



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

Case No: UI-2023-004340

First-tier Tribunal No: PA/11001/2017

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 18<sup>th</sup> of July 2024

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**RWG**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms D Revill, instructed by Duncan Lewis Solicitors  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Heard at Field House on 9 July 2024**

**DECISION AND REASONS**

1. This is the re-making of the decision in the appellant's appeal, following the setting aside, in a decision promulgated on 11 December 2023, of the decision of First-tier Tribunal Judge Cary.

2. The appellant is a citizen of Jamaica born on 6 December 1994. He entered the UK on 5 June 1995, aged 6 months, with his mother. They were granted 6 months leave to enter as visitors. Following various unsuccessful applications the appellant was

granted indefinite leave to remain on 23 September 2004 as a dependant of his father, together with his mother and siblings.

3. The appellant subsequently accrued a number of criminal convictions, culminating in a conviction at the Harrow Crown Court on 14 November 2013 of wounding with intent to cause grievous bodily harm and possessing a bladed article in a public place. He had stabbed his former girlfriend with a knife in her mid-abdomen. It sliced her liver causing bleeding into the abdominal cavity. He was sentenced to a total of 7 years and 6 months in custody.

4. The appellant was served with a liability to automatic deportation notice on 21 January 2014 and on 1 July 2014 a deportation order was issued against him and a decision made that he be deported pursuant to section 32(5) of the UK Borders Act 2007. He appealed against the deportation decision. His appeal was dismissed by a First-tier Tribunal Judge on 29 April 2015. He was refused permission to appeal to the Upper Tribunal and became appeal rights exhausted on 15 June 2015.

5. On 7 September 2016 the appellant made further submissions, following removal directions set for his removal to Jamaica, claiming that his deportation would breach his human rights and relying upon his relationship with his daughter L, born on 28 September 2011, with whom he was seeking contact through the family courts. His submissions were refused on 18 October 2016 under paragraph 353 of the immigration rules. Removal directions were set again for 26 October 2016 but were cancelled when the appellant's legal representatives made a judicial review claim. Following the refusal of the judicial review claim, further removal directions were set for 4 March 2017, but those were cancelled when the appellant made an asylum claim on 3 March 2017.

6. The appellant's claim was made on the basis that he was bisexual and, as such, was at risk of persecution on return to Jamaica. He claimed to have had an intimate relationship with a school friend MK, a Kosovan national, with whom he had shared a cell in prison from 2 May 2015, until MK was transferred in October/ November 2015. He claimed that he had told his sister in Jamaica about being bisexual. His sister had a partner of the same gender but subsequently left Jamaica and went to St Kitts after being attacked and shot. His sister had told her friend about him and had subsequently fallen out with her friend, who had then spread gossip about him. He would be at risk on return to Jamaica because they were very homophobic there. In support of his claim the appellant produced statements from MK and from his sister, SH.

7. The appellant's claim was refused and certified as unfounded on 15 June 2017 and further representations from the appellant led to removal directions being cancelled again. The respondent made a further decision refusing the appellant's claim, on 22 September 2017, declining again to revoke the deportation order issued against him, albeit with an in-country right of appeal. The respondent decided to exclude the appellant from the protection of the Refugee Convention under section 72 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). The respondent considered that the appellant had fabricated his account of being bisexual and that his asylum claim had been made to delay and frustrate attempts to remove him.

8. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Cary on 17 August 2023, after a previous hearing which failed to result in a decision. The appellant relied upon his claim to be bisexual and also relied on Article 8 in relation to his family life with his current partner, SB, who was pregnant,

and his relationship with his three children, L (aged 11), K and E, whom he claimed to be in regular contact. They were all from different mothers. The appellant's evidence was that he was no longer in contact with MK, who had no further interest in speaking to him. He was living with his father, sister and youngest brother K (aged 19). He had not had any relationships with men since his release from prison. He said he had tried to explore "options" since his release but they had not worked out. His relationship with SB had started towards the end of 2020. She lived on her own in Birmingham and he would travel there to see her whenever he could afford to. The appellant's father, sister and partner all gave oral evidence before the Tribunal.

9. Judge Cary found that section 72 of the NIAA applied and that the appellant had not rebutted the presumption therein, so that he was excluded from international protection. He considered that it was not reasonably likely that the appellant was bisexual and that he had claimed asylum to avoid deportation rather than through any subjectively held fear of persecution. He found that the appellant would not be at risk in Jamaica. The judge went on to consider Article 8, noting that it was accepted that the appellant had been lawfully resident in the UK for most of his life and that he was socially and culturally integrated in the UK. The judge did not, however, accept that there were very significant obstacles to the appellant's integration in Jamaica. He was not satisfied that the appellant's sister was currently in St Kitts or that she would not be available to assist him in Jamaica and he considered that any difficulties the appellant may face in Jamaica met the high threshold of being a very significant obstacle to integration. The judge did not, therefore, accept that the appellant met the criteria in exception 1. Neither did he accept that the requirements of exception 2 were met. The judge found that there were no very compelling circumstances for the purpose of section 117C(6) of the 2002 Act and, consequently, concluded that the appellant's deportation was compatible with Article 8. He dismissed the appeal on all grounds in a decision promulgated on 30 August 2023.

10. The appellant sought permission to appeal from Judge Cary's decision on four grounds. Firstly, that the judge erred in his approach in assessing whether he was bisexual. Secondly, that the judge failed to have regard to material evidence in the country expert report. Thirdly, that the judge erred in his findings as to the appellant's sister's whereabouts. Fourthly, that the judge failed to consider whether the appellant's residence in the United Kingdom since he was 6 months old was capable of amounting to very compelling circumstances.

11. Following a grant of permission, the matter came before myself and Deputy Upper Tribunal Judge Malik KC on 11 December 2023. We found the first ground to be made out and did not, therefore, go on to consider the other three grounds. In a decision promulgated on 11 December 2023, we accordingly set aside Judge Cary's decision, as follows:

*" Discussion*

*Ground (1)*

10. The Appellant claimed that he developed romantic feelings for a man, who we shall refer as Mr MK, while he was in prison. They shared a cell for around 18 months. He stated that they never had sexual intercourse although they would hug each other and "touch each other in sexual places". He only had relationships with women prior to the commencement of his sentence. Following his release, he entered into a relationship with another woman, who we shall refer as Ms SB.

11. The Judge, at [56], made these findings on the issue:

“In evidence before me the Appellant confirmed that that he had been involved in his current relationship with [Ms SB] since late 2020 and that he had no evidence of any further relationships with men since his release from prison. He also said he was no longer in contact with [Mr MK] following his release from prison. When I look at all the evidence I do not consider it reasonably likely that the Appellant is bisexual even if like many prisoners he had some kind of relationship with another inmate as claimed when in HMP Swinfell. It may well be that any relationship with [Mr MK] was not a reflection of his sexuality but was more out of pragmatism and as a counterbalance to loneliness.”

12. The Judge, at [57], added:

“I consider that the Appellant claimed asylum solely as a last ditch attempt to avoid deportation rather than through any subjectively held fear of persecution ... I do not understand why he did not claim international protection earlier than he did particular if his relationship with Mr Krasniqi took place in 2015.”

13. The Judge, at [58], considered the reports of Dr Lisa Davies, who is a forensic psychologist, in these terms:

“In reaching my decision I have considered the reports from Dr Davies. In her first report she said that the Appellant said been involved with a number of girlfriends prior to his last offence (against his then ex-partner - Renaye Weekes) and that the Appellant “reported 3 serious intimate relationships” without suggesting that any of those involved [Mr MK] (3.2.10). She did refer to the Appellants asylum claim noting that he had only claimed asylum on sexuality grounds after being served with removal directions for a charter flight which was due to leave the UK on March 4 2017 (3.2.13). He apparently told her that he had become close to a fellow inmate who he had known for about 12 years and that this was the first time he had any feelings for a male. According to Dr Davies he defined his sexuality as “I am open to the idea of a relationship with a male. I consider myself bisexual now” (3.2.13). In her second report Dr Davies dealt extensively with the Appellant’s relationship with various girlfriends without commenting in any detail on the Appellants previous claim to be bisexual. She simply said that the Appellant had told her that Mr Krasniqi was due to be released shortly and that he was “unsure if they will reconcile their relationship. She also said that although the Appellant described himself as bisexual he had not had any further relationships with men since being in the community although he also said the his partners had always been made aware of his bisexuality (3.2.4). None of that suggests that it is reasonably likely that the Appellant is bisexual as claimed.”

14. The immediate difficulty with the Judge’s reasoning is that there is no clear finding as to the Appellant’s account of his relationship with Mr MK. The reasons given by the Judge may support a conclusion that the Appellant’s account on this issue is a fabrication, but the Judge arrived at no such conclusion. The Appellant’s account of being in a relationship with Mr MK was at the heart of his claim of being bisexual. In our judgement, the Judge was obliged to decide with clarity as to whether that account is credible. The Judge’s implicit rejection of it is inadequate.

15. There is also an implicit assumption in the Judge’s reasoning that someone who has had multiple relationships with the opposite sex but only one with the same sex is not genuinely bisexual. This assumption is flawed. Bisexuality does not have to involve attraction to both sexes at the same time, nor does it have to involve equal attraction to or a number of relationships with both sexes. A man may well be bisexual if he is less likely to have relationships with men than with women.

16. We emphasise that the Judge was not required to simply accept the Appellant's account or to find that he is bisexual. In fact, the Appellant faces an uphill struggle in establishing that his account is credible even on the lower standard of proof. We are nonetheless satisfied that the Judge erred in his approach in assessing the Appellant's account. This appeal, given that it involves a protection claim, calls for anxious scrutiny. As was explained in *YH v Secretary of State for the Home Department* [2010] EWCA Civ 116 [2010] 4 All ER 448, at [24], in this context, there is a need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account. The Judge's decision and reasons do not reflect anxious scrutiny of the Applicant's claimed relationship with Mr MK and his account of being bisexual.

17. We entirely accept that we should not rush to find an error of law in the Judge's decision merely because we might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. In this instance, for the reason set out above, we are satisfied that the Judge's decision on this issue is materially wrong in law.

*Grounds (2), (3) and (4)*

18. We can address these grounds together as they are directed to the Judge's decision on Article 8. It is tolerably clear that the Judge assessed the Article 8 claim on the basis that the Appellant would not be at risk on return to Jamaica on account of being bisexual. The Judge found that there were no very compelling circumstances for the purpose of section 117C(6) of the 2002 Act in the light of his earlier findings as to the claimed bisexuality. In the circumstances, with his characteristic candour, Mr Terrell accepted that the Judge's findings on Article 8 would not stand if the first ground of appeal is well-founded. We are satisfied that the Judge's error as to the issue of bisexuality vitiated his findings on the Article 8 claim too. Accordingly, it is not necessary for us to decide discrete points advanced by the Appellant under these grounds.

*Conclusion*

19. For all these reasons, we find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. We set aside the Judge's decision, save as to the unchallenged finding that the Appellant is excluded from international protection by reference to section 72 of the 2002 Act."

12. The matter was then listed for a resumed hearing on 9 July 2024 and came before me for the decision to be re-made.

**Hearing for the Re-making of the Decision**

13. The appellant produced some additional evidence for the hearing, namely a further witness statement from himself and his partner SB, the birth certificate of their daughter, photographs of himself and his daughter, medical notes and medication and a supporting letter from his support worker. These were accompanied by an application to admit the evidence in accordance with Rule 15(2A) of the Procedure Rules, to which there was no objection.

14. The appellant gave oral evidence before me. He adopted his three witness statements and was cross-examined by Mr Melvin. He confirmed that he was not in a relationship with any of the mothers of his three older children but he said that he tried to co-parent his children as best as he could. He did not get to see them very much as he was now living in Birmingham whilst they were in Bedford and London. He saw his youngest child the most because he lived nearby. When asked why the medical records he had produced referred to SB as his ex-partner, the appellant said that they had their ups and downs like any couple but they were currently together. They had lived together on and off in 2022/23 but he now had his own accommodation. He had been living with his father but the house became overcrowded so he moved in with SB until he was given his own place in March 2024. He preferred to live in his own accommodation as he needed his own space. The appellant said that he had not been in trouble since his release from prison in September 2017 and his risk assessment had reduced from high to medium. He had tried to explore his bisexuality but it had not worked out, although he was still bisexual. The appellant said that he had no family in Jamaica. His family members were all in USA and the UK. His sister was in St Kitts. He had not been to Jamaica since he went there with his mother over 15 years ago when his family member died. The appellant said that he was still on medication and had asked for the dosage to be increased. He last saw his doctor a few weeks ago.

15. SB gave evidence before me. She adopted her most recent statement of 12 June 2024 and was cross-examined by Mr Melvin. She said that she met the appellant in 2021 on the internet and he was honest with her from the start about his past. She was prepared to move to Jamaica with him if he was deported but it was not ideal. She would have to work out how she and her daughter would go there. SB said that she had lived with the appellant for a couple of months on and off between 2021 and 2022 but the circumstances were not now right for them to live together as it would affect her property from Birmingham city council. She was not allowed to put him on the tenancy. SB said that she and the appellant had had some breaks in their relationship, the longest of which was about 7 months ago when she was pregnant and lasted 3 to 4 months. SB said that she previously had family in Jamaica but they had all passed away. She had never been there herself. She was currently not working and was looking to go to university. She had previously worked in holistic massage and as a peer educator in schools. She had various qualifications.

16. Both parties made submissions before me.

17. Mr Melvin submitted that the appellant's claim to be bisexual was a fiction which the appellant had dreamt up to avoid removal to Jamaica. He would not be known as, or perceived to be, bisexual on return to Jamaica and would possibly be returning with a partner and child in any event. Mr Melvin asked me to reject the appellant's account about his sister and his claim that she was in St Kitts. She was most likely in Jamaica, along with other family members who could provide support. No weight should therefore be given to the appellant's Article 3 claim. As for his Article 8 claim and the issue of very compelling circumstances, it was accepted that the appellant was culturally integrated in the UK, but he would be able to create a private life in Jamaica. It would not be unduly harsh for his children to be separated from him. There was little in the way of medical evidence, but in any event there was no indication that the appellant could not access any treatment he required in Jamaica. The appeal should be dismissed.

18. Ms Revill submitted that the appellant's account of his bisexual experience with MK should be accepted and that there was more than a fanciful possibility that the

appellant would seek to pursue a relationship with a man in Jamaica. He was therefore at risk on return on that basis. As for Article 8, the appellant's length of residence in the UK since the age of 6 months reduced the public interest in his deportation. There were very significant obstacles to his integration in Jamaica. Ms Revill referred to the expert report from Dr Noronha in that respect. She submitted that the appellant would be an outsider in Jamaica and would be immediately visible and subject to stigma. He would have difficulties obtaining documentation to find employment. Internet access was sporadic and it would be difficult for the appellant to maintain contact with his family in the UK. The appellant would find it difficult to access medication in Jamaica. The appellant had an established relationship with his partner and child. Even if they were to accompany him to Jamaica, his daughter would be foregoing her rights as a British citizen. The appellant had stayed out of trouble and had offended over 10 years ago when he was just 18. There were very compelling circumstances over and above the exceptions to deportation and the appeal should be allowed.

## **Analysis**

19. As agreed by the parties and made clear in the error of law decision of 11 December 2023, Judge Cary's finding that the appellant is excluded from the protection of the Refugee Convention pursuant to section 72 of the 2002 Act is preserved. That position has not changed and remains the case and accordingly the findings the judge made in that regard, from [46] to [50], still stand.

20. Turning to the appellant's protection claim, it was Judge Cary's findings in that respect which led to the error of law decision since he made no clear finding as to whether the appellant's relationship with MK was accepted. Further, his implied assumption that someone who had had multiple relationships with the opposite sex but only one with the same sex was not genuinely bisexual, was fundamentally flawed.

21. Having considered the evidence again myself and having heard further from the appellant, I simply do not accept that he is bisexual, that he has ever had any bisexual encounters or that he has, or has ever had, any bisexual inclinations. I do not accept his account of having had a sexual encounter with his friend MK and I agree with the respondent that it was simply a fabricated account designed to frustrate attempts to remove him to Jamaica. It was only when faced with removal directions set for Jamaica that the appellant raised his asylum claim, having given no prior indication of being anything other than heterosexual and having relied upon his heterosexual relationship and his relevant family life in his previous application to remain in the UK. Whilst I have due regard to Ms Revill's arguments relying upon JT (Cameroon) v SSHD [2008] EWCA Civ 878 and A, B, and C (Cases C-148/13 to C-150/13) at [17] and [18] of her skeleton argument in relation to reasons for delaying making such a claim, the fact remains that the appellant had made several applications resisting attempts to deport him from the UK, where he was assisted by solicitors. It is entirely reasonable to expect him to have raised such a matter during that time had it been a genuine reason for him wishing not to return to Jamaica. His failure to do so undoubtedly casts doubt on the credibility of his claim and his account of being bisexual.

22. With regard to the evidence relied upon to support the appellant's claim, in particular the statements from MK and from the appellant's sister SH, I do not consider them to carry any weight. As Mr Melvin submitted, MK has disappeared from the picture and has not been available to support his statement of 15 January 2020 which was relied upon in the appeal before the First-tier Tribunal. Although it is several years since the sexual encounter with MK was said to have taken place, it is not unreasonable to draw some adverse inferences from his absence of support, given the

claimed prior lengthy and close friendship between the two boys/men. I consider that the statement and letter relied upon were produced purely to support a fabricated claim. The same can be said for the letter from the appellant's sister, SH. For the same reasons as given by Judge Cary at [59] and [60] of his decision I do not accept that the letter was a genuine reflection of the situation she described when purportedly trying to arrange accommodation for the appellant and I take note of the lack of any mention in that letter of his sister having fallen out with her friend and of her friend having spread gossip about him, as he claimed was the case. I do not accept such a claim.

23. I have also considered the two reports from Dr Davies, but do not consider that they add anything to the appellant's claim. Although Dr Davies refers to the appellant's claim in regard to his sexuality, that is simply on the basis of what she was told by him and there is nothing in her reports which independently support his claim in that respect. Further, the appellant's account of his sexuality lacks credibility for various other reasons. His account of how long he shared a cell with MK was at odds with the information provided to the respondent, as referred to at [58] of the refusal decision. In addition, MK described having "shared a sexual relationship" with the appellant, whereas the appellant claimed to have done no more than "touch each other in sexual places", albeit I accept that the two are not entirely mutually exclusive. Further, the appellant's evidence is that he never had any bisexual relationships or inclinations prior to the incident nor has he had any bisexual relationships or explored his bisexuality (as he suggested that he would) following his release from prison. When asked by Mr Melvin if he had explored his bisexuality since coming out of prison, his response was that he had tried but had failed, but he provided no further information despite Mr Melvin's attempts to elicit a more detailed explanation. Clearly he had not done so. He has been prolific in his relationships, but those have only ever been with women, and out of those numerous relationships he has had four children with four different women. I accept, with reference to the error of law made by Judge Cary, that someone who has had multiple relationships with the opposite sex but only one with the same sex cannot be said to not genuinely be bisexual. However, when considering the appellant's sexual history together with the lack of credibility of his account of his relationship with MK, I have no doubt that the appellant's claim to be bisexual and to have bisexual inclinations is pure fabrication. Having rejected the account he gave about his sister's friend spreading gossip about him in Jamaica, I consider there to be no reason why he should be known to be, or viewed and perceived as, bisexual on return to Jamaica. I do not accept that he would have any desire to involve himself in bisexual relationships in Jamaica. I do not, therefore, accept that he would be at any risk on return to Jamaica on that, or any other, basis. The appellant's Article 3 claim is therefore without any basis. I note from [61] of Judge Cary's decision that there is no claim to humanitarian protection.

24. Turning next to Article 8, the appellant clearly has an established private life in the UK and, I accept, a family life with SB and their daughter. The strength of that family life is debatable, given the appellant's past history, but that is a matter I shall address later. The appellant falls within section 117C(6) of the 2002 Act, having been sentenced to a term of imprisonment of over 4 years and therefore has to show that there are very compelling circumstances over and above those described in exceptions 1 and 2, as set out in section 117C(4) and (5). It is relevant to consider his ability to meet the criteria in section 117(4) and (5) before going on to consider the question of very compelling circumstances.

25. I address exception 2 in section 117(5) first:



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

26. Aside from his child with SB, the appellant has three children from three different previous relationships. L is aged 11/12 and lives with her mother in Bedford, and K and E live with their respective mothers in London. There is no relationship between the appellant and the three mothers. The OASys reports refer to various issues concerning the welfare of the children and suggest a limited contact between the appellant and the children. The appellant's own evidence about his relationship with the three children, as given before me at the hearing, was unclear. At the time of the hearing before Judge Cary the appellant was living in London and therefore claimed to have some contact with them, as described at [86] of Judge Cary's decision. However he has since moved to Birmingham and, whilst he claimed in response to Mr Melvin's cross-examination to be co-parenting the children, he was unable to give any details of his level of contact other than stating that he did not get to see them a lot and how difficult it was to see them because of the distance. As was the situation before Judge Cary, there is no actual evidence of the appellant's involvement in the children's lives and it seems to me that any family life existing between him and his three oldest children is extremely limited. As Judge Cary found, it is unlikely that the appellant's deportation to Jamaica would have any significant impact on the children and their best interests clearly lie in remaining with their respective mothers in the UK. There is no question of them relocating to Jamaica with him, but it cannot possibly be said that their separation from him would be unduly harsh.

27. The appellant's relationship with SB and their daughter is clearly stronger, although not without its difficulties. SB attended the hearing to support the appellant and stated that she would return with him to Jamaica if he was deported, albeit that that was not ideal and was not what she would have desired. Whilst I found SB to be well-meaning as a witness, it seems to me that her view of the relationship was not entirely consistent with that of the appellant. Her explanation for their living in separate accommodation was that it was purely for the purposes of her tenancy with Birmingham city council, whereas the appellant made it clear that it was a matter of choice for him as he preferred living apart and wanted to have his own space. It became apparent, from Mr Melvin's cross-examination, that the relationship had not been consistently ongoing and that there had been various breaks. Indeed the appellant's medical records referred to SB as being his ex-partner. SB sought to explain that as being for the purposes of her tenancy with Birmingham city council, whereas the appellant said that they had broken up several times including at the time of the relevant medical appointment and that the relationship had its 'ups and downs'. When that was put to her, SB accepted that they had been apart for three to four months during her pregnancy. In any event, the couple have lived together only for a short period of time whilst the appellant was waiting to be accommodated after having to leave his father's property, and since that time they have lived in separate accommodation, albeit more recently in the same city, the appellant having moved to Birmingham from London. The only evidence of the appellant's parental involvement in his daughter's life, aside from his and SB's testimony, consists of several photographs of them together, which I note to be similar in nature to the evidence he relied upon in his original evidence bundle before the First-tier Tribunal (Part H of the error of law bundle) in regard to his relationship with his daughter K and her mother. The developments in that relationship, and in the appellant's other relationships, together with his somewhat inconsistent approach to his relationship with SB, clearly undermines the weight to be given to the appellant's family life with SB and her daughter. It is, furthermore, of note, as Mr Melvin submitted, that the letter from Ms

Artwell, the appellant's support worker, makes no mention of him being in a relationship and of having a child, and certainly gives no indication that there was ever any intention for him to live in a family unit. That is clearly a matter which raises further doubts as to the appellant's view of his family relationship and responsibilities and his intentions in regard to the relationship.

28. In any event, it cannot be said that it would be unduly harsh to expect SB and her daughter to relocate to Jamaica with the appellant since SB's own evidence was that she was prepared to do that. SB is not currently working and there is no evidence of any ties which would prevent her relocating to Jamaica. Her daughter is a baby and her best interests clearly lie in remaining with her mother, in whichever country that may be. Although she is a British citizenship she would not be denied her rights and benefits as such as it would always be open to her to return to the UK with SB when needed. The effect on SB and her daughter of the appellant's deportation could not, in the circumstances, be said to be unduly harsh. They could return as a family and continue their family life together in Jamaica if the relationship continued to subsist. Likewise, I do not accept that the threshold for meeting the unduly harsh would be met if SB and her child remained in the UK without the appellant. As already discussed, the relationship is not entirely stable, the family do not live together, and the appellant's past history certainly raises questions as to the longevity of the relationship and his continued involvement in his child's life. Although the best interests of the child would be for her father to live with or near her, there is no evidence to suggest that there would be a detrimental impact upon her if they were to be separated. If the relationship were to subsist there is no reason why SB and her child could not visit the appellant in Jamaica and maintain contact remotely in the meantime. Although that is clearly not an ideal way in which to maintain a strong family relationship, there are real doubts as to the strength of the relationship in any event, and there is certainly not a sufficient basis to conclude that the unduly harsh test has been made out. The family life exception in section 117C(5) is therefore not met.

29. I turn next to section 117C(4):

"Exception 1 applies where—

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

30. It is not in dispute that the appellant has been lawfully resident in the UK for most of his life, nor that he is socially and culturally integrated in the UK. He came to the UK as a baby of 6 months of age with his mother and has been through the education system in the UK and has lived here now for 29 years.

31. In Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813, the Court of Appeal considered the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c), and found that it called for a "*broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.*"

32. Ms Revill argues that the appellant would be an outsider, having left Jamaica as a baby and only returning there once as a child, for a family funeral, many years ago. It is accepted that the appellant has been living in the UK for the length of time claimed and that he has not been back to Jamaica other than that one visit. His lengthy absence from Jamaica from such an early age, and his equivalent residence in the UK, is clearly a relevant consideration. However I do not accept the appellant's claim that he has no remaining ties to Jamaica. His evidence in all respects, in relation to his asylum claim and his family relationships, has been unreliable and I am not prepared to accept his evidence at face value. I note that the First-tier Tribunal Judge who heard his appeal in 2015 found his claim to have no family in Jamaica to be inconsistent with the oral evidence and rejected his claim, finding that there were family members there at that time. Likewise, Judge Cary, at [80] and [81] of his decision, referred to the likely existence of family members or at least some access to support in Jamaica. Although those were not findings expressly preserved, and whilst Judge Cary's Article 8 findings were not discussed further given that the nature of the error of law found, I find no reason to depart from such findings. The evidence from the appellant's sister who was said to have moved to St Kitts is not reliable and I do not accept, given her previous support for the appellant, that she would not be able to assist him in re-establishing himself in Jamaica. I note also that the appellant's father gave evidence before Judge Cary that he returned to Jamaica about a year or two prior to the hearing, albeit to support his wife's father. There are therefore clearly some ties remaining to the country, whether or not directly linked to the appellant himself. I do not accept that he has no cultural familiarity with the country or that he would be returning to a situation of no access to support.

33. In addition, the appellant speaks the language in Jamaica and there is no evidence to suggest that he has any physical health problems which would prevent him from finding unskilled work and earning a living there. Although his medical records refer to him suffering from anxiety and depression and that he is prescribed medication, there is no indication in those records of any serious mental health problems and neither is there any other current evidence of such, so as to prevent him from being able to work. The reports from Dr Davies are now somewhat outdated and in any event were submitted largely to address the issue of the risk the appellant posed to the public rather than his mental health. The second report, dated 6 June 2019, refers at 3.2.12 and 5.2.4 to 5.2.5, to the appellant's report of suicidal thoughts, and to him being due to be assessed by a psychologist, but there is no report from any such professional providing a medical opinion on his mental health. Neither is there any evidence to show that the appellant would be unable to access medication in Jamaica if required. As for the question of financial support, there was an indication at the hearing before Judge Cary that the appellant would be eligible for assistance from the facilitated returns scheme and there is no evidence before me to suggest otherwise. Together with some initial financial assistance from his family in the UK, the appellant would be able to support himself until he obtained employment. I have had regard to the expert report from Dr De Noronha which is relied upon by the appellant to support his claim as to the difficulties he would encounter on return to Jamaica. I note that Dr Noronha talks of stigma and cultural alienation, problems finding employment and housing, and crime and violence. It is relevant to note that the report is based upon an acceptance of the appellant being bisexual, which I do not accept him to be. The report therefore approaches the question of the appellant's circumstances on return to Jamaica with that in mind and thus from that particular viewpoint. In the circumstances, whilst I do not doubt that there would be difficulties for the appellant in returning to Jamaica, particularly after his lengthy absence, ultimately I do not consider the evidence, when

taken together, suggests that there would be very significant obstacles to integration for the purposes of section 117C(4)(c).

34. In any event, even if it was accepted that the appellant's absence from Jamaica for most of his life and his departure at such a young age was sufficient in itself to amount to very significant obstacles to integration and that exception 1 therefore applied (which, for the reasons given, is not accepted), the appellant still has to demonstrate 'very compelling circumstances' over and above that exception. It seems to me that there is little by way of additional factors to take the appellant's case any further. He has a long history of criminal offending and committed a particularly serious offence leading to his imprisonment in 2013. It is, of course, relevant to note that his history of violent offending occurred when he was a child and, as such, I have taken account of the principles in Maslov v. Austria - 1638/03 [2008] ECHR 546. That was addressed in some detail in the respondent's deportation decision of 2 July 2014 at [38] to [52] and by the First-tier Tribunal Judge who heard the deportation appeal at [23] of his decision. The appellant was, nevertheless, an adult when he committed the index offence, albeit only 18 years of age. The Judge sentencing him on 14 November 2013 referred to his record as being "dreadful" and to him being "totally out of control" and "dangerous". As Mr Melvin submitted, he had several adjudications against him when he was in prison, as an adult, for violent and threatening behaviour.

35. It is also relevant to have regard to the fact that the appellant has not been convicted for any offences since his release from prison and there is no evidence to suggest that he has re-offended in the ten years since his index offence. However it must be borne in mind that he has been subject to deportation proceedings since that time and has therefore had a great deal of incentive to desist from offending. The respondent has been seeking to deport him from the UK since 2014 and the fact that he has not been deported in that time is largely due to his repeated applications which resulted in removal directions being deferred and, significantly, to his having made an asylum claim on the false basis of being at risk on return to Jamaica as being bisexual.

36. The appellant has, furthermore, been assessed, in the most recent risk assessments, as still posing a medium risk of causing serious harm to the community. Further, Judge Cary's finding, that he remains a danger to society, still stands. It is also of note that the appellant's most recent medical records, dated March 2024, refer to angry outbursts. I take all of that into account when considering the weight to be given to the public interest.

37. Other factors to be weighed against the public interest are the appellant's family and private life as a whole. The weight to be given to his family life with his partner and his four children has already been considered and assessed above. The appellant has other family members in the UK, namely his father, sister and brother with whom he previously resided. They did not attend the hearing to support his appeal. The reason being, the appellant said, was that his father was ill with prostate cancer and his sister had no child care. Their relationships do not amount to family life but are part of the appellant's private life, although there is no current evidence about those relationships and the role those family members currently play in the appellant's life, with the most recent statements dated August 2023 and produced for the appeal before Judge Cary. Although the appellant has lived in the UK for many years since the age of 6 months and is socially and culturally integrated into society, there is no evidence of any positive contribution he has made to society, nor efforts to address his anger management or equip himself with skills and qualifications. There are no probation reports subsequent to the OASys report of June 2019 attesting to his character. The only supporting evidence in his current appeal bundle is from his

support worker and is in neutral terms, providing a factual account and adding little to his case. Although the appellant's ability to find employment has been restricted owing to the deportation proceedings, there is as a result no economic contribution to society. There is no evidence of employment prospects or attempts by the appellant to enhance his chances of employment when permitted to work. Accordingly, whilst I agree with Ms Revill that the appellant's length of residence in the UK and the fact that he has been here since a baby are factors which carry weight in assessing the public interest in his deportation, I cannot conclude that there is anything in the appellant's circumstances which overall amounts to very compelling circumstances for the purposes of section 117C(6) of the 2002 Act.

38. For all these reasons I conclude that the appellant's deportation is in the public interest. The decision to refuse to revoke the deportation order previously made is proportionate and is not in breach of his Article 8 rights.

### **DECISION**

39. The decision of the First-tier Tribunal having been set aside, the decision is re-made by dismissing the appellant's asylum and human rights appeal.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

12 July 2024