



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/01342/2019**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 December 2019**

**Decision & Reasons  
Promulgated  
On 20 December 2019**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

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

Appellant

**and**

**MS CARMEN DASILVA BELL  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr C Avery (Senior Home Office Presenting Officer)  
For the Respondent: Ms M Butler (instructed by Wilson Solicitors LLP)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Secretary of State in relation to a decision of Judge Carroll in the First-tier Tribunal, promulgated on 9 August 2019 in which he allowed the appeal.
2. For the sake of continuity and clarity I shall continue to refer to Ms Bell as the appellant and to the Secretary of State as the respondent in this judgment.

**The Application for Permission to Appeal**

3. The grounds upon which permission to appeal was granted assert that the judge failed to adequately reason findings on material matters/made a material misdirection of law/irrational findings. In particular, the grounds state that the judge found the appellant could not meet the requirements of the Immigration Rules in that there were no very significant obstacles to reintegration to Jamaica. He found the relationship between the appellant and her daughter went beyond the normal emotional ties between parents and adult siblings on the facts of the case and, following that finding the judge concluded, whilst accepting that little weight should be placed on private life that is established when a person's immigration status is precarious or unlawful, that the facts of this case displayed exceptional circumstances that gave rise to a disproportionate breach of article 8 of the ECHR.
4. The grounds note the First-tier Tribunal's finding that both the appellant and her daughter were without credibility in numerous aspects of their evidence and that the Judge appeared to reject the expert evidence that asserted a significant suicide risk. It is said that the judge gave no indication of acceptance or rejection of the latest independent social worker's report that asserted a catastrophic effect on the appellant's daughter and granddaughters but does appear to reject this when upholding the decision of First-tier Tribunal Judge Aujla in 2015.
5. It is submitted that the judge gave no clear reasoning why he had departed from the decision of Judge Aujla, who had rejected the Kugathas test and which Judge Carroll Tribunal helpfully set out in the decision. Judge Aujla had found that the sponsor, her daughter, and her children would be able to visit the appellant on her return to Jamaica. It is said to be unclear from the decision what factors had altered, given the findings under the Immigration Rule, to reveal emotional dependency beyond normal emotional ties between parents and adult children or what exceptional circumstances now revealed themselves post the 2015 decision.
6. It is then said that, given the lack of adequate reasoning as to why Judge Carroll felt able to depart from the 2015 decision, the apparent rejection of the expert evidence and adverse credibility findings against the sponsor and appellant, the conclusion that this appeal succeeds outside of the Rules under exceptionality are irrational.

### **Appeal Background and Claim**

7. The appellant in this case was born in November 1954 and is a national of Jamaica. She is thus now aged 65 years. She had applied, unsuccessfully, for leave to remain in the UK on human rights grounds. The date of decision was 4 January 2019.
8. The appellant had visited the UK 7 times between 1991 and 2003. In January 2003 she entered the UK, again with a visit visa, valid until June 2003. On this occasion she remained without leave. She applied for leave

to remain outside the Rules in October 2008, which was refused, without a right of appeal, in September 2009.

9. In December 2012 the appellant made a further application for leave to remain, which was again refused, without a right of appeal, in December 2013.
10. In March 2014 the appellant made an application for a derivative residence card which was refused in April 2014. The appellant appealed against that decision and it was dismissed by First-tier Tribunal Judge Aujla in October 2015. Permission to appeal that decision was refused and the appellant became appeal rights exhausted in November 2015.
11. In May 2017 the appellant made a further application for leave to remain, which gave rise to the decision currently under appeal.
12. In his judgment Judge Carroll set out the submissions made in support of the application, by the appellant's representative, at paragraph 7.
13. It was asserted that the appellant was an extremely vulnerable, elderly woman who had experienced a history of traumatic events, including prolonged, extreme domestic violence throughout her life. It was said that she came from a very disadvantaged background in Jamaica; that she had left school at a very young age to work; that she was often destitute without a fixed abode having to prostitute herself to find food and shelter.
14. It was said that she had three daughters from three different men in Jamaica one born in 1972 one born in 1973 (J, the current sponsor) and a third born in 1984.
15. The appellant has no contact with the eldest child and does not know her whereabouts. The younger two are both in the UK and very close to her. The appellant has been living with her middle daughter, J and her two daughters since 2003.
16. It is then said that, while in Jamaica, the appellant suffered prolonged and severe domestic violence and abuse from different partners, including being burnt with hot water, being brutally beaten, being pushed into glass doors, having bricks shoved over her head, being kicked in her stomach and that, as a result of the extreme violence she had inflicted upon her, she suffered three miscarriages at various points.
17. It is said that, because of the extreme violence and abuse that she was subjected to, the appellant was unable to raise her daughters. She had married her last partner and moved in with him and his mother and for a short time her youngest daughter lived with them. Because she was ill treated by her husband the appellant moved out. Her husband also sexually molested J on the only occasion she went to stay at their home briefly to escape her own father's violence.
18. As a result of the violence from her husband, the appellant reported him to the police and left the house. She lived with her mother-in-law and sold

fruit on the street to survive. When her mother-in-law died, the appellant moved in with a female pastor and she took her youngest child, C, to stay with her. Then from around 1991 a friend started inviting her to the UK and she travelled on several occasions to the UK between 1991 and 2003, always returning to Jamaica within the currency of her visa.

19. During this time her youngest daughter, C, came to the UK as a visitor and remained.
20. Around 1998 it was said that the appellant regained contact with J, who had moved to the UK as a teenager. J had suffered severe abuse from her own father in Jamaica and was forced to flee the house because of the violence. She came to the UK with her stepmother who had also been abused by him.
21. The appellant and her daughter started to rebuild their relationship and in 2001, when the appellant came to the UK, she saw J a few times and babysat for her granddaughter, born in May 1999. They became closer.
22. J was herself in an abusive relationship at the time. In 2004 she gave birth to her second daughter. Although suffering domestic violence from her partner and wanting to leave, she did not as she felt she could not cope on her own without support and with two young children.
23. Because she did not want her daughter to continue suffering in an abusive relationship, the appellant came to the UK to help her get out of the relationship and to help look after the children so that J could keep her job and study and improve her life. It was for this reason that she remained in the UK, having travelled here in January 2003. She has lived with daughter J and the two children since that time. It is said that she took an active part in the children's upbringing, providing care on a daily basis.
24. It is said that the children had psychological issues as a result of their father's abusive behaviour towards their mother and had been bullied at school. J herself had been deeply affected by the abuse both from her father, paternal aunt and grandmother and by the domestic violence from her former partner such that she is attending psychotherapeutic counselling.
25. Although referred for counselling, the appellant had never taken up any therapeutic treatment and was referred by her representatives to the Helen Bamber Foundation where she attends twice-weekly sessions.
26. It was said that the appellant suffers from suicidal thoughts and moments of extreme depression and anxiety. Having been involved in raising her grandchildren since 2003, she has developed a strong bond with them.
27. It is said that the appellant's mental health problems are worsened by the instability of her legal status and if returned to Jamaica, where she has no ties, no accommodation, no family, no support network and no hope of receiving proper care for her diabetes, high blood pressure and psychological problems.

### **The Reasons for the Refusal**

28. The judge then set out, in brief, the reasons for refusal, namely that the appellant had lived in Jamaica until she was 48 years of age, that no mental health issues had been raised in any of her previous applications and that there were a number of inconsistencies in her evidence. The Secretary of State also noted that the medication prescribed for the appellant is available in Jamaica where she can continue to receive financial support from friends and family in the UK.
29. It is recorded that at the hearing the appellant and her witnesses were treated as vulnerable witnesses.

### **The Expert Evidence**

30. The judge then set out the psychiatric evidence prepared by Professor Katona and contained in the appellant's bundle. In his report he recorded that her clinical score was indicative of severe mental distress and that she had moderate depressive symptoms. He diagnosed PTSD, which in his opinion, was caused by repeated domestic abuse that she had experienced over many years in Jamaica, together with her ongoing immigration uncertainty. He concluded that she would be at significant risk of suicide in the UK if she lost all hope of being allowed to remain. That report was dated April 2017. There was an updated report by Professor Katona, also contained in the appellant's bundle. He concluded in that, that an enforced return to Jamaica would be emotionally devastating and result in significant worsening of her already severe PTSD and depressive symptoms and the frequency and intensity of her associated panic attacks. He said that without support, in the context of worsening PTSD, depressive and panic symptoms, the appellant would be unable to work and support herself and unable to secure her basic needs such as food or accommodation. He stated that homelessness and destitution would result in a vicious cycle of mental deterioration. He also opined that the appellant's suicide risk would be increased and was significant and that she would be at high risk of suicide during the removal process and once back in Jamaica.
31. The judge then referred to an independent social worker's report dated March 2017 which opined that if the appellant were to be removed to Jamaica it would have a catastrophic effect on the relationship with her daughter J, with whom she had built a loving and mutually supportive relationship. She also opined that the removal of the appellant from the family would put the granddaughters at some risk of impairment of their mental health and development such as to affect their education and future lives.

### **The 2015 Judgment of Judge Aujla**

32. The judge then went on to set out the relevant findings of Judge Aujla in his determination from 2015.

33. The paragraphs recited find that although no doubt helping in performing certain tasks in relation to the two children, the appellant was not their primary carer. Their primary carer was their mother.
34. Judge Aujla rejected the assertion that the Secretary of State had not complied with her duty under section 55 and found that whilst the appellant's granddaughters would miss their grandmother if she were removed, since she had lived with them for 12 years, her departure would not in any event jeopardise their welfare, well-being or best interests. He noted that the option of visiting the appellant in Jamaica with their mother was always open to the children so as to maintain the bond between them.
35. With reference to article 8, Judge Aujla considered the matter under Appendix FM and found that the appellant did not satisfy the requirements. She did not have an established family life in the United Kingdom either as a partner or as a parent and did not qualify as an adult dependent relative as she had not entered the UK in that capacity.
36. Judge Aujla did not consider there to be exceptional circumstance for article 8 to be considered outside the Immigration Rules. In any event, he found that even if he were to do that, he would find that she did not have a non-emotional dependency on her sponsor and that any family life she had was established while in the UK illegally and applying section 117B of the 2002 Act he found her removal to be proportionate.
37. Judge Aujla also considered the requirements of paragraph 276 ADE and noted that she had not resided in the UK for 20 years and had spent the first 49 years of her life in Jamaica, where she was familiar with the culture. He found there to be no evidence to demonstrate that there would be very significant obstacles to her integration into Jamaica on return.

### **Judge Carroll's Findings**

38. Judge Carroll then went on to his assessment of the appellant's case as put before him.
39. The first thing he said was that there were significant aspects of the evidence given by the appellant and her daughter which were characterised by evasiveness; in particular, in relation to the appellant's employment in the United Kingdom. She had said in her oral evidence that she had worked for "cash in hand" but had stopped doing that a long time ago. The judge noted however, that according to the GP records in the appellant's bundle, she had been issued with a "not fit for work" document in August 2018, which he found would not be necessary for cash in hand employment. He also noted the GP notes, in July 2015, recorded that she had a stress-related problem and that she was a school cook. He also noted that the appellant was recorded as saying that she had been working for 12 years.
40. Judge Carroll then referred to a 2012 Haringey Mental Health Team report where the appellant is recorded as having left secondary school at age 16 with a certificate in cooking and having furthered her education in NVQ 2

in Customer Care and IG Health and Safety in the UK. That evidence, the judge noted, to be wholly inconsistent with the Helen Bamber Report which claimed that the appellant had left school without qualifications and had taken no exams. It also contradicted the appellant's statement where she claimed to have often missed school and stayed at home and that she had not even managed to finish primary school.

41. The judge then went on to note that the 2015 application for a derivative residence card was based on her claimed role as primary carer for her grandchildren. Judge Carroll found, in view of the evidence that he had previously referred to, that given the appellant's long-term employment as a school cook she could not, even allowing for school hours, have had available to her the amount of time needed to care for her granddaughters to the extent that she claimed to have done. He also noted that the evidence of her long-term employment had implications in the context of her credibility and in the context of her claimed mental health difficulties. Her employment, he found, was evidence of fundamental importance as to her ability to function.
42. He noted that the appellant had been asked whether she had used a false identity to work and, while she had initially claimed not to understand the question, she then said she had worked in her own name but later that she had worked in somebody else's name and that she did not have a national insurance number.
43. The judge then noted that the appellant's daughter's evidence, as to what her mother had been doing in the UK, was equally lacking in credibility. When she was asked how long her mother had worked, she said that it had not been for long and then that she could not remember. She said that her mother had worked cash in hand as a cleaner. When she was asked whether she knew which school her mother had worked in, she said she had not been really focusing on that and she did not know. The judge noted that the appellant and her daughter claimed to be exceptionally close and it "beggars belief" that her daughter would not know where her mother had been working for a period of many years.
44. The judge then went on to refer to the letter of 7 June 2017 from the Helen Bamber Foundation, contained in the appellant's bundle, which refers to the appellant having been offered 26 sessions of "narrative exposure therapy" but that she attended only 17 of those. The judge found that to be a low attendance rate for a person claiming to have significant mental health issues for which therapy and treatment are required.
45. The judge then referred to Professor Katona's more recent report of July 2019, where he had recorded that the appellant had told him that in January 2019 she had felt like drowning herself and had filled the bath with cold water and got into it, intending to drown herself, but had then fallen asleep. She had said that one of her grandchildren came into the bathroom and found her. The judge found that it was inherently implausible that the appellant would have fallen asleep in a bath of cold water on a January day and further, that a letter from Barnet, Enfield and

Haringey Mental Health Trust from September 2016 records the appellant giving a similar account of such an incident having occurred in 2015 when it was her daughter who found her. The judge also noted that nowhere in the daughter's witness statement was any such incident mentioned.

46. The judge noted that the pattern of very frequent travel by the appellant between Jamaica and the UK between 1991 in 2003 did not suggest a traumatised individual who feared return to her place of birth.
47. Notwithstanding those negative findings, the judge then went on to say that he was nevertheless satisfied as to her account of how she had re-established a relationship with her daughter which had been severed by her daughter's departure from Jamaica in 1990.
48. The judge was also satisfied that the two had established a close relationship by having lived together in the UK for a significant period. In relation to her grandchildren however the judge noted that the eldest was over 18 and away at university and the younger would shortly be 18. He did not doubt their affection for their grandmother but one of them was already living an independent adult life and there was no evidence to show that the younger one would not shortly be doing the same. He found the evidence did not cause him to depart from the findings made by Judge Aujla in 2015 that the appellant's departure from the UK would not jeopardise the welfare, well-being and best interests of the grandchildren, who in any event have the option to visit her in Jamaica.
49. The judge then went on to say that it was the appellant's case that she no longer had any friends or family members in Jamaica. He then said that it is apparent from the preceding paragraph that he was not satisfied as the appellant's credibility on very significant aspects of her evidence. He noted that she failed to mention anywhere, the existence of a daughter living in Canada as was claimed in oral evidence. There was no explanation for the failure of the appellant to mention the existence of that child and her failure to do so, together with the inherent implausibility of there being not a single family or social connection in Jamaica led him to doubt the credibility of her evidence in that context. He said that he did not underestimate the difficulties she would face on relocating to Jamaica but, as he had noted above, she had travelled frequently to that country between 1991 and 2003. She lived in Jamaica for 48 years and he found the evidence fell short of demonstrating there would be very significant obstacles to her integration if required to leave the UK.
50. The judge therefore concluded that the appellant did not satisfy the provisions of paragraph 276 ADE.
51. The judge then went on to note the appellant's poor immigration history but also noted that she had re-established an important relationship with her daughter and that they had provided each other with great, mutual, emotional support made necessary, in part, by J's problems caused by an abusive relationship. He accepted that having been in the UK since 2003, all of the appellant's meaningful connections were now in the UK, primarily



with her daughter, but also with friends and the church. He expressed himself satisfied that the facts demonstrated elements of emotional dependency between her and her daughter which went beyond the normal emotional ties that exist between a parent and adult child.

52. Following from that the judge found the appellant to enjoy family and private life in the UK sufficient to engage article 8 and that the decision to remove her would interfere with both. He found the interference to be accordance with the law and then went on to consider whether the interference was necessary and proportionate.
53. The judge then reminded himself of the requirement to take into account section 117B of the 2002 Act which provides that little weight should be given to a private life established by a person at a time when their immigration status is precarious or unlawful, as the appellant has been since her arrival in 2003. He then went on to say that it is well established that, in the case of non-settled migrants, it is only in exceptional circumstances that the decision to remove would give rise to a breach of article 8. In the light of all the evidence to which he had referred above, he expressed himself satisfied that there were exceptional circumstances and found that the decision under appeal gives rise to a disproportionate breach of article 8.

### **My Findings**

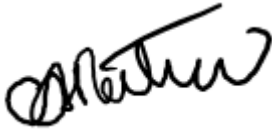
54. I have no hesitation in finding that the judge's reasoning for allowing the appeal outside the Immigration Rules, under article 8 of the ECHR, given his previous numerous negative findings are inadequate, bordering on the irrational. It is well-established that where the appellant cannot meet the requirements of either paragraph 276 ADE or Appendix FM there must be compelling reasons to consider the matter under article 8 outside the Rules and certainly to allow them for that reason. The Judge simply gave no adequate reason as to what the compelling circumstances in this case were. All of his findings were that the appellant's position was not as claimed by her but then found her removal disproportionate.
55. I therefore indicated that for those reasons I was going to set aside the decision to allow the appeal under article 8 outside the Rules but I was not going to set aside any of the judges previous adverse findings in relation to which there had been no challenge. The appellant had not filed a rule 24 response and those findings were fully reasoned and based on the evidence.
56. I indicated that I would redecide the appeal on submissions, all the evidence having previously been given, and the matter fell to be decided on the narrow issue of whether the appeal should be allowed under article 8 outside the Rules. I allowed Ms Butler time to prepare her submissions and the hearing was resumed later in the day.
57. In her submissions Ms Butler relied on the very close relationship the judge had found between the appellant and her daughter and that she had lived for a very significant period with her daughter and her granddaughters,

albeit one grandchild had left home and the other was soon going to. She relied upon the judge's finding that the relationship was important and that they provided great emotional support to each other and the fact that the judge had found all meaningful connections were now in the UK with her daughter, her friends and the church.

58. She then submitted that the judge had not rejected the evidence of either Professor Katona or the independent social worker and that it was clear that the appellant's mental state indicated a very real risk of suicide. She argued that her mental stability, and her physical and moral integrity could not be preserved if she returned to Jamaica. She argued that the psychiatric evidence, the lack of meaningful ties to Jamaica, the age of the appellant, that she had been the victim of extreme protracted domestic violence taken together with the objective evidence regarding the situation for women in Jamaica amounted to compelling circumstances to justify allowing the appeal.
59. On the Secretary of State's behalf Mr Avery relied on the original decision and argued that it was clear from the content of the judgment that Judge Carroll had rejected the medical evidence. The various observations made by the judge undermined the conclusions in that medical evidence; in particular his findings that there were no very significant obstacles to integration. That was the basis upon which article 8 should be considered. Whilst there is family life between the appellant and her daughter, the fact remains that the appellant has a very poor immigration history and taken in the round with the adverse findings, there was nothing exceptional about this case to override the public interest in of immigration control.
60. I find that the judge did reject the medical evidence as to the gravity of the appellant's mental state. It is clear from his numerous findings, that I have set out above, that the appellant's situation was by no means as dire as suggested. She had undertaken only part of the therapies offered, the evidence of suicide attempts was inconsistent and unreliable, and all significantly undermined by her employment history.
61. The appellant and her daughter's evidence in itself lacked credibility and consistency and, was contradictory. It smacked of exaggerating the situation and the appellant's circumstances in an attempt for her to remain in the UK.
62. The simple fact that there is family life between the appellant and her adult daughter in the UK and that she has formed ties here in the years she has been here are all matters provided for within Appendix FM and paragraph 276 ADE. There are no circumstances not covered by those provisions and no compelling circumstances beyond those previously considered and rejected, which would warrant allowing this appeal outside the Rules.
63. I find the public interest in the maintenance of immigration control is not outweighed by any of the factors in this case and therefore the appeal must be dismissed.

64. The appeal to the Upper Tribunal by the Secretary of State is allowed. In redeciding the appellant's appeal against the Secretary of State's decision, that appeal is dismissed.

No application was made for anonymity and I can see no reason to make an anonymity direction in this case.



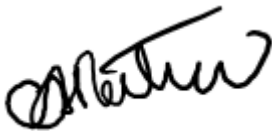
Signed  
2019

Date 16 December

Upper Tribunal Judge Martin

**TO THE RESPONDENT**  
**FEE AWARD**

As I have dismissed the appeal there can be no fee award.



Signed  
2019

Date 16 December

Upper Tribunal Judge Martin