to me. I consider it plausible that she fulfils the key elements known to constitute trafficking. Namely, (i) the action of being abducted and recruited by F, by (ii) means of force, coercion, abuse of power and of her vulnerability. Using for her for the (iii) purpose of exploitation enforced criminality/drug smuggling and thus for financial gain.
 127. My recommendation is, therefore, that her significant vulnerability, and the level of risk to her and her family, be taken into consideration when making a decision on her criminal case.
41. A psychiatric report, commissioned from Dr Abigail Seltzer, a Consultant Adult Psychiatrist, dated 6 January 2020, contains the author's opinion from [84 - 119]

(setting out the questions asked by the appellant's solicitors and Dr Seltzer's replies) in the following terms:

Opinion

84. **Likely causation of any mental health conditions our client suffers. Particularly in regard to whether or not the symptoms the client displays could be consistent with her account of the abuse she experienced at the hands of her traffickers in Jamaica (and her other abusers in Jamaica and in the UK); and**
85. There are a number of likely antecedents. They are as follows:
 - 85.1 History of childhood sexual abuse by stepfather from the ages of 8 to 15
 - 85.2 Rape in Jamaica
 - 85.3 Imprisonment in UK
 - 85.4 On-going immigration situation
 - 85.5 To a lesser extent, domestic violence she suffered in the UK.
86. However, it should be borne in mind that mental health conditions are multi-factorial in origin, and none of these should be considered as sole causes.
87. The symptoms she describes and displays are generally consistent with her account of rape, domestic violence and childhood sexual abuse.
88. **The diagnosis and prognosis of any mental health conditions, including learning disabilities, our client is currently suffering from.**
89. She describes symptoms consistent with the diagnosis of PTSD (ICD 10 F 43.1; see Appendix 3 for diagnostic criteria). She clearly describes flashbacks to the rape and to earlier instances of violence, with accompanying physiological and psychological response, namely, rapid heartbeat and distress. She describes avoiding reminders of traumatic events, namely turning off the TV when there are guns, men shouting or women screaming or other representations of violence. She describes the distress and rapid heartbeat at reminders of detention such as keys. She describes an alteration in her self-image, seeing her life as a blighted.
90. She also describes low mood, reduced motivation, disturbed sleep and appetite as well as thoughts that she would like to fall asleep and not wake up.
91. This is consistent with a diagnosis of adjustment disorder with depressive features (ICD 10 F43.2 see Appendix 4 for diagnostic criteria). This is arisen as a reaction to her conviction, ongoing pain and the threat of deportation.
92. It is difficult to predict the prognosis for her PTSD as recovery depends on many factors, including treatment and is partially dependent on the outcome of her immigration case. It is likely that if her life became more stabled in secure, her symptoms would lessen over time, although they may not remit entirely.
93. The adjustment disorder with depressive symptoms is far more dependent on her to immigration situation and is likely to improve if she is given leave to remain.
94. There is no clear evidence of learning disability, but she appears not to have been a particularly able scholar and she reports that her reading and writing skills are limited. It is not within my experience, to assess whether she has a specific learning disability such as dyslexia.
95. **Whether our client's current mental health situation is likely related to any past trauma in her country of origin, and/or in the UK as a victim of trafficking and sexual exploitation, or if she has any undiagnosed trauma -related illness.**
96. She describes symptoms of PTSD, which is related to the rape by the taxi driver in Jamaica and which has caused other traumatic memories to resurface.
97. **The likely effect of returning to Jamaica and any negative effect this will have on her mental health and support system in place in the UK, including on any suicide risk that she presents with.**

98. It is difficult to form a firm opinion on this, as she was unable to give a clear and convincing account of the impact of return of her mental health. When this was explored, she was more concerned about how she would manage given the physical pain she suffers. She did not describe a support system as such in the UK, but she does seem to have a larger and more involved social network as she was called several times by friends and relatives during the assessment.
99. She does not present with active suicidal ideation, i.e. clear intent or plans, and did not give a convincing account of increased suicidal risk if returned, although she reports that if it were not for her daughters, her life would not be worth living. When asked about intent or plans, she said she just wanted to go to sleep and not wake up but had no methods in mind. The prison medical records, notes that she did not express suicidal ideation at any point during detention.
100. **Whether our client is likely to be malingering or exaggerating any mental health symptoms presented.**
101. I do not think she was malingering, as she did not report unusual symptoms or combinations of symptoms and did report less common symptoms that are not universally present in PTSD, ie pseudo-hallucinations. However, I have concerns that she exaggerates some of her symptoms of PTSD. She initially described her flashbacks as one of the reason she cannot care for her daughters, yet on the exploration, while frequent, her flashbacks are of relatively short duration, never lasting more than ten minutes at most. She described herself as having no friends or social contacts, but was called several times by friends during the assessment. She described her mood is constantly low, but at times she presented as animated, energised and even angry in a way that was not consistent with her description.
102. **Our client's current treatment needs and likely future treatment needs, and the consequences of interruption to this treatment.**
103. At present, she will be best served by supportive counselling, as she does not appear to be ready for trauma focused therapy. She was seen the counsellor but has stopped attending as she was in too much pain to go, so her treatment has already been interrupted and she does not appear motivated to resume it.
104. **Whether the trauma she has experienced and the mental health illness. She presents with, could impact her memory and ability to accurately and consistently recount her past experiences of abuse to authorities and professionals.**
105. I consider that the trauma she experienced, and the PTSD that she suffers likely to only have a limited effect on her recall. With support, she was able to give me a detailed and vivid account of the childhood sexual abuse she suffered, and she needed little prompting to give me details of the physical abuse she suffered from her husband or a previous partner in Jamaica or the rape by the taxi driver in Jamaica. However, her account of events following her arrival in the UK and her explanation of why her number was on G's phone was somewhat confused and confusing, but not in a way that is typical of someone whose memory is patchy due to the effect of trauma. If anything, I would have expected her recall of the traumatic events itself, i.e. the rape, to be less detailed than her recall of events after arrival, as it is common for traumatic events to be patchily recalled, in contrast to the events several hours before and after. While she gives an account of being in a highly traumatised state throughout the flight and afterwards, which is clinically plausible, I found it less clinically plausible that she could not recall any details at all of the flight, even with prompting, whereas she was able to give me a vivid account of the rape.
106. **Whether our client suffers from any mental health conditions that would impair her memory and/or lead to later disclosure of abuse she suffered.**
107. PTSD can affect memory for details of a traumatic event, and can affect concentration so that it appears that the memory is impaired for long traumatic events. However, she was able to give a very detailed and vivid account of all the traumatic events she has experienced in her life, and the symptoms. She described, and the way she presented were not consistent with a typical picture of late disclosure.

108. **Our client's fitness to give evidence in relation to her immigration appeal (which will require her to recount her early life in her home country, and the trafficking and sexual abuse. She was subjected to in Jamaica and the UK, including any traumas), both in court proceedings and in interview with either her solicitors and/or the Home Office, including:**
- 108.1 **What effect doing so will have on her existing mental health conditions (could they trigger deterioration) and any suicide;**
- 108.2 It is very likely to cause distress, but I do not think it is likely to lead to a clinical deterioration as such. I do not think that it is likely to lead to an increase in suicidal ideation.
- 108.3 **Whether her mental health conditions would impact on her ability to give a clear and coherent account of her past:**
- 108.4 With support, she was able to give a clear and coherent account of her past, although this did require patience and considerable clarification on the part of the interviewer. In view of the need for such support, I would consider her a vulnerable witness. She is likely to need questions presented in simple language; she may become distressed when questioned, and require breaks while giving evidence; it should also be borne in mind that she naturally expresses herself in Jamaican patois, and this may need to be clarified.
- 108.5 **Whether her mental health conditions would impact on her ability to make informed decisions regarding her immigration matters.**
- 108.6 I do not think that the symptoms of PTSD that she describes would impair her capacity to make informed decisions. But because of her negative statement of mind, in part attributable to the pain she suffers, she may choose not to engage with the process.
109. **Our client's capacity to instruct solicitors in regards to her case, in light of the symptoms being presented.**
110. Again, I believe that she is capable of instructing solicitors, provided she is given appropriate support to do so, but it may be that she does not fully engage with the process because she has not grasped the importance of doing so. I do not think that her symptoms in themselves are such that they would impair her capacity to instruct.
111. **An assessment of how our client's mental health condition may have impacted her ability to give a clear account of her past when she was interviewed for her asylum claim initially, on 13 January 2014 and again on 7 June 2016 and 8 November 2016.**
112. I cannot give a firm opinion as I can only speculate on her mental health at those times in the absence of contemporaneous assessments.
113. **Our client was invited for a further interview on 6 April 2018 and on 10 December 2018 but was unable to attend those interviews. Her representatives submitted to the Home Office that they were extremely concerned about the client being made to undertake further interviews and considered that she was too vulnerable to be made to go through the process again. We would appreciate the expert's view, insofar as it is practicable, as to whether she would have been fit for further interviews during this period.**
114. I am not in a position to form an opinion on this for the reasons outlined above.
115. **Any other information you think relevant.**
116. My overall impression of [NW], based on the history, she gave me, my mental state examination and the documents provided to me is that she had a difficult childhood marred by childhood sexual abuse from the ages of 8 to 17, which impacted on her ability to benefit from education. An incident when she was hit by the police when she was 9, has contributed to a lifelong fear of the police. Despite this difficult early start in life, she reports long periods of her life from the ages of 18 to her late 40s, when she was not unduly hampered by poor mental health, despite several traumatic events, including experiencing domestic violence at the hands of her first partner and finding out that he cheated on her; the death by drowning of a subsequent partner; the murder of her son; and domestic violence at the hands of her partner in the UK. She reports episodes of intense mental distress as a result of these, with what sounds like a severe grief reaction after her son's murder. However, she also reports that she 'got over' all of these to the extent that she was able to pick up the threads of her life, even if she still becomes

- severely depressed when she thinks of the loss of her son and the abuse she had suffered, but again, not in a way that has, till her rape and arrest, impacted upon her daily functioning. At present, her daily functioning appears to be poor, largely because of pain and low mood, the latter being connected with her immigration situation and having served a prison sentence, rather than because of her symptoms of PTSD.
117. There is no doubt that she has developed PTSD as a result of the rape by the taxi driver in Jamaica, but as stated above, her overall low mood is largely a reaction to the situation she now finds herself in. i.e. she has a conviction and faces deportation, and is in constant pain. In passing, I note that she no longer takes painkillers regularly as she does not like the side effects, but has not raised this with the GP.
 118. However, although she currently describes symptoms of PTSD, such as flashbacks, psychological arousal, dysregulated sleep and appetite and avoidance of reminders of past violence, including rape, the pain that she attributes to damaged nerves as a result of the taxi drivers rape appears to cause her to suffer more than her psychological symptoms. It is well recognised that subjective experience of pain and disability is affected by emotional state, and because she believes this pain to be as a result of an injury during her recent rape (medical notes do not show that she has as severe an injury as she believes she has) she feels the pain more keenly; in other words, there is a psychosomatic component to this pain in that her subjective experiences affected by her beliefs about its traumatic origin.
 119. As a final note, I was unable to clarify certain aspects of her history, in particular why she no longer lives with her husband and daughters. She cites domestic violence, but by her own account, after he went on an anger management course, he was not violent again and she took him back. She became quite aroused and indignant when I tried to explore the exact sequence of events after her arrival in the UK, and in particular the evidence presented in court that she had made contact with G prior to that time.
- .
42. There is also within the appellant's appeal bundle evidence from her GP, including a letter dated 16 April 2019, stating the appellant is suffering severe anxiety with depression who is receiving prescriptive medication and who has been referred to a psychologist for assessment. The GP states that the appellant has been offered a higher level of psychological input due to her complex mental health needs and that she is known to be suffering from knee pain. A further letter from the GP dated 24 July 2018 indicates the appellant was due to start treatment by way of psychological therapy that day of between 6 and 12 sessions of depending upon her needs. There is also within the bundle copies of the appellant's medical records.
 43. Evidence of the nature of the appellant's family and private life in the United Kingdom includes confirmation of the grant of ILR on 18 January 2006, following the grant of leave to remain as a partner ending on 22 January 2006, copies of her marriage certificate and birth certificates.
 44. The appellant has also worked and studied in the United Kingdom and there is a reference to her attending church here, having lived in the United Kingdom for 20 years, brought the family up, worked and studied here.
 45. Although the appellant claims she will be at risk of exploitation and poverty if returned to Jamaica, this appears to be predicated on the claim she will not be able to access the WPP, one stated aim of which is to ensure those on it do not suffer less in economic and social terms than they would if they had not entered the programme.

46. In relation to the appellant's family life, the appellant is divorced from RW but has two children, OSW born on 18 October 2002 , who is now an adult, and ZW born 22 October 2008 who, at the date of the hearing, was still a minor.
47. In considering very compelling circumstances in the refusal letter, which is dated 1 May 2019 and therefore reflects the ages of the children at that date it is written:
 116. You claim to have family life in the UK with two children. You have provided their details as follows:
 - OSW, British-born in the UK on 18 October 2002, and
 - ZW, British, born in the UK on 22 October 2008.
 117. The Home Office's duty to safeguard the welfare of children as set out in section 55 of the Borders, Citizenship and Immigration Act 2009 has been taken into account in the best interests of your children have been a primary consideration in making this decision. However, the best interests of the child are not the only, or paramount consideration, and must be balanced against other relevant factors, including the public interest in deporting foreign criminals, to determine whether your deportation is proportionate. Paragraph 398 399 of the Immigration Rules take into account that a child's best interests are capable of outweighing the public interest and set out in what circumstances that will be the case.
 118. It is noted that both your daughters, O and Z, now aged 15 years old and 10 years old, were born in the UK and have lived in the UK since birth. They are British citizens as their father is British and the younger child, Z was born after you are granted indefinite leave to remain in the UK.
 119. It is also noted that you have adult children in Jamaica and that your son was tragically shot in Jamaica at the age of 24.
 120. It is noted that O and Z remained in the care of their father and paternal grandmother during the time of your imprisonment and that following your release from prison, your daughters remained in the care of their father. It is also noted that you resumed contact with your daughters and your daughter wrote during your incarceration, stating how much she and her sister missed you.
 121. It is accepted, you have a relationship with your daughters, O, 15 years old and Z aged 10 years old. However, it is noted that you were sentenced to 4 years imprisonment and therefore spent a long time during their young lives, in prison. It is considered that their father is their main carer and that the children could remain in the UK in the care of their father and grandmother. It is also considered that O and Z are at ages where they could visit you in Jamaica and also to maintain contact through modern media.
 122. In order to outweigh the very significant public interest in deporting you, you would need to provide evidence of a very strong Article 8 claim over and above the circumstances described in the exceptions to deportation. No such evidence has been provided.
 132. Therefore, having considered the facts of your case, it is not accepted that there are very compelling circumstances which outweigh the public interest in seeing you deported.
48. The appellant in her evidence describes both girls continuing to live with their father as she was in no state to look after them herself, but that she sees them every week and they remain close. It was not disputed before the Upper

Tribunal that family life recognised by Article 8 exists with Z and O as a result of their biological relationship of mother and daughter, demonstrated by way of ongoing contact. It is not made out that if the appellant is deported the children will have to leave their current accommodation or caring arrangements. Although it is accepted there will be an emotional impact upon the children if their mother is deported, and that the appellant states Z in particular is terrified of her mother having to return to Jamaica in light of what happened to her in the past, it is not made out the best interests of the children are the determinative element in this appeal.

49. It is not made out that work could not be undertaken with the children by those within the family or professionals, and particularly by the appellant on return, to reassure the children that the difficulties experienced in the past recorded in the evidence have not re-occurred.
50. I find the children's best interests are to be able to maintain the current contact they have with their mother and to live with their father. Their ability to remain with their father is a consistent element which continued even though their mother was in prison.
51. The reference to visits to Jamaica has to be considered in context. Once the appellant has been taken into the WPP, it will no doubt be a condition of that scheme that she does not disclose her location to anybody outside the scheme, but it is not made out she will not be able to maintain indirect contact with the children or anybody else in the UK even if she is within the scheme, provided that in doing so she does not breach of the terms of the scheme, by disclosing her location. It is accepted that that may become an issue if the children propose to visit her in Jamaica, but it was not made out that appropriate arrangements could not be made with the assistance of those administering the WPP to enable such visits to occur. It was not made out that same are likely to occur in the near future in any event, on the evidence.
52. Whilst I accept it may be harsh, I do not find it has been established that the effect on the minor child Z has been shown to be unduly harsh, when considering the child as an individual, on the evidence that has been provided.
53. I also accept the appellant as a private life in the United Kingdom, where she had lived lawfully for about 20 years, where she would have formed ties in the workplace, the neighbourhood, and friendships, which will be disrupted if she is deported from the United Kingdom. Whilst it is accepted that within the WPP the appellant will not be able to freely associate, such as to reinstate ties with individuals in Jamaica to the same extent as she has been able in the United Kingdom, it is not made out the appellant will not be able to reform and enjoy a private life with new friends and associates. The appellant has experience of living within Jamaica and will not be an outsider within that society. She herself refers to having older daughters in Jamaica and although she could not reveal to them where she lives this indicates that she is not so separated from society in Jamaica that it would be unreasonable and disproportionate to expect her to return there.
54. In summary I accept the appellant was lawfully resident in the United Kingdom for a substantial period of time, that he had an established private and family

life in the UK and is socially and culturally integrated, but do not find that to be the determinative factor although I accept it is a further piece of the balance sheet exercise that needs to be conducted.

55. I also take into account the evidence regarding the appellant's functioning in the reports. I note the psychosomatic element to the appellant's pain connected with the trauma of rape and do not undervalue the potential subjective impact upon her of facing the prospect of being returned to Jamaica, the country where the rape occurred.
56. What is not established, however, is that there is a real risk of the appellant being subjected either to the abuse she suffered as a child, the abusive relationships she has endured in marriage, or finding herself in the specific circumstances she was in before which made her vulnerable to the exploitation and the rape in connection with the desire to coerce her into transporting the drugs. This was a situation specific scenario.
57. Ms Thullesen in her report at [122], dated 5 June 2015, writes:

122. It is my professional experience that the recovery process of survivors of trafficking is usually complex and long term. This is not only due to the serious and degrading impact of trafficking experiences, but can also relate to a woman's personal history. As discussed, it is evident from [NW] account that having been subjected to oppression and domestic violence prior to trafficking is likely to have left her vulnerable to exploitation. Taking her current presentation and background evidence into consideration. I would furthermore suggest that [NW] is at significant risk of further exploitation, whether from her previous exploiters, her husband or other members of the community.
58. I note that the report is now six years old. The evidence shows the appellant has had access to medical care and support to assist with her needs. It was not made out that any further assistance she may require will not be available in Jamaica within the WPP or elsewhere to meet any of her ongoing needs relating to the accepted past trauma. The author also seems to equate risk to NW's vulnerability, which may be the case if she was returned to live alone within Jamaica, but if she was within the WPP, she would not be as isolated or vulnerable as may be suggested.
59. The argument on the appellant's behalf that risk of exploitation in Jamaica will increase as the appellant faces a real risk of poverty and will have few resources fails to factor in to account the evidence relating to the WPP, that an individual will not be permitted to fall below the standard of living she will enjoy outside the WPP. I do not find the appellant has made out she faces a real risk of poverty in Jamaica as a result of a lack of resources.
60. The relevant provisions of the immigration rules are set out above.
61. Whilst it is accepted the appellant has served her sentence and is now assessed as presenting a "very low" risk of reoffending and related harm, rehabilitation cannot in itself constitute a very compelling circumstance and the cases in which it could make a significant contribution are likely to be rare- see Velasquez Taylor v Secretary of State for the Home Department [2015] EWCA Civ 845 [§21].
62. I note however that the Court Appeal did treat the issue of rehabilitation as a relevant factor capable of attracting some weight in HA (Iraq) v Secretary of

State for the Home Department (Rev 1) [2020] EWCA Civ 117 [132-142], and so have considered this element as part of the overall cumulative assessment of the matters relied upon by the appellant when assessing whether they outweigh the strong public interest in deporting a foreign criminal sentenced to 4 years imprisonment for drug related offences.

63. As the appellant was sentenced to 4 years imprisonment she is required to demonstrate “very compelling circumstances over and above those described in Exceptions 1 and 2”: s117C(6) NIAA 2002.
64. Those exceptions, which the Secretary of State accepts if met will outweigh the public interest in deportation are as follows:

Exception 1 applies where—

- (a) C has been lawfully resident in the United Kingdom for most of C's life,
- (b) C is socially and culturally integrated in the United Kingdom, and
- (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5)Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6)In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

65. I have considered the arguments relating to the appellant relative to her ability to satisfy either Exception 1 or 2 but whilst accepting it would be harsh for Z and other family members to remain in the United Kingdom if the appellant is deported, I do not accept it has been established that it would be unduly harsh. I also do not accept it has been shown there are very significant obstacles to the appellant's reintegration into Jamaica as it has not been shown she will not be admitted to the WPP and be able to live as near a normal life as she can, albeit within the confines of that scheme. Those matters the appellant relies upon is in support of the claim as very significant obstacles have not been shown to be sufficient to enable the appellant to discharge the burden of proof, to show there are such obstacles , having conducted the broad evaluative judgement – in accordance with the guidance provided by the Court of Appeal in *Secretary of State for the Home Department v Kamara* [2016] EWCA Civ 813. It is not made out the appellant will be an outsider such that she will be unable to integrate into society in Jamaica. The appellant's ability to meet either or both s117C Exceptions in conjunction with other factors collectively is not made out.
66. This is a case, however, in which the appellant has been sentenced to 4 years imprisonment and so even if it was unduly harsh upon Z for her mother to be deported or they were very significant obstacles to reintegration, the appellant is

required to demonstrate very compelling circumstances over and above those described in Exceptions 1 and 2.

67. The seriousness of the offence is relevant to whether there are very compelling circumstances as found in MS (s.117C(6): "very compelling circumstances") Philippines [2019] UKUT 122 at [49-52] and Secretary of State for the Home Department v PF (Nigeria) [2019] EWCA Civ 1139. The issues the appellant relies upon in support of her case in this jurisdiction as warranting a decision permitting her to remain in the United Kingdom will have all formed part of the mitigation before the Crown Court her advocate during the course of the sentencing exercise. The sentencing remarks show this to be the case and I must not overlook the fact the appellant pleaded guilty, a recognition of her culpability for the offence to the higher standard of proof required by the criminal law.
68. I do not underestimate the impact upon anyone suffering abuse as a child then and in later life, which although it ended when the appellant was 16 years of age is likely to have had a lasting effect upon her. Similarly, the abusive relationships she entered into as an adult and the rape in Jamaica as noted above.
69. The error of law hearing sets out the sentencing remarks but is worth repeating one specific paragraph which is in the following terms:

"It has been said on your behalf that you committed this crime because you are effectively forced in a way that fall short of affording you with the defence of duress. You have mentioned a number of times to various authorities that you were raped while in Jamaica and that that was the reason why you were then forced to... or that is linked to the decision you made to bring the drugs back into the country. As against that I have also been told that there is telephone evidence and I have seen it myself that you are contacted by G on a number of occasions by telephone in December, the month before you went out to Jamaica. I cannot decide on the information I have the truth or otherwise of what happened to you in Jamaica as you allege, although I note that your application to be considered as a victim of trafficking was rejected. I am prepared to accept that you were used by others more capable and sophisticated than you and I have no doubt that you were chosen as someone easily persuaded, no doubt with the temptation of financial reward to bring drugs back into the country.

70. It is accepted there has since been a positive finding in relation to the appellant being trafficked, but the Modern Slavery Act 2015 is only applicable to offences committed after 31 July 2015, and the defence provided by section 45 of that Act was not available to the appellant on the facts of this appeal.
71. There is no indication the appellant has sought permission to appeal to the Court of Appeal (Criminal Division) to secure a finding that her conviction is unsafe on the basis of the law as it stood as the date of the commission of the offence in 2014 following the decision of the Competent Authority. Although whether that would have reasonable prospects of success may be debatable.
72. It is the conviction leading to a sentence of 4 years imprisonment which is the basis of the decision to deport the appellant from the United Kingdom. On the available evidence, even with the positive finding of the Competent Authority that the appellant is a victim of trafficking (which is not an absolute defence) it would still be necessary for the appellant to establish that a reasonable person,

with the same characteristics, would have no realistic alternative to doing that act.

73. The appellant fails to establish, even taking into account the appellant's personal history, the history of childhood abuse and that in later adult life, as revealed in the evidence, and the events in Jamaica in which the appellant claims to have been raped and robbed of her cash, that she could not have reported what had occurred and what she was being asked to do to the authorities at the airport in Jamaica who would have been able to provide her with protection which would have meant the offence of importing the drugs into the UK would not have occurred. I do not find the appellant has established that a reasonable person with the same characteristics did not have a realistic alternative in the situation faced by the appellant.
74. This aspect was also considered by the Sentencing Judge, albeit in a different form. Although at that time there was no positive finding by the Competent Authority the factual basis on which that later positive finding was based was communicated to the Crown Court as part of the appellant's mitigation. The decision of the Competent Authority is recognition of the fact that the factual matrix relied upon by the appellant is sufficient to satisfy the definition of a victim of trafficking as set out in the relevant Convention. It does not add anything to the factual matrix relied upon by the appellant before the Criminal Court.
75. Based upon those facts, the Sentencing Judge makes a specific finding that they do not afford the appellant the benefit of the defence of duress to the charge of importing the Class A drugs to the United Kingdom. This is an important finding as the Court of Appeal, in R v Graham, 74 Cr.App.R. 235, when considering the defence of duress, posed the following two questions in relation to duress:

Was the Defendant impelled to act because, as a result of what he reasonably believed the coercer had said or done, he had a good cause to fear death or serious injury?

Have the prosecution proven that a sober person of reasonable firmness, sharing the Defendant's characteristics, would not have responded in the same way?

76. The second of these questions, which was clearly answered in favour of the prosecution, reflects the theme running through the question posed above, which is that to be found in section 45 of the Modern Slavery Act 2015 which is the provision that does provide a defence to those charged in criminal proceedings if the commission of the criminal act is as a direct result of their having been trafficked, and it being established that they could not reasonably have acted in any other way. The finding of the Crown Court is that, notwithstanding what occurred to her in Jamaica, it was still appropriate to sentence the appellant to 4 years imprisonment.
77. On the other side of the balancing exercise, a powerful factor in favour of the Secretary of State is the legitimate public interest in deterring serious crime and

in sending a powerful message to foreign nationals who might be minded to commit crimes involving drugs. The weight to be given to the importance of deterring others from committing such crimes is a matter that cannot be ignored and is considerable.

78. Having undertaken the necessary holistic assessment of all the relevant facts and having undertaken a balancing exercise, taking into account those matters relied upon by Ms Harvey on the appellant's behalf, and taking into account the submissions made by Mr Tan on behalf of the Secretary of State, I find it has not been made out, despite the appellant's tragic history, that there does exist very compelling circumstances over and above those described in Exceptions 1 and 2 of section 117 C of the Nationality, Immigration and Asylum Act 2002.
79. I have not interpreted the phrase "very compelling circumstances" literally; adopting the guidance provided by the Court of Appeal that it just means there are circumstances that are more compelling than the existing exceptions Akinyemi v The Secretary of State for the Home Department [2017] EWCA Civ 236 (04 April 2017) at [14] considered. Whilst the appellants circumstances are compelling, they are not compelling enough.
80. I have also taken into account the further guidance from the Court of Appeal that the use of the word "Very" imports a very high threshold. "Compelling" means circumstances which have a powerful, irresistible and convincing effect - see Secretary of State v Garzon [2018] EWCA Civ 1225. I do not find the appellant has established that the circumstances she relies upon meet this threshold.
81. I have also taken into account that the public interest "almost always" outweighs countervailing considerations of private or family life in a case involving a 'serious offender'. The appellant clearly satisfies the definition of being a serious offender. Hesham Ali v Secretary of State for the Home Department [2016] UKSC 6 at [46] and KE (Nigeria) v Secretary of State for the Home Department [2017] EWCA Civ 1382 at [34] considered.
82. I have undertaken the necessary holistic evaluation of all relevant factors including those which might have already been assessed in the context of the 'exceptions' and despite it being an extremely demanding test, have nevertheless undertaken the required wide-ranging examination of the facts and assessment exercise so as to ensure that Part 5A produces a result compatible with Article 8. NA (Pakistan) v SSHD & Ors [2016] EWCA Civ 662 and MS (s.117C(6): "very compelling circumstances") Philippines [2019] UKUT 122 - including application of the principles in the Strasbourg authorities considered.
83. Having done so, I find the Secretary of State has established that it is proportionate in all the circumstances for the appellant to be deported from the United Kingdom, even in light of the adverse impact upon her and the members of her family who have expressed their personal views, on the evidence that has been provided and taken into account in this appeal. I find that in all the circumstances the appellant's case is just not strong enough to overcome the very strong public interest in her deportation.

Decision

84. I dismiss the appeal.

Anonymity.

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

86. I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated 6 August 2021

Annex A

Error of Law finding:



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04671/2019

THE IMMIGRATION ACTS

Heard at Manchester (via Skype)
On 28 January 2021

Decision promulgated

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NMW

(Anonymity order made)

Respondent

Representation:

For the Appellant:

Mrs Aboni Senior Home Office Presenting Officer

For the Respondent:

Miss A Harvey instructed by Kesar & Co Solicitors (Bromley)

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Cockerill who allowed the appeal on asylum grounds as an exception to the order for NMW's deportation from the United Kingdom.

Background

2. NMW is a citizen of Jamaica born on 5 November 1967 who is the subject of an order for her deportation as a result of her conviction by the Croydon Crown Court, on a guilty plea, and sentencing on 18 September 2015 for committing the offence of importing Class A drugs into the United Kingdom from Jamaica.
3. In his sentencing remarks Mr Recorder B Kelleher stated:

NW, you are 49 years of age and you must be sentenced today for importing a large amount of cocaine into this country, a kilo almost in weight. You know, I am sure and always have done the damage that cocaine causes to our society. It turns people into addicts particularly when converted into crack cocaine and that ruins their lives and the lives of their families. It also ruins the lives of people who are the subject of crime, committed by people addicted to drugs who need to find payment for it. That is why the courts in this country punish importers of drugs severely.

You travelled out to Jamaica where you have family and where you were originally from in January of last year and you returned on 21st January with a kilo of cocaine concealed in your bra. You were clearly accompanied by a conspirator in this offence, named [G]. He denied the charge when he was arrested, fought the matter at a trial and was sentenced - I am told in his absence because he has absconded - to 13 years imprisonment. The Prosecution say - and I accept - that he was clearly the prime mover in this crime and his role I have no doubt was to ensure that you passed through Customs and delivered the consignment of cocaine safely to people for whom he was working.

It has been said on your behalf that you committed this crime because you were effectively forced in a way that falls short of affording you with a defence of duress. You have mentioned a number of times to various authorities that you were raped while in Jamaica and that that was the reason why you were then forced to... or that is linked to the decision you made to bring the drugs back into the country. As against that I have also been told that there is telephone evidence and I have seen it myself that you were contacted by [G] on a number of occasions by telephone in December, the month before you went out to Jamaica. I cannot decide on the information I have the truth or otherwise of what happened to you in Jamaica as you allege although I note that your application to be considered as a victim of trafficking was rejected. I am prepared to accept that you were used by others more capable and sophisticated than you and I have no doubt that you were chosen as someone easily persuaded, no doubt with the temptation of financial reward to bring drugs back into this country.

Bearing in mind the amount that you brought, applying the guidelines as I must, there can be no doubt that this is a Category 2 case. The question then is whether I consider that you have had a lesser role or a significant role. You are a 45-year-old woman with no previous convictions. You have lived in this country for a long time and you have children both here and in Jamaica. I have come to the conclusion that whilst many of the factors listed in the lesser role definition of the guidelines apply to you or may apply to you, I also conclude that you were, to some extent at least, motivated by financial gain in this offence. I can see no other reason why it occurred. That said, I conclude that the correct approach is to fix a starting point in this case that falls between the two categories, that is to say at the lowest end of significant role and just below the higher end of lesser role. That means the starting point that I consider appropriate in this case is one of six years and six months imprisonment.

You will, however, receive full credit for your guilty plea and I therefore reduce the sentence by a third. Given the other mitigation advanced on your behalf I am just persuaded to reduce that sentence slightly further and so the sentence I pass ultimately is one of four years imprisonment. That means that you will serve half of that sentence in custody after which you will be eligible for release on licence. That will not bring the sentence to an end. If you commit a further offence during the licence period or indeed before the end of the sentence you could be recalled to prison to serve out the remainder of the sentence in addition to any new penalties you receive.

There will be a surcharge payable which will be in the sum drawn up by the court. This is not a case I think where the Crown Court Charges applies. I make no order as to costs or Proceeds of Crime confiscation. The sentence is one of four years imprisonment.

4. Having considered the documentary and oral evidence the Judge sets out her findings of fact from [68] of the decision under challenge.
5. The Secretary of State had issued a Section 72 certificate which, if it stood, excluded NMW from making a claim under the Refugee Convention. The Judge found that the presumption that NMW constituted a danger to the community had been rebutted. At [68] the Judge writes *"the point was really conceded by the respondent that there had not been a sufficient analysis of the potential future risk posed by this appellant"*. There is no challenge to this aspect of the decision.
6. Between [71 – 78] Judge writes:

71. For reasons that I shall express in this document, this case is essentially about asylum. If the appellant does not succeed in relation to asylum, then frankly she is not going to succeed on other bases. I have provided a fairly full narrative of what was said to have taken place in Jamaica. What I concentrate upon is the fact that a good deal of what the appellant has said took place there, including the violent act of rape upon her and being coerced into transporting something which was patently heavy in a bra that was provided to her by her assailants does chime entirely with what the acknowledged expert comments is known about criminal gang activity in Jamaica. In short, the description given by the appellant is quite consistent then with what is known about how sophisticated criminal gangs operate to recruit mules to transport drugs for them from A to B. It is that evidence which in my judgement is valuable and serves to underscore what I find to be essentially the truthfulness of the appellant's main narrative.
72. Pausing there, there are some features to the appellant's account which have caused me some trouble and disquiet. I do not consider that she is a wholly reliable and truthful witness but I make the point as plainly as I can that as regards the core elements as I see them she has basically given a true narrative.
73. The point which is less than clear is really what sort of contact there was between this man G and the appellant before she went to Jamaica. If there was telephone contact, and that of course was noted by the sentencing judge in the criminal matter, then that would undercut any suggestion this was some sort of chance matter where she was picked out at random. There appears therefore to have been some element of planning at least from G's point of view.
74. One other feature which I do note is that whilst the Learned Judge thought that financial gain was a likely motive for the appellant and in the ordinary run of events that would seem entirely natural, what is strange about this case is of course that the appellant was someone who had just enjoyed this considerable winning at bingo and so of all times in her life it was probably at the time when she least needed extra money. However, people

can of course still be tempted by the prospect of some easy gain as they see it, but in this particular case I do not categorise the appellant's actions in this way.

75. For the reasons I hope will become clear, my own assessment is that the appellant had thought, perhaps rather innocently and ingenuously, that this person who has been described as M was showing some interest in her because she had had these winnings and he wanted her to back some music business that he was interested in. It seems that that particular man was one and the same as G, although I accept the appellant may not have known that earlier on.
 76. The incident of the appellant being offered this taxi ride in my judgement is a wholly credible one. I accept that she went in this taxi with her daughter and then a diversion took place and of course she was then subjected to this violent rape. It was something that has affected her psychologically and I have made a clear note of a number of deeply disturbing experiences which the appellant has had in her life. She has been repeatedly the victim of abuse and violence. I find that this act of rape was one designed to frighten her and to coerce her therefore into carrying this unlawful drug into the United Kingdom in the bra that was provided. Really she had no alternative but to comply knowing that those that had assaulted her and had acted in that violent manner towards her knew where she was living and they knew about her family.
 77. The situation looking ahead then is that the appellant who pleaded guilty would be seen as someone who had informed on Mr G, who had escaped justice so far, although 13 years imprisonment was imposed in his absence. I am deeply concerned, particularly given this particular appellant's background and the sort of experiences which she has had in her life so far, that she will be extraordinarily vulnerable to attack if she went back to Jamaica. This was no amateur gang involved in this operation. The value of the drugs that she herself transported was £180,000 and had a considerable level of purity. It should not be under estimated at all the extent to which that criminal gang can go if people do not comply with what the gang wants.
 78. I consider that the appellant has an entirely justified subjective fear of Mr G and his criminal associates. The very fact that she was subjected to being raped emphasises in the most appalling way the preparedness of these people to harm her. She can rightly feel fearful for her own safety in the future. There is no realistic prospect of the Jamaican police authorities coming to her aid at any place in Jamaica. It is this gang that has I am afraid the power and in my judgement although the appellant may have thought that she was involved in something rather more innocent at first, she was drawn into this criminal operation, used as a mule if returned to Jamaica. She does make out her case to the lower standard, which is that of real risk, given her psychological vulnerability and knowing as we do now what has happened to her so far. She is going back, if she goes to Jamaica, to a place where people who have been close to her have been murdered and of course she herself has been raped.
7. The Secretary of State sought permission to appeal on two grounds which was granted by a judge of the Upper Tribunal on a renewed application, the operative part of the grant being in the following terms:
1. The judge arguably erred by failing to consider whether internal relocation would be safe and reasonable for the appellant. Arguably, therefore, there is merit to the ground of appeal submitting that the judge erred by failing to consider *AB (Protection - criminal gangs- internal relocation) Jamaica CG [2007] UKAIT 00018*.
 2. I do not restrict the grounds that can be argued but notes that the NRM decision was before the Tribunal (see page 73 of the appellant's supplementary bundle).

8. In relation to the second ground referred to in the grant of permission to appeal, there was in NRM's documents bundle copies of two negative decisions of the NRM that NMW is not a victim of trafficking. The initial decision to this effect had to be reconsidered but the negative decision upheld.
9. In her skeleton argument for the purposes of these proceedings Ms Harvey referred to a positive NRM decision which post dated the Judge's decision which had not been seen by either Mrs Aboni or the Tribunal. A copy of the letter advising NMW of the outcome of the further reassessment of the merits of the trafficking claim was therefore provided by Ms Harvey, the relevant section of which reads:

"We found the following types of exploitation occurred:

It is accepted the PV was a victim of modern slavery in Jamaica and the United Kingdom in between 12/2013 and 21/01/2014 for the specific purposes of forced criminality and a victim of modern slavery in Jamaica between 1975 and 1983 (from when the PV was aged 8-9 until 15- 16) for the specific purposes of sexual exploitation."

10. Mrs Aboni accepted that in light of this document the second ground of challenge to the Judge's decision fell away, based as it was upon the assertion that the Judge had failed to consider the negative conclusions of the Competent Authority when finding that NMW's claim as to events in Jamaica was credible.

Error of law

11. The one remaining issue is that relating to the alleged failure of the Judge to consider the country guidance case of AB.
12. It is not disputed that reference was made to that case in the skeleton argument of Ms Harvey that was before the Judge. In relation to the case, it is written:

57. The Home Office report cites at 2.5.2 the country guidance case of **AB (protection-criminal gangs-internal relocation) Jamaica CG [2007] UKAIT 00018**, which, while old has not been superseded. It holds:

If a person is of interest or vulnerable to an OCG [organised criminal gang] because of their particular circumstances, decision-makers must establish that an OCG's behaviour and capabilities pose a real and serious threat to the person which amounts to serious harm.

13. In the section of the skeleton argument headed 'State Protection' it is written between [60 – 65]:

60. In **AB (Jamaica)** the tribunal held:

5. The immigration judge went on to find that the appellant had been persecuted for a Convention reason, "namely women who are perceived as informers and who are unprotected by the state." There is, she stated, "an insufficiency of protection in Jamaica for such a social group".

...

Protection against a criminal gang violence

151. We turn to consider whether, even though generally willing and able to protect its citizenry, the Jamaican authorities can protect persons who face a real risk of persecution or serious harm or treatment contrary to Article 3 in the form of targeting by criminal gangs. Mr Sobers' reports say they cannot.
 152. So far as persons facing such targeting who live within the garrison communities to be found in the KMA, we think the evidence Mr Sobers presents, and that contained in the background materials, is strong. The resources that criminal gangs can draw on in order to carry out violence on their own turf or in other gang - controlled areas is well illustrated in the 2005 US State Department Report which referred to the "well armed gangs" trafficking in narcotics and guns "control[in] many in the city communities". Such gangs are said to be "often... equipped better than the police force and [to have] conducted coordinated ambushes of joint security patrols" (COI.8.08). Within the garrison communities gang leaders (sometimes in alliance with local party leaders) can often act with impunity, although they have to vie for power with other "dons" or gang leaders. Whilst the authorities through Operation Kingfish and other initiatives appear to be able to disrupt these gangs, the evidence does not show that they have dismantled them: within these areas the gangs appear to be still largely in control.
 153. As far as the ability of these gangs to operate outside the KMA is concerned, however, the evidence is far from being one way. [...]
 154. (in our view this evidence also cast considerable doubt on whether informers as a class can be seen as unable to receive effective protection. If they are able in significant numbers to enter this programme, then it would appear in broad terms that their protection can be secured. However, we lack evidence on this and the precise issue of protection for informers is not raised by the particular facts of this case.)
 155. Nevertheless, of this programme, there does appear to be a protection gap. For persons targeted by gangs who are not reasonably likely to be admitted into this programme, we think the evidence adduced by Mr Sobers and others strongly points to them not being able to secure protection through the range of normal protective functions carried out by the authorities - unless they can internally relocate without being a real risk of detection by their persecutors.
14. It is important to read the case of AB as a whole. The above quotes contained in Ms Harveys skeleton argument are in the terms made out but follow a section of the judgement in which the Tribunal take issue with the weight that could be given the evidence of Mr Sobers resulting in their finding at [150]:
150. In short, the evidence does not bear out Mr Sobers' contention that there is Jamaica a general insufficiency of state protection. On this matter we reconfirm the guidance given in JS.
15. The Tribunal in AB also considered the issue of internal relocation before concluding:

Internal relocation

157. The language of Mr Sobers' reports does not appear to wholly rule out that internal relocation may be an available option for some individuals (e.g. those with wealth, see e.g. paragraph 134 of his March 2006 Report). However for the most part he dismisses it in view of the following: the fact that Jamaica is a relatively small island; that there is a reasonably well

developed network of roads and telecommunications; that persons relocating will be seen as stranger who stand out; and that there is a lack of a social welfare safety net. Some of these factors go to the issue of continuing risk of persecution, some to the issue of reasonableness.

158. As regards the former, Mr Sobers considers that the first three factors mean that it would be extremely difficult for a person who is targeted by a gang or a “persistent abuser” to remain undetected. We do not consider that this view is borne out by the evidence. Whilst that evidence does bear out that the criminal gangs, at least the major ones, are well organised and have considerable resources as well as networks, these appear to be very largely concentrated within their own areas or “turfs”. There is nothing at all to suggest that they keep records or have any system of information-storing or information-sharing beyond ad hoc discussions. It is important also to bear in mind that criminal gangs cannot be considered as some kind of collective monolith, because we are told that much of their time is spent fighting each other for control of the markets in drugs, guns and prostitution. Even assuming that in every part of Jamaica there are persons who have connections with or work for organised gangs, the evidence does not show that such persons are generally familiar with or know who the sought enemies of these gangs are. In our view it is not reasonably likely they would be told to look out for specific individuals except in high profile cases. Further it is clear in our view that the day-to-day world of criminal gangs is constantly changing with those involved in gangs reacting to opportunities and events taking place around them.

159. We do not consider that the evidence even establishes that where criminal gangs have particular enemies whom they mark out for reprisal, they are generally able to track them down and carry out their revenge. We revert here to the facts and figures we have about the Witness Protection programme. On Mr Sobers’ own figures, some 1,000 people have been assisted by this programme since 1995 and he does not dispute the government’s claim that no one has been “lost” to the programme. It is noted that sometimes those who go into the programme are placed abroad, but this is not described as the norm. Not only are these facts indicative that witnesses can be protected, but it also suggests that a significant number of persons at risk of reprisals have been able to relocate within Jamaica, without being detected or at least subject to reprisal.

160. Mr Sobers places emphasis upon persons who move into communities for the first time being seen as strangers and standing out. The Amnesty International reports have emphasised that the range of factors of relevance would be whether persons would be identified as JLP or PNP by reference to their home area. However, even if these observations are correct, we do not find that such visibility is reasonably likely to result in their identity and whereabouts being relayed back to criminal gangs in any organised way. There is simply no evidence to suggest the existence of infrastructures of this type.

161. We accept Mr Sobers’ evidence about Jamaica’s developed system of transport networks and telecommunications and the fact that Jamaica is a relatively small country. At the same time, its size is not significantly different from a number of countries where UNHCR and national courts and Tribunals have accepted that internal relocation may in at least a range of cases be viable (e.g. Kosovo, which has an area of 5,000 square miles). Significant parts of Jamaica are known as “the country” and are markedly rural.

162. We accept that the considerations which Mr Sobers highlights are very relevant factors when examining the viability of internal relocation in any particular case, but so too, in our view, must be the question of the accessibility to any particular individual of the Witness Protection programme. It seems to us that it will be very important in Jamaican cases concerned with protection against a real risk of serious harm from criminal gangs, to first of all analyse whether the individual concerned will be able to receive assistance from this programme. Assuming it is decided a person on return will be admitted into this Programme, then we consider that the evidence overwhelmingly indicates that they will thereby be able to avoid any real risk of detection: we remind ourselves that no one has been “lost” to the programme so far.

So far as the likely economic and social conditions faced by those within the Programme, whilst we do not rule out that unusual individual circumstances may make it unreasonable for them to be admitted into the programme, there is nothing to suggest that programme participants are generally exposed to destitution or unduly harsh living conditions.

163. When we refer to persons being “admitted” into the programme, we do not believe that the test can be what the individual’s preferences are or whether there are hardships that will be involved (e.g. having to live for at least some period of time in difficult circumstances). The test is simply whether, if they sought access to it, they would be admitted to it.

164. What, however, would be the position of a person who would not be admitted to the Witness Protection programme? Here the first question to be asked is whether it is reasonably likely they will be traced and targeted in their new place of residence. As already indicated, we do not consider that, except in high profile cases, such persons would face a real risk of being detected by criminal gangs based within the KMA or other inner-city urban areas. But each case will turn on its own facts.

165. Even if it is decided there is no real risk of such detection, a person may still face a real risk, by virtue of it being unreasonable or unduly harsh for him to relocate: see paragraph 339O of HC395 as amended. Here, however, it must be borne in mind that the criteria identified by the House of Lords in Januzi are stringent. It will not suffice that there may be a lack of social welfare support combined with other difficulties: what matters is whether such a move will result for the individual in question in destitution or other forms of violation of a nonderogable human right..

166. We would re-emphasise at this point that what we have just delineated about insufficiency of protection for those unlikely to be accepted into the Witness Protection Programme, only becomes germane in a case where it has first been established that a criminal gang’s behaviour poses a real and serious threat to an individual. In order to show that such a threat exists, it will not suffice to show that a criminal gang dislikes an individual or even that it has made threats of violence: it has to be shown that the gang has a real intent to inflict the threatened serious harm and to carry out its threats. We shall return to the importance of these considerations when we turn to examine the appellant's particular circumstances.

16. I find Ms Harvey’s submission that NMW will not be admitted to the Jamaican witness protection programme, as she is not a witness to any crime in Jamaica, not made out. NMW is a witness to the attempted importation of drugs to the UK by G, to being trafficked by a gang for such purposes by the use of violence, and of being a victim of rape, all of which contravene the criminal law of Jamaica. There is no evidence of an approach being made to the authorities in Jamaica or of their refusing to admit NMW to the programme.
17. In relation to the Witness Protection programme per se; whenever a person says that he or she has witnessed a crime and volunteers to give that kind of evidence, the Police who come in contact with that witness first introduce the witness protection programme. As part of the process the police undertake a risk assessment as to the dangers the witness may face, which will include consideration of who those a witness fears, where they are, and how they operate, to enable recommendations to be made to ensure the witness remains safe.
18. The success of the programme is evidenced by the information provided by the Jamaican authorities which show that the programme has been running for

- over 10 years and that they have not had a witness who is on the programme and who remains on the programme, injured, killed, or hurt in any way.
19. The programme began officially in 1995 and is now administered by the Ministry of National Security. Social workers from the Ministry work with those in the programme.
 20. In its current form, having identified witnesses and made recommendations to the Ministry, the Police then divests all contact with those individuals to the Ministry.
 21. The Justice Protection Act to provide a legal framework for the Witness Protection Programme making the State responsible for granting protection.
 22. I find the Judge has erred in law in failing to consider the availability of the witness protection programme and the country guidance case of AB in the absence of providing adequate reasons for not having done so.
 23. The issue in this case is whether any such error is material for as recognised in AB

165. Even if it is decided there is no real risk of such detection, a person may still face a real risk, by virtue of it being unreasonable or unduly harsh for him to relocate: see paragraph 339O of HC395 as amended. Here, however, it must be borne in mind that the criteria identified by the House of Lords in Januzi are stringent. It will not suffice that there may be a lack of social welfare support combined with other difficulties: what matters is whether such a move will result for the individual in question in destitution or other forms of violation of a nonderogable human right.

24. Whilst the submission made by Ms Harvey relating to the undesirability of NMW having to go through a further hearing is noted, the difficulty that arises is the failure of the Judge to consider the reasonableness of internal relocation which was rejected out of hand without considering AB, and lack of consideration and findings concerning any prospective violation of a non derogable human right.
25. It may be that a proper examination of the evidence may result in the appeal being allowed but it cannot be established at this time that the outcome will be the same. I therefore find the identified error to be material. The decision of the First-tier Tribunal shall be set aside.
26. The following directions shall apply to the future management of this appeal:
 - i. List for a remote Resumed hearing before Upper Tribunal Judge Hanson on the first available date after 12 March 2021 time estimate 3 hours.
 - ii. The findings of the First-tier Tribunal relating to NMW's experiences in Jamaica, her immigration history, family composition, criminality, positive finding of the more recent letter from the NRM, shall be preserved findings.
 - iii. NMW shall no later than 5 March 2021 file with the Upper Tribunal and send to the Secretary of States representative an updated consolidated, indexed, and paginated bundle containing all the evidence she seeks to rely upon. Witness statements in the bundle must be signed, dated, contain a declaration of truth, and shall stand as the evidence in chief of the maker who shall attend the hearing for the purposes of cross-

examination and re-examination (if any) only, unless the Secretary of States representative confirms the case can proceed by way of submissions only and is content for NMW to be excused from attending the resumed hearing.

- iv. No interpreter being required; none shall be provided by the Upper Tribunal.

Decision

- 27. The First-tier Tribunal Judge materially erred in law. I set that decision aside. This appeal shall be case managed in accordance with the directions set out above.**

Anonymity.

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

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

Signed.....
Upper Tribunal Judge Hanson

Dated 10 February 2021