



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI 2023 002253**  
**First-tier Tribunal No:**  
**HU/04859/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 11 September 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**YRM**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr R Toal, counsel instructed by Duncan Lewis & Co Solicitors  
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**Heard at Field House on 25 August 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family, is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or any member of his family. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

Introduction

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge S Aziz promulgated on 18 May 2023.
2. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.

3. Permission to appeal was granted by First-tier Tribunal Judge Monaghan on 7 June 2023.

#### Anonymity

4. An anonymity direction was made previously and is repeated as this is an appeal involving a protection claim.

#### Factual Background

5. The appellant is a national of Jamaica now aged in his twenties. He first arrived in the United Kingdom with his mother in 2002, when he was aged three years old. The appellant was granted periods of leave from 2009 until 2016. Thereafter he was granted indefinite leave to remain. In 2019, the appellant was convicted of possession of cannabis with intent to supply for which he was sentenced to twelve months imprisonment as well as possession of a prohibited weapon for which he received five years imprisonment, to run concurrently. Deportation action was initiated, in response to which the appellant made human rights submissions, referring to his private and family life with his mother, siblings and partner.
6. On 15 July 2021, the Secretary of State decided to deport the appellant, and this is the decision under appeal.
7. On 5 October 2022, the appellant raised a protection claim. In that claim he stated that he was recruited for exploitation while visiting Jamaica, in that he was asked to bring a package to the United Kingdom. The appellant refused to do so and received threats as a result. Upon returning to the United Kingdom, the appellant describes being coerced into criminality which resulted in the 2019 convictions. The appellant prayed in aid Articles 3 and 4 of the ECHR. Ultimately, the respondent consented for the appellant to rely on only Articles 2 and 3 ECHR as new matters, because there had been a negative reasonable grounds decision made on 4 November 2022.

#### The decision of the First-tier Tribunal

8. At the hearing before the First-tier Tribunal, the judge heard oral evidence from the appellant and several witnesses, as well as submissions from the representatives. The judge concluded that there was a real risk of serious harm to the appellant from an Organised Crime Gang (OCG), that the appellant satisfied the private life exception to deportation and that there were very compelling circumstances given that the protection claim succeeded.

#### The grounds of appeal

9. The grounds of appeal are summarised in the application as follows.
  - a. Ground 1: Error of law in relying on experts' opinions on the facts of YRM's case.
  - b. Ground 2: The Judge failed to make sufficient findings of fact or sufficient reasons to substantiate his conclusion.
  - c. Ground 3: The Judge failed to consider the findings of the NRM decision or state why he was reaching a different conclusion.

- d. Ground 4: The Judge conflated arts 3 and 4.
  - e. Ground 5: Misdirection as to s 117(1) NIAA 2002.
  - f. Ground 6: Failure to correctly apply the s 117(6) test.
10. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.
- The Judge has arguably made a material error of law in attaching undue weight to the three expert reports in reaching his findings.
- The Judge has also arguably failed to carry out a full proportionality assessment under Article 8 when considering whether the Appellant has established that there are very compelling circumstances such as to outweigh the public interest in deportation and the effect of s117(C)(6).
- The Judge has arguably erred in conflating Articles 3 and 4 of the ECHR.
11. The appellant, as respondent to these proceedings, filed a Rule 24 response dated 28 July 2023 in which the appeal was opposed, and the Upper Tribunal invited to dismiss the appeal. A detailed skeleton argument and bundle was also filed on 23 August 2023.

Decision on error of law

12. I heard submissions from the representatives. Ms Ahmed's arguments were succinct, in that she mainly relied upon the grounds, mainly one to three. She criticised the experts' reports, stating that they amounted to factfinding and argued that the judge did provide adequate reasons, make sufficient findings including the nature of any risk and internal relocation and failed to consider several matters. Ms Ahmed said nothing of note in relation to ground four and nothing at all regarding grounds five and six. Mr Toal relied upon his skeleton argument, upon which he expanded with reference to various case law. At the end of the hearing, I reserved my decision and give my reasons below.
13. In the light of the nature of the grounds of appeal in this case as well as the guidance given by the Court of Appeal at paragraph [77] of *KM* [2021] EWCA Civ 693, I recognise that judicial restraint should be exercised when examining the reasons given by a Judge of the First-tier Tribunal for his or her decision and that it should not be assumed too readily that the judge misdirected themselves owing to not every step in their reasoning being fully set out.
14. In reaching my decision, I have taken into consideration all the evidence before me and submissions, both oral and written. I conclude that the decision of the First-tier Tribunal contained no error of law for the following reasons.
15. The first ground alleged that the judge erred in relying on the expert opinions adduced before him to arrive at his findings as to the credibility of the appellant's claim. Those experts were Dr John Cordwell, a forensic psychologist; Mr Colin Carswell, an anti-human trafficking specialist and Dr Damian Blake, an academic whose research includes organised crime, violence, society, and politics in Jamaica as well drug trafficking and urban violence in the wider Latin American and Caribbean region.

16. I note, at the outset, that Mr Toal's submission that there was no challenge by the Secretary of State's representative before the First-tier Tribunal as to the expertise of the authors of the reports nor their reasoning, was not disputed by Ms Ahmed. Nor did Ms Ahmed draw my attention to any part of the judge's decision which indicated that he had abdicated responsibility for arriving at credibility findings to the experts.
17. I was handed several authorities including *MN* [2010] EWCA Civ 1746, which made the point that an expert may give an opinion as to the veracity of account and that weight should be given to such opinions. The complaint made in the first ground is incompatible with these principles. Furthermore, in *SI* (expert evidence - Kurd - SM confirmed) Iraq CG [2008] UKAIT 00094 the following guidance was given.

...a country expert's opinion is to be given significant weight and if the Tribunal decides to come to a different view from an expert on key matters, proper reasons must be given.
18. The judge in this instance, followed this guidance, giving weight to the unchallenged opinions of experts. Even now, the permission grounds do not take issue with any specific opinion expressed by the three experts, albeit it would be impermissible at this late stage. The Secretary of State's case has always been predicated on their view that the appellant has not provided an honest account of his circumstances or alternatively the passage of time negated any current risk.
19. The reports before the judge were replete with detail and considered the appellant's case with care. The psychological report of Dr Cordwell shows that he interviewed the appellant, that the truthfulness of every aspect of his account was considered and an explanation provided, with cogent reasons, for believing the appellant. Mr Carswell's opinion was that indicators and patterns of trafficking set out in the appellant's account was consistent with that of other victims of trafficking and with the objective evidence. Whereas Dr Blake concluded that the appellant was plausible and credible regarding his account of being targeted and recruited by a criminal gang operating in the area of Kingston concerned.
20. Notwithstanding the three supporting expert opinions, the judge did not merely adopt these opinions as is contended in the grounds. It is apparent from [48] of the decision that the judge directed himself appropriately to look at all the evidence in the round. It is further apparent that the judge applied this self-direction because, also at [48] the judge firstly acknowledged the Secretary of State's concerns with the veracity of the appellant's account, which were reproduced in detail at [33] and which were described by the judge as 'valid.' At [40] the judge grappled with the particularly troubling footage of the appellant on WhatsApp, which was one of the respondent's specific concerns. The judge went on to explain that he found the appellant and his witnesses to be credible regarding the core of the appellant's account as well as in the explanations provided to address the Secretary of State's concerns. It was only at this stage, that the judge added that the appellant's account was supported by experts operating in different fields. Thereafter the judge said that he considered all the evidence before him before arriving at a global finding that the appellant was a victim of human trafficking and that his offending occurred owing to being groomed by an OCG. There was no error in the approach of the judge.
21. I now move onto the second ground, where it is asserted that the judge failed to make sufficient findings or give adequate reasons. The principal complaint is that

the judge made no findings as to the form of ill-treatment the appellant faced on removal to Jamaica or to explain why the appellant would face a real risk of a breach of his rights under Article 3 ECHR.

22. The Secretary of State's view of risk was recorded by the judge at [50], that is, that the appellant would face no ill-treatment owing to the passage of time since the events occurred. There was no argument made on behalf of the respondent to the effect that the appellant would not be at risk of serious harm if the events had occurred more recently.
23. Again, there was no criticism on behalf of the respondent of the country expert's opinion that the appellant would be labelled an informer which amounted to a 'death sentence.' Nor was there any challenge to Mr Carswell's evidence that the appellant would face being re-trafficked. As indicated above, the judge accepted the authors' expertise and it is therefore, abundantly clear the nature of the ill-treatment which the judge accepted that the appellant fears.
24. The second ground includes an argument that the judge failed to make findings on internal relocation. It was never the Secretary of State's case that the appellant could avoid any risk by relocating outside of Kingston. As stated above, the respondent's case was that the appellant was not telling the truth and if he was, there was no risk owing to the passage of time. Nonetheless, the judge addressed this matter at [55], in that he accepted the expert evidence of Dr Blake that there was no safe relocation option for the appellant. In the absence of any evidence or submissions to the contrary, the judge made no error in doing so. The remaining points made in this ground make vague assertions as to what the judge failed to do or to refer to. It suffices to say they lack merit.
25. I can dispose of the third ground swiftly. It is contended that the judge failed to consider the NRM decision or state why he reached a different conclusion. The judge described this issue as a 'key point' at [33iii] of the decision and set it out in detail along with the respondent's submissions. As indicated above, at [48] the judge stated that he had taken this issue and the respondent's other concerns into consideration and that all matters had been considered in the round. It is hard to see what more the judge is expected to do. Ultimately, the judge accepted the veracity of the appellant's account, and there is no indication that that outcome would have been altered by the judge providing fuller reasons.
26. The fourth ground amounts to little more than a statement that the judge conflated Article 3 and 4 ECHR. The judge was entitled to treat the accepted risk that the appellant was at risk of being re-trafficked as also amounting to a risk of inhuman and degrading treatment and the grounds fail to identify any error here. The judge acknowledged that the appellant's recruitment by human traffickers was within Article 4 and, in addition, amounted to inhuman and degrading treatment because the appellant was used by the gang to carry out crimes by implied and express threats of extreme violence, including murder. Furthermore, the evidence before the judge was that if the appellant was removed, the gang's actions risked exposing the appellant to violence from Jamaican law enforcement as well as retribution, both as a suspected informer and on account of failing to bring drugs into the United Kingdom for the gang. Therefore, it was right for the judge to look at both Articles. Indeed, in *SM v Croatia* (2020) App no 60561/14, at 297, it was recognised that there can be overlap between Article 4 ECHR and other Articles.

Such conduct or such a situation of human trafficking then falls within the scope of Article 4 of the Convention. This, however, does not exclude the possibility that, in the particular circumstances of a case, a particular form of conduct related to human trafficking may also raise an issue under another provision of the Convention.

27. Grounds five and six allege errors in relation to sections 117(1) and 117(6) of the 2002 Act for reasons which do not relate to the judge's conclusions on the human rights claim. These grounds do not begin to disturb the fact that the appeal was allowed under Article 3 ECHR based on a real risk to the appellant's life and was also allowed under Article 8 for the same reasons.
28. In his decision, the judge explained that he was satisfied that even on the balance of probabilities standard, the appellant would be at risk from the OCG and that this was determinative of the very compelling circumstances test required for the appellant to succeed on human rights grounds.
29. The decision and reasons showed that this experienced judge carefully and fairly considered all the evidence and issues raised in this appeal. The judge's detailed findings are more than adequate to enable the parties to understand why he reached those conclusions.

### **Decision**

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

**The decision of the First-tier Tribunal is upheld.**

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**29 August 2023**

**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email