



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/22151/2015**

**Appeal Number:**

**IA/22147/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 June 2017**

**Decision & Reasons  
Promulgated  
On 5 July 2017**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**AOB  
C L G-B  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

1. On 10 April 2017, the Upper Tribunal found a judge of the First-tier Tribunal had materially erred in law such that the earlier decision was set aside. A copy of the error of law decision is appended to this judgment in Appendix A.
2. Directions were given regarding the future management of the appeal, with a view to the Upper Tribunal being able to remake the decision which it was agreed could be disposed of by way of written submissions being made by the advocates.

3. Mr Kotas, on behalf of the Secretary of State, filed his written submissions dated 22 April 2017 on that date. Mr Balroop, on behalf of the appellant, filed written submissions dated 27 April 2017 received by the Upper Tribunal on 8 May 2017.
4. Both documents have been considered together with all other available evidence and it is not considered necessary to reconvene to hear oral submissions or for any additional evidence to be provided.

## **Discussion**

5. The background is set out in the Error of Law finding at [4] to [33] and need not be repeated at this stage of the decision as it is accessible to a reader in the annex below.
6. The finding by the First-tier Tribunal the appellants were unable to succeed under the Immigration Rules was preserved as was the finding of the existence of family life between the appellant's son D and his mother.
7. The issue in this appeal is whether the decision to remove the appellants, who it is accepted had this appeal only involve them as individuals would have been likely to fail, is disproportionate in light of the situation of D set out in the error of law finding.
8. There is no dispute between the parties that an assessment of the merits of the appeal under Article 8 ECHR outside the Rules is necessary although it is submitted by Mr Kotas that the failure of the appellants to satisfy the Immigration Rules should be accorded considerable weight in the balancing exercise as made clear by the Supreme Court in *R (on the application of Agyarko and Ikuga) v Secretary of State for the Home Department [2017] UKSC 11*.
9. As noted by Mr Kotas at [6] of his written submissions "as is common ground these appeals essentially hinge on the effective removal on their son/stepson D who has PTSD.
10. It is not disputed, as asserted by Mr Kotas, that D only has limited leave to remain and can, as a matter of choice, follow his parents to Jamaica, and that the appellants have remained unlawfully in the UK since 2008 and 2002 respectively with knowledge that this is so.
11. The assertion by Mr Kotas that little weight should be attached to the family life between the appellants and D pursuant to section 117B of the Nationality, Immigration and Asylum Act 2002 is noted although this is a case where family life existed by virtue of Strasbourg jurisprudence whilst D was a dependant minor if the family were within a Member State. Although family life recognised by Article 8 would have ended when D became dependent, as a result of the impact of his service for the British Army outlined in the Error of Law finding such family life has come back into existence.
12. The assertion by Mr Kotas is that D's condition, although an important and indeed weighty consideration, is not of such severity that it could properly be described as exceptional or very compelling given the ordinary meaning of those terms and the high threshold they import.
13. In relation to the earlier decision of First-tier Tribunal Judge Blake, it was found that removing D from the UK would be a disproportionate

- breach of Article 8. Mr Kotas submits that finding was based upon particular factors which would need to be revisited in view of developments that have arisen since that decision was made in 2013.
14. There is no successful appeal against the earlier decision which, therefore, will form the starting point in any appeal that D may bring if an attempt is made to remove him from the United Kingdom whilst the need for treatment still exists. Even though D is heavily dependent upon the appellants for his day-to-day support, and although there may be family connections in Jamaica, this does not show that the type of support D needs for his combat-related stress will be available in Jamaica.
  15. A key aspect of the respondent's case is set out at [17 - 26] of the written submissions in the following terms:
    17. Ftj Blake also found that D would not receive the specialist treatment he required for combat stress. The SSHD submits that this finding was very much made in the context of things as stood at the time of that appeal hearing. At present however, D does not appear to be getting any ongoing specialist medical treatment. Indeed the only reference in D's most recent statement dated 18.04.2016 is that he is being supported by Combat Stress which is a charity. Similarly Dr Lyle in her 2016 report refers to D having continued to receive substantial and regular support from other veterans.
    18. The UT is invited to note that the reference to the *ongoing* treatment D receives is hardly mentioned in his own statement and only briefly touched on in the expert report.
    19. Properly understood therefore, D does not currently receive any *medical* intervention and the SSHD would respectfully submit that the support the appellant does get from this charity albeit of importance to his emotional well-being, is not so acute or specialised such that it should be given substantial weight in the balancing exercise.
    20. Indeed, as is made clear in the witness statements of all three interested parties to this appeal, these cases principally put on the dependency on his parents which by definition will continue in Jamaica.
    21. The SSHD submits that ultimately if this family support can continue in Jamaica, the only basis for asking the appellants' appeal to be allowed is because D would lose the support of a charitable organisation. This with the greatest respect is not the sort of case that can be described as very compelling or exceptional. More over as part of that evaluative exercise D will receive medication and also some mental health care in Jamaica albeit not as specialised.
    22. Finally since the decision of Immigration Judge Blake the immigration rules have changed and critically the public interest features in the 2002 Act have come into force. This is another reason to depart from the findings of FTJ Blake.
    23. As stated above one is essentially considering the effective removal on D's private life. Yet D only has limited leave to remain, and therefore his continued presence in the UK is contingent on a further grant of leave. As such his immigration status is deemed precarious. The tribunal must therefore give little weight to the effective removal of the appellants on D's private life in the UK pursuant to 117B(5) of the 2002 Act.

24. Finally the fact neither appellant is financially independent and A2 is heavily reliant on the NHS must count heavily against them in the proportionality exercise is found by FTJ Clarke.
25. Overall therefore whilst at first blush the appellant's case appears to have an attractive quality in view of D's situation and the previous findings of FTJ Blake, when the present facts are properly viewed through the relevant jurisprudence and statutory considerations, the strengths of their appeals is significantly weakened, and the SSHD would submit cannot outweigh the public interest in immigration control which has now been given statutory force.
26. The Tribunal is therefore invalid invited to dismiss the appellants appeals.
16. On behalf of the appellants' Mr Balroop records at [5] that the applicant takes a completely different view to the Secretary of State.
17. It is submitted on the applicants' behalf that the Secretary of States fails to address the fact the Tribunal has found it will be a breach of D's article 8 rights to remove him as per the judgment of First-tier Tribunal Judge Blake which has not been appealed, meaning the respondent cannot remove D or force him to leave the United Kingdom.
18. If it is accepted that D is dependent upon the appellants' as a result of his PTSD and mental health problems and if the appellants are removed D will have to go with them which it is argued will breach his Article 8 rights.
19. The appellant submits that D's treatment is exceptional and/or very compelling and it is submitted that the Secretary of State's submissions gloss over the reasons for D's PTSD which was not as a result of a serious accident or something similar but as a result of D engaging in combat whilst serving as a British soldier. It is submitted that specialist treatment is required and that it has been found that Jamaica will be unable to provide the required care.
20. It is submitted the report from Dr Lyle, dated 1 June 2016, states that D 'receives substantial regular support, particularly from other veterans...' and that D is experiencing suicidal thoughts approximately three or four times a week. Treatment is ongoing and would be ongoing for an indeterminate period which is treatment only available in the United Kingdom for D.
21. In all the circumstances the appellants submit the decision should be remade and the appeal allowed.
22. This is not a normal "run-of-the-mill" case involving a family who, on the face of it, would have no right to remain in the United Kingdom, who have overstayed, formed a private or family life during a period where their status is precarious, and now seek to rely upon Article 8 to prevent their removal from the United Kingdom. It takes accepted Article 8 does not permit a person to choose where they wish to live in is about preventing unwarranted interference with a protected right.
23. Adopting a structured approach, the right being protected in relation to this appeal is the family life that exists between the appellants and D. It has been found that D has a degree of dependency on account of his PTSD and mental health problems which is something more than

normal emotional ties. There is also an element of private life which in relation to D involves his connection with the medical and support services.

24. What makes this case somewhat different is that the underlying factor leading to D's problems arise out of his service in the British Army whilst on active service for the Crown in a combat zone. The impact of that service is set out in the report of Dr Lyle referred to in some detail in the Error of Law finding.
25. The Secretary of State submissions make no reference to the Military Covenant by virtue of which the Ministry of Defence has an obligation to ensure that those injured in active service properly provided for both in terms of medical and pastoral care/support. There also appears no consideration of what weight should be given to the public interest concerning a member of the Armed Forces suffering as a result of combat service, who does no more than ask that his mother and father be allowed to remain to continue to support him in assisting during his period of rehabilitation.
26. It is not disputed that D has made some progress but in the section of the report headed 'Discussion and Conclusions' set out at [26] of the error of law finding it was found on 1 June 2016:

"D is saying that he experienced suicidal thoughts approximately three or four times a week and I consider that the support of his mother and stepfather is even more necessary for him now. It is important that he has the opportunity to undergo the specialist Behaviour Therapy treatment with Dr Wilde which I have outlined above. Given the recent deterioration in D's mental health state I consider that it is even more important that he should continue to have the support of his mother and stepfather and indeed he feels very threatened of the prospect of them potentially being required to leave the country. At present, they are a major factor in preventing his suicidal thoughts from being carried out in reality."

27. Whilst it is accepted that there are psychiatric services in Jamaica the thrust of the expert evidence is that what D requires is specialist intervention and treatment/assistance. Those of real benefit to D are likely to be the veterans with whom he is able to talk about his experience and who have personal knowledge of the reality of war in a very high pressure and dangerous combat environment. It was found in [29] of the Error of law finding that what is recognised is that those who have suffered in a combat environment experience things that members of the normal population never have to contemplate. This is not a case of D just suffering from PTSD but an individual suffering the consequences of the trauma of a combat role in Iraq which has been accepted as credible by both the Secretary of State, medical professions and the Ministry of Defence.
28. I find that the medical evidence clearly shows there remains an ongoing need for specialist treatment and also for D to be supported during the period of such treatment/assistance both to "be there" for D but also to ensure his personal safety and welfare as demonstrated by D's mother retaining and handing out his medication to prevent any risk of overdose.
29. It is arguable that the public interest, whilst ordinarily strong in relation to an appeal of this nature without the additional

circumstances peculiar to D, would need to be very strong for the appeals to fail. It is arguable that the weight given to the public interest is lessened in a case of this nature.

30. As noted in the Error of Law finding at [18], D accepted there was a real risk of suffering serious harm when he agreed to join HM Armed Forces as part of their normal day to day activities, but it is also been accepted in this case that D has suffered harm as direct result of his combat experience, that assistance has been provided in helping him cope with the same and that he was granted a period of leave to remain in the United Kingdom to enable him to receive the specialist treatment the United Kingdom has to offer.
31. There is no medical evidence before this Tribunal showing that D has made sufficient progress not to require the services that can be offered in the United Kingdom, especially in light of the heightened risk of suicide arising from perceptions of insecurity following the attempted break-in into his mother's house, which resulted in a worsening of his symptoms.
32. Although Mr Kotas attempts to encourage this tribunal to depart from the findings of First-tier Tribunal Judge Blake, the core finding that the removal of D breaches his rights pursuant to article 8 ECHR was properly made and accounts for the leave D currently has.
33. It is necessary in this case to consider all relevant aspects of the matter together. It is not possible, as Mr Balroop submits, to separate the reasons for D suffering from PTSD and to approach this decision without incorporating the additional element of service within the British Army.
34. This tribunal does not accept the submission made on the appellants' behalf that D's treatment will be ongoing for ever although it is not known at this stage how long D will require the expertise available in the UK. For as long as he requires such assistance it is arguably made out that D requires the support of his parents and that the consequence of removing his parents is likely to result in D deteriorating very quickly, leading to his likely suicide, it cannot be said on the facts of this matter that remove the appellants at this stage is proportionate to the legitimate aim relied upon by the Secretary of State.
35. It is known that D has applied for an extension of his leave to remain and much may depend upon his status. If evidence is provided to the Secretary of State, which appears likely, to show a continued ongoing need for treatment in the United Kingdom it is likely a further short period of leave will be granted. In such a situation, it is arguably appropriate that the appellants should be granted a period of leave in line with D to enable them to continue to provide him with the support referred to in the medical evidence.
36. To remove the appellants from the United Kingdom at this stage will, the tribunal finds, be a disproportionate interference with D's protected rights and therefore a breach of Article 8 ECHR.
37. It appears a pragmatic solution to this matter is for the appellants' to be granted leave in line with D with a requirement for there to be a periodic review of the nature of the treatment D is receiving and its

impact upon his well-being, together with any prognosis, and to assess the situation of this family in line with the specialist medical evidence. It is noted, for example, reference by Dr Lyle to not only Combat Stress but also to specialist treatment at King's College Hospital in London by the named individual referred to in the Error of Law finding. The Secretary of State should be able to assist D in overcoming the barriers to accessing such treatment as a result of his immigration status.

38. If D is deemed to have benefited from such further intervention to the extent that he no longer needs to remain in the United Kingdom in the opinion of the medical experts, can manage on the basis of general psychiatric services in Jamaica, or if appropriate support and intervention is offered which D for no justifiable reason refuses to avail himself of, then the Secretary State may be entitled to review the matter further in relation to any period of leave granted or curtailment decision.
39. In conclusion, it is found when considering all relevant aspects of this case that the respondent has failed to discharge the burden of proof upon her to the required standard to show that the decision is proportionate. Although the appellants' in isolation would fail with this appeal, their involvement in the protection and well-being of D and the related family and private life associated therewith, if lost as a result of removal decision, will amount to an unwarranted interference in a protected right.

### **Decision**

40. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed.**

Anonymity.

41. The anonymity order made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 shall continue until further order.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 12 June 2017

**Annex A**



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/22147/2015**

**Appeal Number:**

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**Decision Promulgated**

**Before**

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**AOB  
C L G-B  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent



## **Representation:**

For the Appellant: Mr Balroop instructed by Greenland Lawyers  
For the Respondent: Mr Kotas, Senior Home Office Presenting Officer

## **ERROR OF LAW FINDING AND REASONS**

1. This is an appeal against a decision of First-tier Tribunal Judge G Clarke ('the Judge') promulgated on 21 September 2016 in which the appeals of the above-named Jamaican nationals, against the refusal of their applications for leave to remain in the United Kingdom based on their family and private life, were dismissed.
2. Permission to appeal was granted by First-tier Tribunal Judge Shimmin on 1 February 2017 for the following reason:  
  
"It is arguable that the judge has materially erred in law in the assessment of the appellant's relationship with [D] which is accepted by the judge to be beyond normal emotional times, bearing in mind the mental health of [D]."
3. The use of the letter 'D' to identify the second appellant's son arises as a result of the anonymity order made in these proceedings.

## **Background**

4. The first appellant was born in 1962 is a national of Jamaica. The second appellant who was born in 1964 is also a national of Jamaica. The appellants' immigration history set out at [4 - 21] and need not be repeated in this decision.
5. The Judge sets out his findings from [39 - 91] of the decision under challenge. At [40] the Judge writes:
  40. I find that the Appellants were married in Jamaica on 14 August 1999. They live together with CLG-B's son, D. I find that D enlisted with the British Army shortly after his arrival in the United Kingdom and served from 2003 to 2007. D served a term of duty in Iraq from October 2005 to March 2007. D now suffers from severe mental health problems and has a diagnosis of PTSD as a result of his experiences in Iraq. There was a report from Dr Ronald Lyle, Consulting and Chartered Clinical Psychologist and other medical evidence relating to D's mental health which I have taken into account in making my decision. I have also taken into account the letter dated 9 March 2016 from the Armed Forces Compensation Scheme awarding D an interim payment.
6. The Judge's finding that both the above-named appellants have a poor immigration history, AOB having been an over stayer since 30 August 2008 and CLG-B since 6 May 2002, is a factually correct and sustainable finding [41]. The Judge also found that the appellants have extensive family connections in Jamaica and that neither appellant could qualify for a grant of leave in respect of their family life in the context of Appendix FM. Similarly, neither appellant was able to

succeed on the basis there were parents of a qualifying child as D is not under the age of 18 nor is he a British citizen. The Judge also considered the family life they sought to rely upon by reference to paragraph 276ADE(1) and similarly found they could not succeed on that basis either which, again, is a sustainable finding.

7. At [64] the Judge found:

64. The Appellant's family life and private life have been considered under Appendix FM and Paragraph 276ADE(1). I am not satisfied that there are compelling circumstances for a consideration outside the Rules because the Appellant's family and private life have been considered under the Rules.

8. Had the Judge gone no further there would have been a clear error of law as the jurisdiction of the Tribunal is a human rights jurisdiction. The Judge was also required to consider the human rights of not only the appellants' but also other family members affected by this decision, as per the guidance provided by the House of Lords in *Beoku-Betts v Secretary of State for the Home Department [2008] UKHL 39*. The relevant family member is D whose situation is not provided for by reference to the Immigration Rules under the family and private life provisions according to the Judge. However, at [65] the Judge states "In the event that I am wrong, I will now make such an assessment." This finding, albeit expressed as being in the alternative, means that no procedural error is made out in the structure of the determination, in relation to the aspects the Judge did actually consider.

9. The Judge found at [68] that the appellants have family life with each other and that there will be no interference with their family life as it is proposed that they be removed together to Jamaica where such family life can continue. It is noted at [69] that the appellants claim to have family life with D who was born in 1986 and who at the date of the hearing was just over 30 years of age.

10. In relation to D the Judge writes at [71]:

71. In 2005, D volunteered to serve in Iraq and completed an eight-month period of duty. D has developed PTSD as a result of his experiences in Iraq. I have considered the detailed account that D provided in his witness statement of his health problems. D describes how he was diagnosed in 2012 and was referred to Combat Stress, a charity that provides counselling for service personnel. D believes that had it not been for the care of the Appellants he would have committed suicide or committing a criminal offence. He continues to rely on his mother and stepfather to assist his continued recovery. In her oral evidence, Mrs G-B stated that her son was on an antidepressant and a sleeping tablet.

11. In [72] the Judge finds "I am satisfied that D has a degree of dependency on his mother and stepfather on account of his PTSD and mental health problems that is something more than normal emotional ties and therefore I find that there is family life between the Appellants and D". This answered the first of the *Razgar* questions. The Judge also found the appellants had a private life built up in the United Kingdom since their respective dates of entry.

12. At [76] the Judge found that the decision turns on the issue of proportionality. The Judge stated that consideration was given to the family life between the appellants and D and the impact on D of the appellant's removal.
13. The Judge attached considerable weight to the fact that neither appellant was able to meet the requirements of the Immigration Rules and stated that it could not be ignored that the proportionality assessment must be made as per *AQ and others [2015] EWCA Civ 250* "through the lens" of the Immigration Rules. It is stated the failure to satisfy the requirements of the Rules militates strongly against the appellants. Little weight was also attached the private life built up whilst the appellants immigration status was precarious, in accordance with Section 117 B of the 2002 Act.
14. The requirements of the Rules set out the respondent's position in relation to how Article 8 should be interpreted by Courts and Tribunals and does form part of the balancing exercise when looking at the respondent's position. The government has also incorporated a number of principles to be found in the Rules and European jurisprudence relating to Article 8 into Section 117 of the 2002 Act which is intended to provide a structured approach to the application of Article 8 which produces, in all cases, a final result which was compatible with Article 8. However, it must always be recognised by decision-makers, at whatever level, that there may be circumstances appertaining to a case that require special consideration especially if they do not fit within the established framework. It is for this reason that when considering Article 8 cases great care must be taken to identify all relevant facts accurately before undertaking the proportionality assessment.
15. In addition to these proceedings D has himself had an appeal which was heard by First-tier Tribunal Judge Blake who promulgated his decision on 7 October 2013, allowing D's appeal against the refusal of his application for leave to remain in the United Kingdom on Article 8 grounds. It is not disputed that in his decision Judge Blake made the following findings:
  - i. D has been in the UK since he was 16 years of age and enlisted in the Army.
  - ii. D has endured horrific experiences, which has left him suffering with mental health problems and in particular post-traumatic stress disorder.
  - iii. D's character changed after his tour of duty in Iraq and he was suffering with problems relating to those experiences.
  - iv. D has been assessed by the Institute of Psycho-Trauma in East London NHS Trust and he required specific therapy for his PTSD and he should attend Combat Stress... There is doubt that the type of highly specialised treatment that D required would be available to him if he were returned to Jamaica.
  - v. There is nothing in the objective material to suggest that D would benefit from the identified specialist treatment he required in the form of Combat Stress if returned to Jamaica..
  - vi. D is a vulnerable and fragile individual who was suffering mental health problems arising out of his experiences whilst serving in the British Armed Forces.

16. Judge Blake's decision was not appealed and D was granted a period of leave. The grounds of appeal note that D has made an application for further leave which is still pending before the Secretary of State.
17. At [84 - 91] the Judge sets out the operative part of the proportionality assessment in the following terms:
  84. Mr Malik in his submissions that I should find a way of giving effect to the decision of Judge Blake. While I have taken Judge Blake's as my starting point, I find that it is proportionate to remove the appellants. I so find because it will be a choice for D whether he remains in the United Kingdom until his leave expires or chooses to return with his mother and stepfather to Jamaica. I have also taken into account that when Judge Blake made his decision in 2013, D was awaiting treatment for combat stress. Crucially, the evidence before me is that D has finished his specialist treatment. The anticipated specialist treatment involved a six-week course. In his Witness Statement at Paragraph 26 he states, "... As I was advised to seek combat counselling I was referred to Combat Stress a charity which provides counselling for service personnel. I was placed on a six week intensive treatment course and medications including Amitriptyline which I continue to take till (sic) 2014. I am still dependent on sleeping tablets and Vitamin B6."
  85. I find that D's specialist course of intensive treatment finished three years ago although in his Witness Statement he states that he is still supported by Combat Stress and if he had to go to Jamaica he would not receive the support of Combat Stress. I remind myself that the burden of proof is upon the Appellants to prove each element of their case. There is no credible evidence before me that there is not a functioning mental health service in Jamaica. The contrary is the case as the Reasons for Refusal letter quotes from the Jamaican Information Service, Ministry of Health, accessed on 17 September 2009 which reported:

*"The mental health services are delivered through a three-pronged system consisting of: a residential hospital - Bellevue Hospital, outpatient community mental health services at primary health care facilities island wide, and residential outpatient rehabilitation units - Ken Royes Rehabilitation Centre."*
  86. The Respondent also refers to the WHO Country Profile Jamaica 2005 which lists the following therapeutic drugs as Carbamezepine, Phenobarbital, Phenyltoinsodium, Sodiam Valoprate, amitriptyline, Chlorpromazine, Diazepam, Fluphenazine, Haloperidol and Lithium. Also on 4 June 2008, the Jamaica Information Services reported that the Ministry of Health and Environment planned to develop a community-based mental health service. I am therefore fortified in my view that there is mental health provision in Jamaica which D could avail of. I also find that by modern means of communication, D could continue to keep in touch with Combat Stress from Jamaica.
  87. The Appellants and D make the case that his mother and stepfather have been instrumental in his care and looking after him. I find that the Appellants will be able to continue to provide care to D if he decides to return with them to Jamaica. Up until the expiry of his leave, it is a matter of choice whether he returns with the Appellants. However, I find there is nothing in these circumstances that would tip the balance in favour of the Appellants and against the public interest.
18. It was not raised before the Judge and not discussed before the Upper Tribunal at the error of law stage as to whether the fact D is suffering

to the extent he is as a result of active service on behalf of the United Kingdom should be a relevant factor when assessing the weight to be given to the public interest. It is accepted that when individuals join HM Armed Forces they are accepting that there is a real risk of their suffering serious harm as part of their normal day-to-day activities, but whether this is an absolute issue in a case in which an individual has been shown to suffer symptoms which have no organic origin and for which the UK Government has accepted responsibility and provided treatment is an interesting question.

19. The Judge found that the balance of the proportionality exercise tipped "firmly in favour of the public interest" [90] and found that the decision was proportionate.
20. The Judge had available information that D had received input from Combat Stress. This is a charitable organisation who specialise in helping former members of the Armed Forces who leave their service with complex mental health problems. Combat Stress describe themselves as experts in the treatment of Service-related mental health issues. In addition to offering a 24-hour helpline and community support they also offer more intensive treatment programmes including a six-week specialist Post-Traumatic Stress Disorder Intensive Treatment programme which is that D attended.
21. Combat Stress note that PTSD is a problem for a minority of Veterans and that around 1 in 25 Veterans of the Iraq and Afghanistan wars are likely to develop PTSD, similar to that in the general public. Their website goes on to state "however, while the rate of occurrence is similar, the complexity of the disorder tends to be much greater in Veterans. Furthermore, it often occurs alongside other medical problems such as pain, disability and substance abuse, particularly alcohol abuse."
22. In relation to the question of whether it is possible to cure PTSD, Combat Stress state on their website:

"PTSD has been left untreated for a number of years or decades will require more intensive treatment. There are still positive health outcomes for sufferers, and the potential for a life beyond symptoms, but seeking suitable, timely treatment is key to maximising the chances of recovery. If PTSD is diagnosed early and the sufferer receives the right treatment in the right environment, rates of recovery are very positive. Veterans can live normal fulfilling lives, able to work with the condition and generally become symptom-free for long periods.

There is a risk of delayed-onset of PTSD, where symptoms do not occur for years or decades after the traumatic events. Veterans who present with delayed-onset PTSD have often been exposed to the effects of multiple traumas over a longer period of time. This suggests that those who served multiple tours are more at risk of developing PTSD several years after leaving the military.

23. The Judge had available to him evidence from Combat Stress including a letter from the Outpatients Department together with reports written by Dr Lyle dated 4 September 2013, 26 April 2015 and 1 June 2016.
24. In the 2013 report Dr Lyle writes:

### **Psychological symptoms**

D has dwelt a lot on all of his experiences in the Army including both the bullying and the traumatic experiences he had in Iraq. He was particularly affected by the episode when the vehicle was blown up by an explosive device, killing and severely injuring many of the occupants. He has since experienced nightmares in which he wakes up in the night in a panic, agitated and looking for his helmet and body armour. This reminded him of the situation in Iraq when he might be rudely awakened from his sleep by having a mortar shell landed close by his bed. He explained that there was no "hard cover". His sleep still remains very disturbed. He has continued to be plagued by flashback episodes in which he will relive some of the many traumatic experiences that he had whilst on active service. He describes having "sense of the fear of knowing you can die". Sometimes he sees himself being chased by a Vehicle-Borne Explosive Device, which was a particular hazard his unit had to face in Iraq. D explained that although he was a gunner he was often cast in the role of infantry and would have to go out on patrol as all the other soldiers did. Even when back in Germany or the UK, D remained suspicious of litter bins or unattended luggage. He was also unnerved by people looking through windows or shouting. All of these were particularly likely to trigger flashbacks. These could also be set off by low-flying planes which sounded to him very similar to the Chinese-made rockets which bombarded his unit in Iraq. Typical anxiety symptoms experienced include an increase in heart rate, sweating to excess and handshaking.

.....

### **Self-harm**

D admitted to one attempt at self-harm in Iraq. He described how he had loaded his gun and had his finger on the trigger. On another occasion after he went absent without leave, he planned to crash a car and kill himself. There is a documented attempted overdose in June 2013 which provoked a response by the [..... Crisis Service ]who have been monitoring him since. D is staying with his mother but she is afraid to leave him alone in the house in case he might again try to kill himself.

### **Opinion**

D is a young man who whilst on active service with the British Forces suffered a number of traumatic experiences which have resulted in him developing a severe combat-related Post Traumatic Stress Disorder. He has been assessed by the Institute of Psycho-trauma at the East London NHS Trust. Their report concluded that he required specific therapy for his PTSD and suggested that he should attend Combat Stress. There are however apparently issues about the availability to him of treatment because he does not have guaranteed residency within the UK. I would be extremely doubtful if the type of highly specialised treatment D requires would be available to him in Jamaica. He specifically requires either Eye Movement Desensitisation or Bilateral Stimulation treatment, which are the treatments recommended in the NICE guidelines for Post-Traumatic Stress Disorder. I have, since seeing D specifically written to his GP requesting a change of antidepressant medication, but I have indicated that his mother should hold and disperse the medication, as I consider that he still represents an overdose risk.

It cannot be doubted that D is still in a very vulnerable state in terms of his mental health. He is scoring at nearly the maximum on depression and he also has a score indicating a quite severe degree of anxiety. There is an established recent history of a suicide attempt by D and in my opinion does very much need the support and help which continues to be provided by his mother. If he were forced to return to Jamaica I do not think it will be long before he became a completed suicide.

25. The 2015 report was written following an interview with D on 23 April 2015 to review his progress. Dr Lyle notes that D had been assessed

and inducted into treatment by the Combat Stress organisation and had undertaken a six week intensive residential programme and that he continues in treatment with them, being followed up on a weekly outpatient basis. Some improvement in D's clinical condition was noted and his mother was now willing to leave him alone in the house for short periods, but not overnight, as even then she still checks up on him. It is noted that D is still troubled by suicidal thoughts and there had been at least one serious attempt that is known about. On page 3 of the report it is written:

"D has still not found a medication which suits him, and he struggles with feelings of rage. His sleep is still very disturbed. He continues to suffer from feelings of depression which "hit him hard" and he describes the feelings as being of "complete loss". He continues to be disturbed by the "humming noise of jets" which reminds him of the rocket fire which he would sometimes experience in Iraq. He finds also that cars "with flashing lights" recall to him the car bombs he encountered on active service. In response to the treatment he is receiving, the flashbacks have receded and are now mainly triggered by such reminders. D is still unfit to work and he's totally reliant on his family for emotional support and to keep him from self harm. In my view the maintenance of the programme which he has so far [intelligible] is heavily predicated on him being able to stay in the UK in touch with his ongoing treatment programme and with his family. He has also particularly appreciated the contact with and support of other veterans who have undergone similar experiences, and some of whom are still affected by psychiatric injuries sustained as long ago as the Falklands War.

D's parents provide vital stability and close support to D who is slowly trying to claw his way back to some sort of normality, after suffering a severe form of Post Traumatic Stress Disorder whilst on active service with the British Army. I consider that their presence is a major factor in facilitating and maintaining the improvement he has managed so far, and in dissuading him from suicide. I very much fear that if D's parents are not allowed to stay in the UK to continue to look after him, D would not be able to survive independently in the community.

26. In the report dated 1 June 2016 Dr Lyle records that D found the course with Combat Stress helpful although he still has mood swings and reports still having suicidal thoughts. It is recorded that D's mother continues to hold and dispense his psychotropic medication to prevent him overdosing and that although D feels he had been making some overall progress he suffered a setback in November 2015 when he had to confront two individuals breaking into his mother's house which ended up in him being "bottled" on the head and sustaining a head wound, which has led to him not to now feeling safe at his mother's house in case those individuals should return. It is noted D has been prescribed psychotropic medicine by his GP. Dr Lyle summarises the content of the clinical interview with D before setting out his professional opinion in the following terms:

#### **Discussion and Conclusions**

I was sorry to see that D is not much further improved, indeed he seems to have taken several steps backwards. This is probably largely attributable to the fracas which resulted when he tried to stop two youths from breaking into his mother's house. This seemed just to confirm to him that the world was still a very dangerous place and it has resulted in a worsening of his symptoms of PTSD.

I have some recommendations to make about future treatment which may be helpful to D. In the first instance I would recommend a reinstatement of his treatment with the antidepressant Amitriptyline working up to a larger dose. This should help with the ongoing sleep problems which are considerable. Whilst at Combat Stress Leatherhead he was prescribed additional antipsychotic medication and I will be writing to his GP to suggest that this be reinstated too. Regarding the ongoing difficulties with going out of doors, I would suggest a programme of desensitisation and treatment along Behaviour Therapy lines. I will be writing to suggest a referral to Dr Jennifer Wilde at Kings College Hospital, London where there is particular expertise in applying this to sufferers of PTSD. There may however be a wait before he can be taken into treatment.

D is saying that he is experiencing suicidal thoughts approximately three or four times a week and I consider that the support of his mother and stepfather is even more necessary for him now. It is also important that he has the opportunity to undergo the specialist Behaviour Therapy treatment with Dr Wilde which I have outlined above. Given the recent deterioration in D's mental health state I consider that it is even more important that he should continue to have the support of his mother and stepfather and indeed he feels very threatened of the prospect of them potentially being required to leave the country. At present, they are a major factor in preventing his suicidal thoughts from being carried out in reality."

27. It is clear from the evidence before the Judge that D is still suffering as a result of his earlier experiences. Dr Lyle identifies two sources of future treatment, being chemical intervention through the form of prescription medication and specialist treatment at Kings College Hospital in London. The decision under challenge finds that Jamaica has psychiatric services which is not disputed before the Upper Tribunal, but that is not the only issue. The Judge was arguably required to identify not only whether psychiatric services exist but whether the services offered are capable of meeting D's specialist needs.
28. A consequence of the war in Iraq and Afghanistan is that medical professionals in the United Kingdom, both those who served in the Armed Forces as their chosen profession who were seconded to or assisted the Armed Forces in the field of combat and those who dealt with the effects of combat within the UK such as those in the hospitals within Birmingham, have gained world leading expertise in dealing with the effects of combat and war. This applies not only to the ability to deal with physical injuries such as wounds caused by gunfire, bomb blasts, or other forms of direct trauma, but also the psychological impact of experiencing such a hostile and dangerous environment.
29. It is recognised that in dealing with psychological illnesses such as PTSD one of the therapies involves an understanding of the root cause(s). What is recognised is that those who have suffered in a combat environment experience things that members of the normal population, fortunately, never have to contemplate. A reading of the decision under challenge indicates that this unique element of this case was not properly understood or factored into the balancing exercise by the Judge who appears to have treated D as a person suffering from PTSD with no apparent consideration/understanding of the trauma of serving in a combat role in Iraq, which has been



accepted as credible by both the Secretary of State, medical professionals and the Ministry of Defence, and what future treatment is required. It is of concern to note that in the paragraphs set out above the Judge makes no mention of the specialist treatment recommended by Dr Lyle and fails to assess whether those delivering psychiatric services in Jamaica possess the appropriate training and experience, to deal with PTSD arising from combat experiences.

30. The medical report clearly shows there remains an ongoing need for specialist treatment. Whilst it is accepted D is not the subject of any order for his removal from the United Kingdom, the medical evidence clearly shows the role D's mother plays in both providing support but also in ensuring his personal safety and welfare, such as retaining and handing out D's medication to prevent any risk of overdose. The impact of the appeal being dismissed is that the Secretary of State would be able to issue a removal direction and remove the appellants. The Judge fails to consider what impact that would have upon D which on the face of the medical evidence would be catastrophic, more likely than not, resulting in D committing suicide.
31. The Judge's solution to this is set out in [84] that the decision was proportionate as it will be a choice for D whether he remains in the United Kingdom or chooses to return with his mother and stepfather to Jamaica. D has leave pursuant to article 8 in his own right based upon his situation, presentation, and needs, which were accepted as making any decision to remove him disproportionate by Judge Blake. If the only option D is left with, if his parents are removed, is to accompany them to Jamaica it may be necessary to consider the lawfulness of such a decision. The effect of compelling D to have to follow his parents to continue to receive their ongoing support may result in a breach of his protected rights. If so it cannot, arguably, be a lawful decision. This is not a matter of choice in the way that term is ordinarily understood, where a person has options in relation to which there is relative freedom of choice as to which one to take, but a situation where D will be faced with either following his mother to ensure he has her ongoing support but without the specialist treatment it appears he still requires that has not been shown to be available in Jamaica, or he remains in the United Kingdom to access such treatment without the support of his mother. Either option appears on the face of the professional medical evidence likely to result in a fatal outcome for D.
32. I find in this case that the Judge has materially erred in law in undertaking the assessment of the proportionality of the decision based upon the information that was before the First-tier Tribunal.
33. The rejection of the appellant's case under the Immigration Rules has not been shown to be infected by arguable legal error and shall be preserved. The finding of the existence of family life between D and his mother is also a sustainable finding and shall be preserved.

34. The Upper Tribunal was not able to go on a remake the decision at the hearing but it was agreed that this may be a process that can be completed on the basis of the information available to this Tribunal, after time has been provided for the parties to provide written submissions in relation to the Article 8 ECHR element of this case.
35. The following directions shall therefore apply to the future management of this case:
  - a. The determination of First-tier Judge G Clarke shall be set aside.
  - b. The dismissal of the appeal under the Immigration Rules shall be a preserved finding as shall be the finding that family life recognised by Article 8 ECHR exists between D his mother and his stepfather as a result of D's PTSD and mental health problems and the related emotional and other forms of dependency referred to in the First-tier Tribunal decision.
  - c. The Secretary of State shall file and serve written submissions in relation to the remaking of the Article 8 ECHR element of the appeal to be received no later than 4 PM 12 May 2017, allowing for the intervening Easter holiday period.
  - d. The appellant shall have leave to file written submissions in relation to the remaking of the Article 8 ECHR element of the appeal, and in reply, providing the same received no later than 4 PM 19 May 2017.
  - e. The appeal shall be listed before Upper Tribunal Judge Hanson to be determined on the basis of the evidence available to the First-tier Tribunal and the written submissions filed in accordance with these directions, on the first open date after 22 May 2017.

## **Decision**

36. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. Directions have been given in relation to the future conduct of this appeal.**

Anonymity.

37. 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 the 12 April 2017