



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/18799/2019
UI-2022-000036

THE IMMIGRATION ACTS

**Heard at Field House
On 18 May 2022**

**Decision & Reasons Promulgated
On 8 July 2022**

Before

**THE HON. MRS JUSTICE HILL
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**F B
(ANONYMITY DIRECTION MADE)**

Respondent

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

Representation:

For the appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the respondent: Mr D Jones, Counsel, instructed by Duncan Lewis Solicitors

DECISION AND REASONS

Introduction

- 1.** For ease of reading, we shall refer to the parties as they were before the First-tier Tribunal. Thus, the Secretary of State is once again “the respondent” and FB is “the appellant”.
- 2.** The respondent appeals with permission against the decision of First-tier Tribunal Judge Barrowclough (“the judge”), promulgated on 19 August 2021. By that decision, the judge allowed the appellant’s appeal against the respondent’s decisions to refuse his human rights and protection claims, dated 5 November 2019 and 26 April 2021, respectively.
- 3.** The appellant is a citizen of Jamaica, born in 1980. He came to the United Kingdom in 2001 and had leave to remain until July 2003. In March of that year he was convicted of possession with intent to supply Class A drugs (crack cocaine) and sentenced to 3 years’ imprisonment (the offence had taken place in September 2002). Deportation action followed, which ultimately resulted in the appellant succeeding in an appeal in December 2007. That decision was overturned by the Asylum and Immigration Tribunal, with a subsequent application for permission to appeal to the Court of Appeal being refused in October 2008. A further two years elapsed before a Deportation Order was signed in November 2010. In June 2011 the appellant was recorded as an immigration absconder. His next interaction with the respondent was not until May 2018, whereafter he has reported on a monthly basis.
- 4.** In February 2019, the appellant made an application for leave to remain, deemed to constitute the human rights claim. This was based on Article 8 ECHR (“Article 8”) and specifically his long-standing marriage to a British citizen, Mrs B, and his relationship with their two British citizen children, born in 2015 and 2017. In addition, the appellant relied on his lengthy residence in United Kingdom and the claimed difficulties to any reintegration into Jamaican society. The refusal of that claim gave rise to a right of appeal.
- 5.** In June 2020, the appellant made his protection claim, asserting that by virtue of giving evidence against co-defendants at his trial in 2003, he had been labelled as an informer and would, for that reason, be at risk from those individuals and/or their criminal associates in Jamaica. In addition to that risk, the appellant claimed that he would face significant problems as a deportee. In refusing the claim, the respondent did not accept that the appellant was at risk from specific individuals, gangs, or society in general. It was said that there was a sufficiency of protection from the Jamaican authorities and/or that internal relocation was a viable option. It appears to have been accepted that one of the appellant’s co-defendants had in fact been murdered on return to Jamaica 2019. This decision also attracted a right of appeal.

6. Following lodgement of the appeals (which were quite sensibly processed by the First-tier Tribunal in tandem), the respondent conducted a review of the case. It was accepted that the appellant should not have been regarded as an immigration absconder between 2011 and 2018. This was because the respondent could not establish that he had been properly informed of his bail conditions in the first place. The two refusals under appeal were maintained.

The decision of the First-tier Tribunal

7. The judge began his decision by setting out in detail the appellant's immigration and criminal background, together with the respondent's written case against him: [2]-[15]. The judge then went on to provide a comprehensive recitation of the representatives' submissions and the evidence from the appellant and his four witnesses, including Mrs B: [16]-[40].
8. At [43] the judge concluded that there were good grounds for departing from the findings made in the 2008 appeal, given the subsequent existence of the appellant's children, delays by the respondent, and the production of expert evidence. No issue has been taken in respect of this issue and we need not address it further.
9. Next, the judge dealt with an argument put forward by the appellant under the well-known Zambrano principle (Ruiz Zambrano v Office national de l'emploi [2011] Imm AR 521). Having directed himself to relevant case law, the judge concluded that this submission did not assist the appellant: [44]. Again, there is no dispute as to that conclusion and it is not a live issue before us.
10. The judge then began his assessment of Article 8 in the context of the applicable statutory framework provided by Part 5A of the Nationality, Immigration and Asylum Act 2002, as amended ("the 2002 Act"), specifically section 117C, which provides as follows:

117C 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.

- 11.** At [45] the judge confirmed the absence of any dispute as to the genuine and subsisting parental relationship enjoyed by the appellant with his children (each of whom were a “qualifying child” under section 117D(1)(a) of the 2002 Act by virtue of their British citizenship). The correct question was then posed: would it be unduly harsh on the children to either go with the appellant to Jamaica or to be separated from him? In this regard, the judge directed himself to the guidance provided in HA (Iraq) [2020] EWCA Civ 1176; [2021] Imm AR 59, paraphrasing key points arising from the judgments of Underhill and Jackson LJ. In summary, the appropriate approach involved a fact-sensitive analysis focused on the particular child(ren) in question.
- 12.** “Bearing those principles in mind”, the judge had “particular regard” to the evidence of an independent social worker, Ms S Prempeh, whose opinion was that the children’s best interests lay very much in remaining with both of their parents in the United Kingdom. Mrs B’s mental and physical health was considered by Ms Prempeh and it was her view that the appellant’s removal from the family unit would result in Mrs B being unable to care for the two children: [47]. In addition to that evidence, the judge took account of letter from Mrs B’s GP, which confirmed the existence of a physical ailment (psoriasis) and “low mood [and] increased emotional stress”, due at least in part on the physical condition: [48].
- 13.** Having expressly stated that he had weighed all matters together, the judge concluded that it would be unduly harsh for the children to relocate to Jamaica and for them to be separated from the appellant: [49]. In respect of the “go scenario”, the judge took account of a variety of factors, including: the children’s British citizenship; the lack of any meaningful ties to Jamaica; the appellant’s lack of ties to that country; the detriment of relocation to their best interests; removal from the “regular and close relationships” enjoyed with extensive family members in the United Kingdom who had “played an important part in their young lives”; the impact of relocation on Mrs B’s health and the consequences of this for her ability to care for the children; and the likely practical difficulties to be faced by the appellant on return to Jamaica in light of an expert country report from Dr L Noronha.

- 14.** The “stay scenario” was addressed at [50]. The judge regarded the appellant as the children’s primary carer and accepted Ms Prempeh’s evidence that there was a “particularly strong attachment” between the children and their father, a position that was supported by the unchallenged evidence of the witnesses. These considerations within combined with the likely impact of the appellant’s deportation on Mrs B’s health and ability to care for children. Having then referred once again to HA (Iraq), the judge found the unduly harsh threshold to have been met.
- 15.** It followed from this that Exception 2 under section 117C(5) of the 2002 Act had been satisfied and the appellant was entitled to succeed in his appeal on that basis alone.
- 16.** The judge adopted a belt and braces approach and went on to consider Exception 1 under section 117C(4). He found that it was clear that the appellant had not resided in the United Kingdom lawfully for most of his life and therefore the Exception could not be satisfied: [51]-[54].
- 17.** The judge then considered the very compelling circumstances test under section 117C(6). The judge reminded himself of the serious nature of the appellant’s offence and the existence of the public interest in deportation. On the appellant’s side of the balance sheet, the judge took account of a number of factors, including: the appellant’s clean record before and after the offence; the low risk of re-offending; the significant passage of time since the offence; the appellant’s relative youth at the time of its commission; the delay occasioned by the respondent, both following the original deportation decision in 2003 and the near 10-year period between the exhaustion of appeal rights in October 2008 and the (re)commencement of any enforcement action in May 2018; rehabilitative steps taken by the appellant; and all other considerations evaluated in the context of the unduly harsh assessment. On a cumulative view, the judge concluded that there were indeed very compelling circumstances over and above those described in the two Exceptions contained within section 117C of the 2002 Act: [56]-[60].
- 18.** On this alternative basis, the appellant was able to succeed in his appeal.
- 19.** Finally, the judge addressed the protection claim in the context of Article 3 ECHR (it had been conceded on the appellant’s behalf that the Refugee Convention was not engaged). The judge noted that, “in broad terms”, there was no dispute that the appellant had been labelled as an informer by co-defendants, that he had in fact received threats and had been moved to a different prison as a result, that he gave evidence against his co-defendants, and that one of these had been murdered on return to Jamaica in 2019. The judge placed significant weight on the expert report of Dr Noronha, having noted that the respondent had failed to address this evidence despite being presented with it in a timely fashion. With reference to the substance of the report, the judge specifically noted the high levels of murders and violent crime related to personal vendettas and the accompanying risk to the appellant is a person previously targeted as

an informer. His status as a deportee would mark him out on return. The report suggested that state protection and/or internal relocation were not complete answers to the risk. Further, the judge took account of a variety of additional factors relevant to the appellant circumstances which would make a return to Jamaica particularly difficult (lack of familial and/or social ties, the time away from the country, and suchlike): [62]-[69].

20. The appeal was therefore also allowed in respect of the protection claim: [69].

The grounds of appeal and grant of permission

21. The respondent's grounds of appeal were all placed together under the heading, "Ground one: Making a material misdirection of law/failing to give adequate reasons for findings on a material matter". This did not accurately reflect what followed in the body of the text.

22. The substance of the grounds can be distilled down to the following points:

- (a) The judge "failed to have regard" to the high threshold applicable to the unduly harsh test;
- (b) The evidence did not support the conclusion that the unduly harsh test was met;
- (c) The judge was wrong to have placed weight on the independent social worker's evidence because she had "made findings" on matters beyond her remit (specifically, she had use the phrase "unduly harsh" at one point in her first report);
- (d) The judge failed to consider other forms of support allegedly available to Mrs B, were the appellant to be deported;
- (e) The judge's reasoning on undue harshness "simply does not establish that the high threshold... is made out";
- (f) The judge "failed to have regard to" the wider public interest when assessing the very compelling circumstances issue;
- (g) As regards the protection claim, "heavy reliance" was placed on the expert country report and there was "no evidence" that the appellant would be targeted by "gangs".

23. In a relatively detailed decision, the First-tier Tribunal refused permission on all grounds. On renewal, the Upper Tribunal Judge concluded that there was merit in the respondent's challenge. In particular, it was arguable that the judge had failed to engage with the elevated threshold for the unduly harsh test, that the reasoning was "unduly sympathetic" and insufficient in respect of the very compelling circumstances issue, and that the expert country report was generalised in nature.

The hearing

24. The parties' respective submissions are a matter of record and we need not set them out in detail here.
25. Mr Tufan relied on the grounds of appeal and the respondent's skeleton argument. He expressly confirmed that the respondent was not mounting a perversity challenge. Rather, the case was based on an inadequacy of reasoning. On the unduly harsh issue, we were referred to relevant passages in KO (Nigeria) [2018] UKSC 53; [2019] Imm AR 400, at paragraph 23 and 27. Mr Tufan also confirmed that he was not challenging the judge's conclusion on the "go scenario" at [49] of the decision. He accepted that the judge had directed himself to HA (Iraq), but submitted that the reasons on the "stay scenario" were insufficient. He attempted to suggest that the judge's factual findings on Mrs B's health conditions were flawed, but did not pursue this when relevant medical evidence contained in the appellant's bundle was brought to his attention.
26. It was suggested that the judge should not have placed any weight on the delay factor, or that he might have placed decisive weight on this when considering very compelling circumstances and that this did not sit well with the decision of the Upper Tribunal in RLP (BAH revisited - expeditious justice) Jamaica [2017] UKUT 00330 (IAC), the headnote of which stated that unjustified delay by the respondent was "unlikely" to tip the balance in an individual's favour when considering proportionality. When pressed, Mr Tufan accepted that we should read the judge's decision holistically and that this involved the agreement with Counsel's submissions.
27. On the protection issue, it was submitted that there was no evidence to link the killing of the co-defendant to the appellant and that the expert country report was "generalised" in nature.
28. Mr Jones (who had also appeared before the judge) relied on his detailed rule 24 response. Following from Mr Tufan's concession that the "go scenario" conclusion was not challenged, he pointed to an apparent inconsistency in the respondent's challenge: if it were now accepted that the judge approached the "go scenario" correctly, including an application of the high threshold, how could it be said that there was an error of law in respect of the "day scenario"? In any event, Mr Jones submitted that the judge had directed himself correctly in all respects and, when his decision was read sensibly and holistically, there were clearly no errors of law. The relevant evidence had not been challenged. There was no perversity challenge and in any event the judge's decision disclosed no such error. On the evidence, there was a perfectly sustainable basis for the judge to have found in the appellant's favour.
29. On the issue of very compelling circumstances, Mr Jones submitted that the judge had been entitled to take account of all the factors that he did, had directed himself to the public interest, and had been entitled to place significant weight on the respondent's delays, in light of MN-T (Colombia) [2016] EWCA Civ 893. It was significant that in this case, the appellant's

private and family life, together with aspects of rehabilitation, had occurred during the currency of the second period of delay.

- 30.** Finally, Mr Jones submitted that the expert country report was not “generalised”, but addressed to the appellant’s particular case. The judge had been entitled to take account of undisputed facts relating to the appellant’s past and to then combine them with the expert evidence. As to state protection and internal relocation, the judge had been entitled to place significant weight on the expert evidence, whilst at the same time noting that the respondent’s own CPIN undermined her assertions on these issues.

Conclusions on error of law

- 31.** Before turning to our analysis of this case, we remind ourselves of the need to show appropriate restraint before interfering with a decision of the First-tier Tribunal, having regard to numerous exhortations to this effect emanating from the Court of Appeal in recent years: see, for example, Low [2021] EWCA Civ 62, at paragraphs 29-31, AA (Nigeria) [2020] EWCA Civ 1296; [2020] 4 WLR 145, at paragraph 41, and UT (Sri Lanka) [2019] EWCA Civ 1095, paragraph 19 of which states as follows:

“19. I start with two preliminary observations about the nature of, and approach to, an appeal to the UT. First, the right of appeal to the UT is “on any point of law arising from a decision made by the [FTT] other than an excluded decision”: Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”), section 11(1) and (2). If the UT finds an error of law, the UT may set aside the decision of the FTT and remake the decision: section 12(1) and (2) of the 2007 Act. If there is no error of law in the FTT’s decision, the decision will stand. Secondly, although “error of law” is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter. Baroness Hale put it in this way in AH (Sudan) v Secretary of State for the Home Department at [30]:

“Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently.”

- 32.** Following from this, we bear in mind the uncontroversial propositions that the judge’s decision must be read sensibly and holistically and that we are neither requiring every aspect of the evidence to have been addressed, nor that there be reasons for reasons.

The unduly harsh issue

- 33.** We reject the respondent’s contention that the judge failed “to have regard to” the elevated threshold applicable to the unduly harsh test. HA (Iraq) was plainly concerned with what had been said in KO (Nigeria). An important element of the Supreme Court’s judgment related to the nature of the threshold applicable to the unduly harsh test: paragraph 27. In turn,

Underhill LJ's judgment in HA (Iraq) re-stated the authoritative guidance at paragraph 51:

"The essential point is that the criterion of undue harshness sets a bar which is "elevated" and carries a "much stronger emphasis" than mere undesirability: see para. 27 of Lord Carnwath's judgment, approving the UT's self-direction in MK (Sierra Leone), and para. 35. The UT's self-direction uses a battery of synonyms and antonyms: although these should not be allowed to become a substitute for the statutory language, tribunals may find them of some assistance as a reminder of the elevated nature of the test. The reason why some degree of harshness is acceptable is that there is a strong public interest in the deportation of foreign criminals (including medium offenders): see para. 23. The underlying question for tribunals is whether the harshness which the deportation will cause for the partner and/or child is of a sufficiently elevated degree to outweigh that public interest."

- 34.** It is manifestly the case that the judge directed himself to HA (Iraq) and there is nothing to indicate that having done so he subsequently simply failed to apply the relevant guidance contained therein. The fact that he did not expressly refer to KO (Nigeria) adds nothing to the respondent's case. It certainly does not indicate that an error of law was committed. Similarly, the respondent's citation of PG (Jamaica) [2019] EWCA Civ 1213 takes matters no further: that case was referred to by Underhill LJ in HA (Iraq) and said to be entirely consistent with the guidance set out in his judgment.
- 35.** We see merit in Mr Jones' point on the tension within the respondent's case on appeal. Mr Tufan had conceded that there was no error in respect of the "go scenario" issue, whether in terms of the applicable threshold or the assessment of the evidence. That being so, it is difficult to see how the judge can be said to have erred in his approach to the "stay scenario", absent any indication that he had applied a lower threshold to the unduly harsh test than in respect of the "go scenario". This only goes to fortify our primary conclusion that there is no error as to the elevated threshold.
- 36.** We turn to the judge's assessment of the evidence. In so doing, we reiterate the fact that the evidence of the appellant and his witnesses was unchallenged before the judge and that the grounds of appeal had not mounted an identifiable challenge to his findings of fact. The judge adopted a fact-sensitive, child-focused, approach, which was entirely in keeping with the guidance set out in HA (Iraq). In our judgment, he was fully entitled to reach the findings that he did in relation to the family's overall circumstances in the United Kingdom, as set out that [47], [48], and [50]. The evidence on which he relied was more than sufficient.
- 37.** There is no merit in the point raised at paragraph 9 of the grounds of appeal. Whilst it might have been ill-advised for Ms Prempeh to have used the term "unduly harsh" in her report, the judge's reference to this was only the context of a recitation of what she had said. It is clear from a

sensible reading of his decision that he had not taken that into his evaluation of undue harshness at [50].

- 38.** As regards the claimed failure by the judge to have regard to potential sources of support for Mrs B other than the appellant, we agree with the observation by the First-tier Tribunal Judge who refused permission, namely that not each and every point put forward by a party need be specifically addressed in a decision. The judge's decision is careful and considered and that proposition applies here with some force. In any event, the judge did in fact address his mind to the possibility of support from Mrs B's family and concluded that this made no material difference to his overall conclusion: [50]. Having regard to decision as a whole and the underlying evidence, the suggestion (we are unaware of any evidence or even specific submissions made to the judge and the point was not taken by Mr Tufan) that social services could in some way step in and provide appropriate care, did not require express consideration and, in any event, could not conceivably have altered the outcome.
- 39.** Although the wording of certain passages in the grounds of appeal alluded to a perversity challenge, none is before us. Even if it had been, there was no prospect of it succeeding. In light of the high threshold involved and the evidential basis on which the judge based his conclusions, the decision was far from irrational.
- 40.** The respondent has, at the end of the day, pinned her challenge to the reasons mast. Yet the grounds of appeal do not, in truth, articulate any identifiable errors in this regard. The points raised therein have been dealt with, above. Beyond that, Mr Tufan was able only to repeat the assertion that the reasons provided were "insufficient" without providing particulars. In our judgment, the reasons set out by the judge in support of his conclusion on the "stay scenario" were as sound as those on the unchallenged "go scenario" and, when seen in the context of the decision and evidence as a whole, were eminently adequate. They explained why the judge regarded the appellant's role in the family unit as particularly significant, why Mrs B would have great difficulty in coping without him, and why all of the circumstances would have an impact on the children which was rationally considered to be unduly harsh.
- 41.** Requiring anything beyond what had been stated on the face of the decision, seen in its proper context, would amount to the application of an impermissible reasons for reasons criterion.
- 42.** In summary, there are no errors on the unduly harsh issue and the first aspect of the respondent's challenge fails.

The very compelling circumstances issue

- 43.** The judge had in mind the fact that the appellant had been convicted of a "serious" crime and of the consequent public interest in deportation: [56]. The public interest is essentially a composite consideration, comprising

aspects of rehabilitation, deterrence, and public concern. In the absence of sufficiently clear contraindications, we are not prepared to conclude that the judge failed to have regard to the “wider public interest” beyond the risk of re-offending despite having made express reference to that consideration (including the undoubted fact that the offence was “serious”).

- 44.** The judge was, as a matter of law, entitled to conclude that the public interest was not a fixity and that all relevant circumstances had to be taken into account.
- 45.** The judge was unarguably entitled to take account of all the considerations evaluated under the unduly harsh issue, together with those set out at [57]-[60]. The only matters of any substance specifically raised in the respondent’s challenge relate to delay and rehabilitation. In respect of the latter the judge expressly stated that it would not of itself suffice. This is in keeping with the relevant case-law, which also confirms that rehabilitation is nonetheless relevant to the assessment of proportionality: see, for example, HA (Iraq), at paragraph 141. It is clear to us that the judge did not in any way regard this as a decisive factor in his assessment.
- 46.** The respondent has criticised the judge for his reliance on the delays, appearing to suggest that he was either not entitled to take them into account all, or that he placed undue weight on that factor. In our judgment, neither line of attack has any merit.
- 47.** The judge referred to MN-T and directed himself that lengthy delay by the respondent in taking deportation action against a foreign criminal is capable of making a “critical difference” in the proportionality exercise: [58]. That approach has not been properly challenged, nor could it have been. In MN-T, the individual concerned had been convicted of supplying cocaine and received an 8-year sentence. Following her release from prison, there was a delay of 10 years before the relevant deportation decision was made. The Upper Tribunal had taken the delay into account when concluding that very compelling circumstances existed. On appeal, Jackson LJ (with whom Sales LJ, as he then was, agreed) concluded that there was no error of approach. Having set out well-known passages from EB (Kosovo) [2008] UKHL 41; [2008] Imm AR 713, Jackson LJ went on to confirm the relevance of delay in the deportation context at paragraphs 41 and 42:

“41. I should perhaps add this in relation to delay. As a matter of policy now enshrined in statute, the deportation of foreign criminals is in the public interest. The reasons why this is so are obvious. They include three important reasons:

1. Once deported the criminal will cease offending in the United Kingdom.

2. The existence of the policy to deport foreign criminals deters other foreigners in the United Kingdom from offending.
3. The deportation of such persons expresses society's revulsion at their conduct.

41. If the Secretary of State delays deportation for many years, that lessens the weight of these considerations. As to (1), if during a lengthy period the criminal becomes rehabilitated and shows himself to have become a law-abiding citizen, he poses less of a risk or threat to the public. As to (2), the deterrent effect of the policy is weakened if the Secretary of State does not act promptly. Indeed lengthy delays, as here, may, in conjunction with other factors, prevent deportation at all. As to (3), it hardly expresses society's revulsion at the criminality of the offenders conduct if the Secretary of State delays for many years before proceeding to deport."

- 48.** The grounds of appeal and skeleton argument make no mention of MN-T (Colombia), which is unfortunate given its citation by the judge and prominence in the appellant's arguments throughout these proceedings. The Court's judgment confirmed that delay by the respondent in the context of deportation proceedings was capable of diminishing the strength of the public interest: paragraph 42.
- 49.** The respondent has relied on the judgment in Reid [2021] EWCA Civ 1158, paragraph 59 of which confirmed that delay is irrelevant to the question of whether deportation would be unduly harsh. It is immediately apparent that Reid does not assist the respondent's challenge. That case concerned Exception 2 under section 117C(5) of the 2002 Act, not the assessment of very compelling circumstances under section 117(6) and is therefore readily distinguishable.
- 50.** We are bound to say that we hold some misgivings about the decision in RLP in so far as its judicial headnote is concerned. The second paragraph of that headnote reads as follows:

"(ii) In cases where the public interest favouring deportation of an immigrant is potent and pressing, even egregious and unjustified delay on the part of the Secretary of State in the underlying decision making process is unlikely to tip the balance in the immigrant's favour in the proportionality exercise under Article 8(2) ECHR."

- 51.** On its face, this appears to constitute a clear proposition of law. However, on our reading of the decision itself, the only reference in the Upper Tribunal's analysis to delay is contained in paragraph 23, which addresses the particular circumstances of that case. Having recounted the importance of the public interest in general and certain factual elements relating to the individuals circumstances in the United Kingdom, the Tribunal went on to say that:

"We take into account all of these facts and factors in determining whether very compelling circumstances have been demonstrated. This is

a self-evident the elevated threshold which, by its nature, will be overcome only by a powerful case. In our judgement the maladministration and delay of which the Secretary of State is undoubtedly guilty falls measurably short of the mark in displacing the aforementioned potent public interest in the Article 8(2) proportionality balancing exercise. We conclude that the Appellant's case falls to surpass the threshold by some distance."

52. It is, with respect, somewhat difficult to extrapolate the relevant paragraph from the judicial headnote from what is said in paragraph 23. The latter appears to us to constitute nothing more than an evaluation of the facts of the particular case.
53. In addition, we note that the Tribunal was not apparently referred to MN-T.
54. In any event, it is clear from MN-T that delay caused by the respondent in the context of deportation is capable of diminishing the public interest: all will depend on the facts of any given case. The headnote of RLP in fact employs the word "unlikely" rather than, for example, "cannot".
55. The second period amounted to a decade of inaction and was described by the judge, with unarguable justification, as "extraordinary". In light of MN-T and the trite proposition that weight is a matter for the fact-finding tribunal, it was open to him to conclude that the delays were deserving of significant weight and that this in turn had an impact of similar magnitude on the reduction of the public interest. The judge was also entitled to conclude that aspects of the appellant's private and family life had materially developed during the period between 2008 and 2018. As already mentioned, the judge did not consider delay in isolation, but as part of a cumulative assessment of relevant considerations.
56. The final point on very compelling circumstances raised in the grounds of appeal is what can properly be described as an attempt at factual comparisons between the present case and others. The facts of Bossade (ss.117A-D - into relationship with Rules) [2015] UKUT 00415 (IAC) are set out, presumably with the intention to show that because Mr Bossade failed, so should the appellant.
57. The practice of seeking to rely on factual comparisons has been disapproved on numerous occasions, not least in HA (Iraq) itself: paragraphs 127-129. We endorse that position.
58. As with the unduly harsh issue, there is no perversity challenge here. Again, even if there had been, it would not have succeeded, for the reasons set out above.
59. Accordingly, the second aspect of the respondent's challenge fails.

The protection claim issue

- 60.** It is fair to say that Mr Tufan did not pursue this aspect of the respondent's challenge with particular vigour.
- 61.** In our judgment, there is little of substance here. The expert country report was not "generalised" such that it was in some way incapable of attracting significant weight. Having read it for ourselves, it is clear that it was directed to the appellant's case, and that the author was provided with all relevant documents pertaining to it. The report, as with many if not most, comprised a combination of a more general overview of relevant issues in the country of origin and more focused consideration on matters specific to the appellant's case. No challenge was made to the expert's suitability or his methodology. The judge was fully entitled to play significant weight on this evidence.
- 62.** It is also sufficiently clear from the decision, when read sensibly and holistically, that the judge did not consider the expert report in isolation. He was aware of, and took into account, the (essentially undisputed) facts that the appellant had been labelled as an informer by co-defendants, had been targeted whilst in prison, and that one of those co-defendants had been murdered on return to Jamaica. It was also plainly the case that the appellant would, on return, hold status as a deportee. The expert evidence specifically addressed the question of how that factual matrix was likely to affect the appellant were he to be removed to Jamaica. Dr Noronha's opinion was clear enough: there would be a risk based on either one of those two profiles, or a combination of both. The judge was entitled to accept that opinion evidence and place it alongside reasonable inferences drawn from the primary facts. In addition, there was no error in the judge preferring the expert's evidence on the questions of state protection and internal relocation over the submissions put forward by the respondent. The latter had been materially undermined by evidence contained in her own CPIN.
- 63.** There are no errors in respect of the protection issue. It follows that the third and final aspect of the respondent's challenge also fails.

Anonymity

- 64.** The First-tier Tribunal did not make an anonymity direction, although we understood from Mr Jones that one had been requested and agreed to at some stage of the proceedings below.
- 65.** Mr Jones applied for a direction to be made. He emphasised the existence of children in this case, together with the health problems experienced by the appellant's partner. In addition, he submitted that the protection element of this case justified a direction in any event. Mr Tufan had no objection to a direction being made.

- 66.** We have had regard to the importance of open justice. Against that, the appellant's case does indeed concern a protection element. In particular, it relates to matters connected to his past in the United Kingdom and a risk if returned to Jamaica. On this basis alone, it is appropriate to make a direction.
- 67.** Whilst the fact that children are involved in this case would not, in and of itself, lead to the making of a direction, when combined with the appellant's partner's health conditions, these are circumstances which go to reinforce our decision on anonymity.

Notice of Decision

68. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

69. The appeal to the Upper Tribunal is therefore dismissed and the decision of the First-tier Tribunal shall stand.

Signed: H Norton-Taylor

Date: 20 May 2022

Upper Tribunal Judge Norton-Taylor