IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01462/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination & Reasons Promulgated**
On 25 February 2015 & 25 March 2015	**On 22 June 2015**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

LML
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms D Revill, Counsel instructed by Peer & Co
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Jamaica, born on 24 October 1967. She arrived in the UK in 2000 as a visitor. In due course, on 19 January 2010, she was granted indefinite leave to remain with her three children.

2. On 15 July 2013 a decision was made to deport the appellant under the automatic deportation provisions of the UK Borders Act 2007. This was a result of her conviction on 19 March 2012 in the Crown Court at

Wolverhampton for an offence of unlawful wounding, for which she received a sentence of 30 months' imprisonment.

3. Her appeal against the respondent's decision came before a Panel of the First-tier Tribunal on 4 April 2014, the Panel consisting of First-tier Tribunal Judge P. J. Clarke and Mr J. O. De Barros, a non-legal member, whereby the appeal was allowed.

4. Permission to appeal against that decision having been granted by a judge of the Upper Tribunal, the appeal came before Upper Tribunal Judge Hanson on 28 July 2014. He concluded that the First-tier Tribunal had erred in law and set aside its decision, for the decision to be re-made in the Upper Tribunal. I set out Judge Hanson's decision as follows:

"ERROR OF LAW FINDING AND DIRECTIONS

1. This is an appeal by the Secretary of State against a determination of a panel of the First-tier Tribunal composed of First-tier Tribunal Judge P J Clarke and Dr J O De Barros (hereinafter referred to as 'the Panel') who in a determination promulgated on 18th April 2014 allowed LML's appeal against an order for her deportation from the United Kingdom.

2. LML was born in 1967 and is a single female citizen of Jamaica. On 13th July 2013 an automatic deportation order was made following a conviction for unlawful wounding for which LML was sentenced to a period of 30 months imprisonment.

3. Having considered the evidence made available to them the Panel set out their findings from paragraph 11 of the determination which can be summarised as follows:

   i. That LML and her daughter were credible witnesses about their relationship and the relationship between LML and her daughter B.

   ii. That LML is B's primary carer [11 (i)]. LML's older daughter C confirmed in a witness statement that she could not care for B.

   iii. Documentary evidence does not suggest that B has any sort of relationship with her father [11 (ii)].

   iv. A letter from B indicates a close relationship with her mother and that she and her sisters visited their mother fortnightly in prison and that her mother telephoned her on a daily basis [11 (iii)].

   v. LML has a genuine and subsisting parental relationship with B, a child under 18 in the UK and a British citizen [14].

   vi. It would not be reasonable for B to leave the UK. She was born here, she is a British citizen, her sisters and niece is in the UK. The school report indicates she is doing well. There is no indication she has family in Jamaica although as a result of inconsistencies in the witness statements the panel were not sure about that fact [15].

vii. There is no family member in the UK able to care for B in the UK. She has no contact with her father attendance at school suffered when her sister looked after her although there is little evidence her schoolwork suffered. C is not be able to care for B. C is pregnant and will be moving in with her boyfriend although such a finding of inability is made with an element of doubt. It was not suggested another daughter P was able to care for B [16].

viii. Requirements of 399 (a) (i) and (ii) (a) and (b) of the Immigration Rules are met [17]. In light of this the Secretary of State did not consider B's rights and the general principles of European law or Article 8 ECHR.

4. The Secretary of State sought permission to appeal asserting that the Panel made a material misdirection in law in relation to their application of paragraph 399 (a). The grounds allege the Panel's findings are ambiguous and in relation to the other daughter P, inadequate. P was not excluded from the role as a potential carer for B solely because the Secretary of State did not advance her as a potential carer.

5. The grounds also asserts that the Panel failed to acknowledge that cases involving criminality differed from merely administrative removal cases and that the best interests of the child, whilst a weighty fact, need to be weighed against the public interest in respect of reasonableness. There was a viable alternative to B leaving the United Kingdom which was to remain with either of her sisters although should her mother wish to remain her primary carer it will be reasonable to expect B to leave the United Kingdom with her mother who could assist her in readjusting to life in Jamaica. It was said in a supplementary decision letter that it will be open to B to return to the UK at an independent age if she so wished.

6. Permission to appeal was granted by Upper Tribunal Judge Dr Kekic on the basis it is arguable that the Panel, in what is a brief determination, did not consider all the factors and that the findings under paragraph 399 are flawed and that where there is serious criminality, as here, the Panel should have appreciated that the presence of the child is not a trump card. Permission was granted on all grounds.

Error of law

7. LML finds herself the subject of a deportation order as a result of her criminality. His Honour Judge Webb in sentencing her on 17 April 2012 noted the guilty plea, the fact LML carried a knife to peel fruit, and that she did not intend to cause serious injury although it was noted that the damage caused to the victim by LML undoubtedly involved greater harm. The injury to the victim's face was a serious one which is permanent physically and probably permanently psychologically affected her. The Judge stated the assault was sustained, that there were number of blows with a knife, it was an offence of great harm involving the use of a weapon. LML deliberately caused more harm than was necessary for the commission of the offence leading to the conclusion it was an offence of higher culpability within Category 1 for malicious

wounding. A further aggravating factor was the location of the offence in broad daylight in West Bromwich. The Judge suspected it was a deliberate attack by LML to mark the face of someone she thought was a rival for the attentions of a man. It was an isolated incident with no previous convictions although the Judge noted "people who use knives and then cause lifelong injury physically and psychologically to a victim would lose their liberty, whether or not they are of good character. In my judgement, you could have faced a Section 18 wounding charge. This was a very serious and nasty offence and in all the circumstances it comes at the top of the category range of 1 to 3 years, in my judgment."

8. The basis of the opposition to deportation order was that deportation would breach LML's rights under Article 8 ECHR. The Panel correctly identified that there are relevant Immigration Rules that they were required to consider and that as a result of the period of offending paragraph 398 was applicable which states:

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of least 4 years;

(b) the deportation of the person from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors.

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would not be reasonable to expect the child to leave the UK; and

(b) there is no other family member who is able to care for the child in the UK; or ……..

9. In relation to a deportation decision it has been held the Rules are a complete code.

10. Mr Smart relied upon four submissions which are:

a. The panel's findings in respect of (a) and (b) of paragraph 339(a) are fundamentally flawed as circumstances relied upon at paragraph 15 of the determination do not established that it would be unreasonable. The Panel rely upon B's citizenship, family members in the UK, and the fact that she would not be facing removal were it not for the deportation proceedings brought against her mother.

b. The Panels conclusions are misguided as it is open to LML to entrust her daughter B to her other children. Whilst it was found that one sister C would be unable to look after B the reasoning provided by LML does not make it clear why this should be so. The Panel clearly had an element of doubt and their findings in respect of P are inadequate as it was open to the Panel to consider whether P would be able to assume the role of carer to B rather than the conclusion that because the Secretary of State did not advance her as a potential carer this excluded her from the role.

c. The Panel's findings that were it not for the deportation there would be no issues with B remaining in the United Kingdom fails to acknowledge that cases involving criminality are fundamentally different from administrative removal cases in that the best interests of the child not a 'trump card'. The Secretary of States case has always been of the view that there is a viable alternative to B leaving the United Kingdom by remaining with either of her sisters although if LML wished to retain her role as the primary carer for daughter it would be reasonable to expect B to leave with her mother.

d. It was the view of the Court of Appeal in AR (Pakistan) v SSHD [2010] EWCA Civ 816 that it would be contrary to principal if the best interests of the child were to always take precedence over the wider public interest when the two are in conflict. The Court stressed the need for a balanced assessment of such conflicting interests which it is stated has not occurred in the determination. It was submitted the Panel failed to consider the seriousness of the offence when considering 'reasonableness'.

11. Reference was also made by Mr Smart to a supplementary refusal letter dated 10th January 2014. In that letter, at paragraph 20, the situation of B was considered by the decision maker who stated:

c) Notwithstanding [B's] rights as a British citizen, it is not considered unreasonable to expect B to leave the United Kingdom. It is noted that your client has previously stated that her daughter's relationship with her father is no longer subsisting. Your client is the main carer for her daughter and it is therefore considered that the best interest of [B] would be to

remain with her mother as a family unit. [B] is young enough to adapt to life abroad, would benefit from the family unit with her mother being maintained abroad and would be able to enjoy the cultural and social benefits of her Jamaican heritage. As a British citizen, your client's youngest daughter, once she is old enough to live independently, could return to the United Kingdom if she wished. Furthermore, both education and medical provisions are available and these are not such a differing standard from the United Kingdom so as to make it an unreasonable adjustment. In addition, [B] has an unequivocal right to Jamaican citizenship as a result of her mother's Jamaican nationality. However, it is also recognised that, as a British citizen, your client's daughter also has an unequivocal right to reside in United Kingdom and enjoy the benefits of her citizenship. Any decision made by your client to take her daughter with her to Jamaica will be on a purely voluntary basis and no effort will be made to remove your client's daughter from the United Kingdom.

d) It is, however, considered that there is another family member who could care for [B] in the United Kingdom. It is noted that your client's two elder children [PAP] and [C S-K P], who are both over the age of 18, were the main carers for their step sister whilst their mother was serving her custodial sentence. Even though [P] and [C] cared for their step sister previously, they have now stated that they would not be in a position to care for their step sister should their mother be deported. However, it should be noted that neither [P] nor [C] have given reasons which showed that their circumstances would prevent them from caring for their step sister even though they have claimed that they are unable to do so.

12. In paragraph 21 the author of the supplementary refusal letter also notes that should LML decide that B must remain in the United Kingdom and the two older daughters refuse to care for her, the Home Office will be able to liaise with Social Services and put the relevant provisions in place for B to be able to remain in the United Kingdom.

13. Mr Ahmed opposes the application by reference to the fact the Panel heard evidence from LML and her daughter. It was stated that the original refusal letter only mentioned C and enquiries being made in relation to her ability to care for B. Although it was accepted the supplementary refusal letter was in existence Mr Ahmed asserted no submission were made upon the same. There is also no evidence P could care for B and that the burden was not relevant as a result of the same. B's father is not relevant to the proceedings.

14. Mr Ahmed also submitted that the issue is one of reasonableness. The child has been in the UK for 12 years and should not be the victim of her parent's actions. She is a British citizen and has strong ties to the UK. There is an element of proportionality to the issue of reasonableness but it is fact specific.

Discussion

15. This is a case in which I find the Panel have erred in law. LML is the subject of an automatic deportation order for a serious offence of violence involving the use of a knife. She was sentenced to 30 month imprisonment and so the above Immigration Rules apply. When LML was in prison LML's daughter B was cared for by her sister C. B rejoined her mother on release. LML is B's primary carer. Although B is a British citizen this is not a trump card- see ZH (Tanzania) – although it is not proposed to deport B with her mother. That is said to be a matter for choice within the family. The Immigration Rules in relation to Article 8 and deportation have been found to be a complete code. One element which allows a person sentenced to under 4 years to remain on family life grounds is to be found in paragraph 399 which states that if a person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and (i) the child is a British Citizen; or (ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case (a) it would not be reasonable to expect the child to leave the UK; and (b) there is no other family member who is able to care for the child in the UK; - that person is entitled to remain in the UK

16. B is a British citizen and the issue is not just that of reasonableness as Mr Ahmed submitted but also whether there are other family members able to care for B in her mother's absence. In this respect the Panel are wrong in fact when they claim there was no reliance by the Secretary of State on the fact P was a possible carer. It may be that the original refusal letter only mentioned C and that the Presenting officer did not mention P, but she was clearly mentioned in the supplementary refusal letter and relied upon as a potential carer.

17. The wording of the Rule also uses the specific term 'able' which needs to be explored in full in relation to all potential family members including B's father if there is contact with him or other relatives of B, as the wording of the Rule is not limited to the immediate family. In relation to reasonableness the immigration history of B was noted but that in isolation does not make her returning to Jamaica with her mother unreasonable. Greater evidence of the impact upon B was required and more detailed and adequate reasons demanded of such an important element.

18. I find the Panel have materially erred such that determination must set aside. It may be the outcome might be the same once all relevant issues have been considered and adequate reasons given, but it cannot be said this is the only outcome at this stage. The following directions shall apply to the future management of this case:

    a. The determination shall be set aside. LML's immigration history and that of B shall be preserved findings as shall the evidence relation the index offence and LML's imprisonment.

    b. List for substantive hearing before Upper Tribunal Judge Hanson sitting at Sheldon Court on the first available date after

17th December 2014, but not less than 14 days after the pre-hearing review provided for below, taking into account the availability of Mr N Ahmed of counsel. Provisional time estimate 3 hours.

c. List for a pre hearing review before UTJ Hanson at which the parties are expected to be in a position to discuss the number of witnesses to be called, issues agreed and those remaining in dispute, the time estimate in light of the witness numbers, and any other case management directions required, on the first available date after 3rd December 2014.

d. LML must file with the Tribunal and Mr Smart at the Home Office Presenting Officers Unit in Solihull details of all family members of B living in the UK, however remote, and contact details by way of addresses and telephone numbers, if known, by 4.00pm 29th October 2014.

e. The parties shall file consolidated, indexed, and paginated bundles, containing all the evidence they intend to rely upon no later than 4.00pm 19th November 2014. Witness statements in the bundle shall stand as the evidence in chief of the maker and must be signed, dated, and contain a declaration of truth. Evidence not filed by the stated date shall not be admitted without permission. Any application for such permission must be made before the expiry of the date set out above and include an explanation for the delay, the person responsible, the nature of the evidence sought to be admitted out of time, the time scale in which it will be available, whether the opposing party consents to the late filing, any impact upon the hearing date, and prejudice to either party by admitting or not admitting the evidence.

f. No interpreter shall be provided unless requested in advance of the hearing for which details of the language and dialect must be provided together with an explanation for why an interpreter is required on the facts of this case.

Anonymity.

19. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008."

5. For the present, the content of Judge Hanson's error of law decision, and my brief introduction, are sufficient to put into context the remainder of this determination. I heard oral evidence on 25 February 2015 and 25 March 2015.

The oral evidence

6. In examination-in-chief the appellant adopted her witness statement dated 16 November 2013. She said that if she has family in Jamaica she does not know where they area.

7. In cross-examination she said that she lives in a rented council property which she pays for when she is working. She lives with her daughters C and B, as well as C's daughter, A.

8. When she came to the UK she left her daughters C and P in Jamaica with a friend, Anne Marie, for nine months. They were not happy there, because they told her that she used to beat them to make them sweep the yard and to read. They did not tell her that when they were in Jamaica but only when they came to the UK.

9. When they were in Jamaica they did not move to live anywhere else. She would contact them on Anne Marie's phone. She did not tell the appellant that she had had any difficulties with her children at that time. She is not still in contact with her.

10. The appellant was referred to the social worker's report, written by Peter Horrocks, in which it states that he was told that the appellant has a maternal uncle and two maternal cousins in Jamaica. The appellant agreed that that was the case but said that she did not know where they are. She had lost contact with them from the time she came to the UK and has not heard from them since.

11. She did not leave her two children with those relatives because she and their father had separated and he was not looking after them. She had no family who could look after them. Anne Marie was a very close friend whom she had known for about five years. Their respective mothers had been in hospital at the same time, and both died of cancer, which was when they became close friends. At that time Anne Marie was single and had two children.

12. She, the appellant, used to go to church in Jamaica on a regular basis and had friends there. She is not still in contact with them. As to why she cut off all friendships in Jamaica, she said that when she came to the UK she was not supposed to work but she was doing cleaning. She had no money with which to contact anybody and she was looking after her children.

13. She worked in Jamaica in a grocery store and did hairdressing. The hairdressing was done at her house, which was rented. She gave up that house when she came to the UK. She left her possessions with friends but does not know where those possessions are now. It was just furniture and nothing else.

14. She last had contact with B's father when she became pregnant. Her father does not know her. She does not know if he is still in the UK. They were not living together when she became pregnant.

15. She is very close to her family in the UK and they all get on. They go to church as a family in Wolverhampton. When she was in prison her children continued going to church. They did support them, with food and bills because she was working part-time.

16. If she was deported there would be no one to look after B. The appellant expressed surprise to hear that in the social work report B had said she would want to go with her to Jamaica. She said that B had not been to Jamaica and does not know about it. She also said that she would not want her to leave her again. The first time she left her was when she went to prison.

17. She is not able to go to Jamaica because she has a nut allergy and needs an Epipen. She would not be able to afford that in Jamaica.

18. She, the appellant, would not be able to obtain work in Jamaica. She reads the papers which say there are no jobs there. She wants a better life for her daughter. Going to Jamaica would only ruin her. She would be on the street as there would be nowhere to go.

19. B would not be able to stay with her other daughter, C in the UK because C has just had a baby. P has her child to look after. Although C looked after B when she was in prison, she had no child at that time and it would be hard for her to look after both.

20. P does have her own flat which has two bedrooms, for her and her daughter. No one else lives there.

21. The appellant's daughter C adopted her witness statement dated 16 November 2013 in examination-in-chief. She now has a 4 month old daughter, A. She does not think she would be able to look after B because her own daughter, A, is already a handful. She is aged 25 years.

22. In cross-examination she explained the circumstances in which her mother left her in Jamaica with a friend, and about her life with her mother's friend. She was also asked questions about what she told her mother about how she was treated.

23. As to what relatives she has in Jamaica now, she said that she has her father there, although she does not really know where he is. When they were in Jamaica they were not in contact with any member of the family. As to the social worker's report referring to her mother having a maternal uncle and cousin there, she does not know them.

24. The father of her daughter is RW, who lives in Birmingham. They do have plans to get together but at the moment it is helpful to have the appellant at home with her to help her. B also helps.

25. RW is involved with their daughter and sees her pretty much every day. He tries to see her after work. RW has other children and aunts in England. His parents are in Jamaica.

26. He is not married. His children are roughly aged 4 and 10 years. They live with him. As to who looks after them when he goes to work, they go to school and he works round them. They do eventually plan to live together but they are not sure where as he would need a bigger house. All of that

relates to why she would not be able to look after B if the appellant had to go back to Jamaica.

27. As to why B could not live with her if the appellant was removed, she does not think it would be fair to RW to take his sister in as well. He has got children already. She is the one holding up the process of her and RW getting together because she is getting help from her mother at home. She gave evidence of her employment which was formerly full-time but is now part-time. She did part-time work when she was looking after B when the appellant was in prison.

28. Referred to her witness statement, she said that B was difficult to look after when the appellant was in prison because she just got "dropped in" to being a mother. She used to go out with her friends which she was unable to carry on doing. B was stressed out about her mother and she did not know how to comfort her. B was 10 at the time. She is now more mature.

29. They are a close family and regularly attend church together. As to how much help they got from the church when the appellant was in prison, she did not speak to a lot of people. She got a bit of comfort on the phone but she closed off from people as she was also stressed out. A few people from the church did ring her to see if she was ok. She stopped partying and invested everything in B. She was still working and the housing support worker helped her to sort out benefits. Friends took her to see the appellant.

30. She has indefinite leave to remain. If the appellant were removed to Jamaica, she would not be able to visit her often as she would not be able to afford it.

31. In answer to a question from me she said that the mother of RW's children does not live with him.

32. The appellant's other daughter, P, adopted her witness statement in examination-in-chief. She has a daughter TW, aged 4, who would be 5 in April. She lives with her.

33. As to why she said in her witness statement that she would not be able to take responsibility for B, she already has her own child and she does not want any more children at the moment. It would be difficult to juggle work, and the possibility of going back to study if she had to look after B. Her mother gives her most of the help at the moment.

34. In cross-examination she said that when the appellant was in prison she lived at her own address but she came back and forth to help her sister with B. In traffic that takes about half an hour on the bus. She is not able to drive. She lives in a two bedroom house.

35. She was also asked questions about her stay in Jamaica when the appellant came to the UK in 2000, and the circumstances in which she lived with her mother's friend. She came here when she was 9.

36. She does not have relatives in Jamaica and nor does her mother that she knows of.

37. She is looking for work at the moment. She has not worked before. When she left school she went to college and then got pregnant. It is difficult to find work because she has no experience. She started looking for work about two years ago. She has done unpaid work at a job centre for experience.

38. B could not stay with her in her house because it would be too much stress for her. It is true that they are close but she does not think she could manage the responsibility. That is why she chose not to have more children. She does not have contact with TW's father.

39. On 25 March 2015 the appellant was recalled to give evidence. In cross-examination she said that she had not read the social work report of Peter Horrocks. The information she gave him was accurate. She does not remember the exact dates that B was admitted to hospital for her nut allergy. The allergy was first diagnosed when she was a baby but she does not remember her exact age. She had given her some nuts and her throat started swelling. She rang the doctor who told her to bring her into the surgery straightaway.

40. The next time she went into hospital for the same reason was when she was about 2. She explained the circumstances in which that happened. She has gone to the children's hospital about four times. It is not true that she has only gone once, as the medical report states.

41. B also has eczema, and she explained the circumstances in which that was diagnosed. She also keeps getting tonsillitis, the last time about two weeks ago. It is true that the school have threatened to take action because she has been off school so much as a result.

42. In re-examination she was asked about other medical records additional to the ones that had been provided. She had said that she needed the reports urgently but she was told that it might not be able to be possible for the children's hospital to provide them in time.

Submissions

43. Mr Smart relied on the decision letter and the supplementary letter dated 18 January 2014. It was submitted that the Immigration Rules now applicable are different from those that were in force at the time of the hearing before the First-tier Tribunal. The question now is whether it is unduly harsh for the appellant's child to live in Jamaica or to remain in the UK. On the facts neither is unduly harsh.

44. It was submitted that the appellant left her two children in Jamaica in 2000 when the children stayed with friends. She has a maternal uncle and a cousin there. Although it is claimed that there is no contact between her and those relatives, that is purely self-serving. It suited her case to state that she does not have friends or relatives there.

45. Although B's siblings say that they are unable to look after her, that is simply a matter of personal choice. P lives in a flat with her daughter and C in the family home. B could stay with either of them.

46. The social work report is of limited value. It is an assessment based on what the family have said and the author's own observations without reference to any medical or educational evidence. B's medical conditions have been exaggerated by the appellant in the information given to the social worker. I was referred to aspects of the social work report. For example, although it is suggested that B has very severe eczema, the medical records indicate that she has mild eczema. She has been treated by shampoos, moisturisers and skin cream. All of those medications are available over the counter at chemists.

47. I was referred to the decision in AJ (Angola) [2014] EWCA Civ 1636, as well as s.117C of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). I was also referred to the decision in McLarty (Deportation – proportionality balance) [2014] UKUT 00315 (IAC) at [29]-[31] in relation to the respondent's policy objective of deportation in relation to foreign criminals insofar as it relates to proportionality.

48. Ms Revill relied on the skeleton argument. She submitted that the only matter in dispute is whether it would be unduly harsh for B to go to Jamaica or to remain in the UK without the appellant. In both cases that had been established. It was accepted that the decision in McLarty was relevant in relation to proportionality. The IDIs also suggested a similar approach.

49. It was accepted that there is a sliding scale in terms of the sentence imposed but that is only one factor. It was not suggested that the offence that the appellant committed was not serious, albeit that it is the only offence she has been convicted of. There is a low risk of offending. That is not decisive but it is important. The letter from the offender manager demonstrates that the appellant expressed remorse and experienced shock at being separated from her family.

50. B's best interests had to be taken into account, albeit that they are separate from the public interest issues. The "unduly harsh" test is a proportionality assessment. B's best interests are a primary consideration.

51. If she had to go to Jamaica B would be with her mother and it is in her best interests to be cared for by her mother. However, she is a British citizen and although that is not a trump card it is a weighty factor, as explained in

ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4. B has the right to live and be educated in the UK and to have access to the NHS. In evidence there was a relatively plausible account of the trips B has had to make to hospital and why the children's hospital records are not before the court. On balance, it is not a proper interpretation to say that the appellant has exaggerated B's health conditions. She does suffer from eczema and does have a nut allergy. I was referred to the medical records. Information provided indicates that Epipens are not available in Jamaica.

52. B is currently being educated in the UK and moving to Jamaica would disrupt that education and it would be likely to be difficult for her to adjust. She would also be deprived of the strong relationships with her extended family in the UK. Her sister C lives in the family home and her other sister P visits every day. She has two nieces, one of whom lives with her.

53. The limited means of P and C mean that only occasional visits to Jamaica would be possible. This would all have a significantly detrimental impact on B. Her two sisters are Jamaican citizens but have children here and the father of one of them is here.

54. The evidence is that there is no contact with other family members in Jamaica. B had never been there and has no connection with Jamaica. She has always lived in the UK.

55. Although the social worker's report said that B had said that she wanted to go to Jamaica with her mother, that does not indicate that it would not be unduly harsh for her to have to go there.

56. If she stayed in the UK without the appellant, she would be without a parent. It does not need definitively to be decided that the appellant's other daughters would be able to look after B, albeit that that is relevant. Both sisters gave reasons as to why they would not be able to look after her. C looked after her when the appellant was in prison. Since then C has become a mother herself and has a daughter, A. She would not be able to devote as much time to B as before. She also intends to move in with her partner. C would struggle to look after the appellant.

57. P no doubt did her best to look after B when the appellant was in prison but she is a single mother to her daughter and reliant on benefits, so her situation is very tight.

58. Both C and P obtained significant support from the appellant. P goes there every day with TW, her daughter, and C lives with the appellant. If that support were taken away it would be even more difficult to look after B.

59. B suffered significantly with the previous separation from the appellant, albeit that she was able to visit her fairly regularly in prison. If the appellant is deported, she would not be able to do that.

60. B is an anxious child and perhaps has more than the usual attachment to her mother, and in respect of which I was referred to the social worker's report. B does not want to be separated from her mother so she does not go to sleepovers with friends. Her development and educational progress are likely to be significantly affected, with no end to the separation in sight.

61. Even taking into account the extent of the public interest, it would be unduly harsh and therefore disproportionate for the appellant to be separated from her daughter.

62. Even if the appellant is not able to meet the requirements of the Immigration Rules, there are very compelling circumstances, including the effect on the wider family, including the appellant's granddaughters. Their best interests also need to be taken into account as they see the appellant every day. TW is 4 years old and 5 in April. A is 4 months old. TW is clearly old enough to have formed a bond with the appellant.

63. B feels that she would have no choice but to go to Jamaica and live there with her mother. The decision in Zambrano [2011] EUECJ C/34/09 is relevant although not decisive. Effectively, B would be compelled to leave the UK although theoretically could stay here without her.

64. It was accepted on behalf of the appellant that for the appeal to be allowed there would need to be something more than mere separation between a parent and child and the obvious effect of that. The question is, is it unduly harsh.

My conclusions

65. The parties agreed that the reference in the supplementary decision letter dated 10 January 2014, to the decision being one to refuse to revoke a deportation order, is incorrect. Similarly, although there had originally been a deportation decision in respect of B, that decision was withdrawn when B became a British citizen. Thus, LML is the only appellant.

66. It was also accepted on behalf of the appellant, and agreed between the parties, that it is the post-28 July 2014 Immigration Rules that apply notwithstanding the date of the respondent's decision and what was the position before the First-tier Tribunal. In this respect I was referred to the decision in YM (Uganda) v Secretary of State for the Home Department [2014] EWCA Civ 1292. The appellant's skeleton argument proceeds on that footing.

67. Likewise, with reference to s.117C of the 2002 Act, the appellant is not able to rely on Exception 1 because she has not been lawfully resident in the UK for most of her life.

68. The relevant provisions of the Immigration Rules are as follows:

> "**A398.** These rules apply where:

(a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention;

(b) a foreign criminal applies for a deportation order made against him to be revoked.

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported…"

69. I also set out ss.117A-D as follows:

"PART 5A

ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

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

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D Interpretation of this Part

(1) In this Part—

"Article 8" means Article 8 of the European Convention on Human Rights;

"qualifying child" means a person who is under the age of 18 and who—

(a) is a British citizen, or

(b) has lived in the United Kingdom for a continuous period of seven years or more;

"qualifying partner" means a partner who—

(a) is a British citizen, or

(b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).

(2) In this Part, "foreign criminal" means a person—

(a) who is not a British citizen,

(b) who has been convicted in the United Kingdom of an offence, and

(c) who—

(i) has been sentenced to a period of imprisonment of at least 12 months,

…"

70. In the error of law decision, it can be seen from [18a.] that the appellant's immigration history and that of B are to be findings of the First-tier Tribunal that are preserved, as well as the evidence in relation to the index offence and the appellant's imprisonment.

71. It is important to set my conclusions into context in terms of the offence for which the appellant was convicted and which, after all, is the basis of these proceedings before the Upper Tribunal. The best source of information on that question is the sentencing remarks of His Honour Judge Webb who sentenced the appellant on 17 April 2012. He stated that the appellant had pleaded guilty but only when the matter was listed for trial. The basis of plea was that she carried a knife to peel fruit, a matter which the prosecution were prepared to accept. It was also accepted by the prosecution that the appellant did not intend to cause serious injury. Nevertheless, he concluded that as an offence of malicious wounding it was a serious one. The injury to the victim's face was a serious one "which has permanent physical and very probably permanent psychological effects for her".

72. He stated that the assault upon the victim by the appellant was sustained. There was one particularly serious injury but there were a number of other blows with the knife, cuts and grazes which were shown in the photographs put before the judge. He concluded that the appellant had deliberately caused more harm than was necessary for the commission of the offence. There was a weapon available to the appellant and she used it. He concluded that the offence was one of "higher culpability", presumably within the sentencing guidelines.

73. As to aggravating features, it was found that the location of the offence was "disturbing" in that the appellant felt she was able to commit the offence in broad daylight. Of much more concern was the impact that the offence had on the victim. Judge Webb said that he suspected that it was a deliberate act by the appellant to mark the face of someone she thought was a rival for the attentions of another man. On the other hand, he also found that there was some validity to the point that on the basis of plea she did not intend serious harm, it would not have been therefore, a deliberate act to mark the face of a rival.

74. He took into account that the appellant had no previous convictions and had shown a degree of remorse, although he stated that whether or not that was remorse for what she had done or fear of the consequences, he was not entirely sure. He sentenced her on the basis that she was a person of good character and the sole or primary carer for a young child.

75. Paragraph 398(b) applies in that the appellant was sentenced to a period of imprisonment of less than 4 years but at least 12 months. The next question then, is whether paragraphs 399 or 399A apply. It is accepted on behalf of the appellant that 399A does not apply because it includes a

requirement that the person concerned has been lawfully resident in the UK for most of their life. That does not apply in the case of this appellant.

76. Returning then to paragraph 399, it is not disputed but that the appellant has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, namely B, who is a British citizen and who has also lived in the UK continuously for at least seven years preceding the date of the immigration decision. B was born on 24 February 2002 and is now aged 13 years.

77. The question correctly identified by the parties revolves around the issue of 'undue hardship'. That is, whether it would be unduly harsh for B to live in Jamaica and whether it would be unduly harsh for her to remain in the UK without the appellant.

78. Ms Revill suggested, and I agree, that this involves an assessment of proportionality. However, it is to be recognised that the fact of separation in itself, i.e. B living in the UK without the appellant, is not sufficient to establish that it would be unduly harsh. The Rule, and indeed the 2002 Act at s.117C, both contemplate separation as being a possible outcome of deportation proceedings. Thus, it is not sufficient for an appellant to say that it is "unduly harsh" to separate her from her child, without more. Separation is an inevitable feature of deportation as recognised in the Immigration Rules and in primary legislation. It is also reflected in the jurisprudence, for example in AD Lee v Secretary of State for the Home Department [2011] EWCA Civ 348.

79. Furthermore, it is not enough for an appellant to point to the fact that the child with whom he or she has a genuine and subsisting relationship is under the age of 18 years and is a British citizen, or has lived in the UK for at least seven years. Overlaying those features of the case is the requirement for separation to be unduly harsh. Thus, something more is required.

80. In considering the question of whether it would be unduly harsh for B to live in Jamaica with the appellant or for B to remain in the UK without the appellant, I start with a consideration of what is in B's best interests. In that respect, it seems to me to be plain that B's best interests are to remain with the appellant. It is not necessary for me at this point to rehearse the evidence pertaining to the closeness of their relationship. It is sufficient to state that B lives with the appellant, they have a close relationship and B does not have contact with her father.

81. Before proceeding further however, it is also important to recognise that a child's best interests, whilst being a primary consideration, are not the only, or indeed the most important, consideration.

82. However, the age of the child, their length of stay or integration in the UK, the stage of the child's education, and all other relevant factors must be taken into account. It is important to mention that I have considered in

detail the social work report of Peter Horrocks dated 6 February 2015, B's school reports and letters from the school, the witness statements of the appellant and her daughters, their letters and the oral evidence. Specifically, I note the letter from B herself which has a stamped date of 13 November 2012. It is not entirely clear when it was written. As Mr Horrocks says in his report, B's voice needs to be heard.

83. There is also medical evidence in relation to B, about which there was some limited dispute in terms of the seriousness of her conditions. Medical records have been provided, which was essentially the purpose of the adjournment of the first hearing before me, although it is said on behalf of the appellant that there are other medical records that she has not been able to produce. It is clear that B does have a nut allergy. There was dispute about the number of times she has had to go to hospital as a result of that nut allergy. I do not consider it necessary to resolve that dispute because what is plain from the medical records is that B is required or does need to carry with her an Epipen. It is evident from the medical records that staff at her school needed training in the use of the Epipen. That she has required hospital treatment and that she requires to carry an Epipen with her, as well as the fact that staff at her school needed training in its use, all indicate that her condition is not something trivial. Whilst there was no detailed medical report about the effects of the nut allergy on her, and more widely as to the potential consequences of an allergic reaction, the evidence that has been provided indicates that her condition is one that has been taken seriously by medical professionals.

84. Further in relation to this issue, only limited evidence was provided of the extent to which B could be safeguarded in terms of that condition in Jamaica. A copy of an article from the Jamaica Gleaner dated 4 January 2014, being a one page article, in summary indicates that Epipens are not available in Jamaica. The article also contains very brief information about anaphylactic shock. However, without a medical report in relation to B dealing with this issue, it would to some extent be speculative to conclude that B is at risk of anaphylactic shock were she to have an allergic reaction. Indeed in any event, the consequences of anaphylactic shock are not explained in evidence before me by any expert evidence.

85. However, one can reasonably conclude that the standard of medical care in Jamaica is, for the most part, not as high as that in the UK. That fact, together with the, albeit very brief, article from the Jamaica Gleaner, is sufficient evidence to indicate that B would be more at risk in Jamaica in relation to her nut allergy.

86. The medical reports provided to me also indicate that B suffers from eczema. The seriousness of that condition again is not explained in any medical report. It is, it seems to me, sufficient to note that she has visited her GP more than once in relation to that condition and receives treatment for it, for example in the form of creams, bath oil and the like. Whether or not she needs, or has been prescribed, treatment including

hydrocortisone, a matter in dispute, again does not seem to me to be particularly relevant. I do however accept, as Mr Smart said, that such treatment, for example shampoos and moisturisers, can be obtained over the counter. The extent to which they are in fact available in Jamaica has not been established. There is however no indication that her condition has, for example, required hospitalisation or absence from school.

87. Similarly, in terms of the visits to the doctor B has made because of tonsillitis, a question arose as to the extent to which that has caused her absence from school, and whether the school had threatened to take action because of those absences. Again, a fine judgement about that issue does not need to be made. It is sufficient to note that it is clear from the medical records that B has received treatment more than once for tonsillitis and related conditions. On the face of it, that does not seem to be a life threatening condition, but of course again it is reasonable to assume it can be a limiting and disruptive condition in the life of a teenage child of school age.

88. It is clear from the medical reports that B has visited the GP for other conditions, which were not referred to in the oral evidence or in submissions. I mention that fact only to include it within the overall observation that B has over the years required treatment for various conditions and which have necessitated her repeated visits to the GP's surgery, as well as on occasion admission to hospital. This is plainly irrelevant in terms of the question of whether it would be unduly harsh to expect her to return to Jamaica with the appellant. That contact with doctors has been with the full support of various family members who have taken her there.

89. In contrast to the situation in the UK, where B has close relationships with family members, even if there are members of the family in Jamaica the evidence does not indicate that B has, or has had, any contact with them. There is inconsistency in the appellant's witness statement in terms of whether there are family members in Jamaica. She states at [12] that she does not have a home to return to there despite having some family there but in the next paragraph states that there is no family left in Jamaica. In Mr Horrocks' report there is reference to the appellant's mother having a history of mental health problems as does a maternal uncle and two maternal cousins. In cross-examination it was put to the appellant that this indicates that she has those relatives in Jamaica. The appellant agreed that she had those relatives there but said that she does not know where they are.

90. The evidence therefore, does indicate that there are relatives in Jamaica. However, the written and oral evidence is consistent in stating that the appellant has no contact with them, and I accept that to be the case. So far as B is concerned, as I say, this is relevant because it could not be said that the evidence shows that B, on going to Jamaica, would have the benefit of being welcomed into a close, loving and supportive family.

91. Considering all the circumstances, B's age, her health conditions, the stage of her education in the UK, the fact of her British citizenship and her close relationships with family in the UK, I am satisfied that even though she would be with the appellant on return to Jamaica, it would be unduly harsh to expect her to leave the UK with the appellant. It is true that in the social worker's report B said that she would go with her mother to Jamaica, but I consider that is because she plainly wishes to remain with her mother. That does not indicate necessarily, and certainly not in this case, that it would not be unduly harsh to expect her to leave the UK to be with the appellant.

92. The critical question it seems to me is whether it would be unduly harsh to expect B to remain in the UK without the appellant. Clearly, remaining in the UK B would be able to continue with her education, at least in the sense that there would be education available to her, albeit that in the absence of the appellant the question arises as to whether she would be able to make the progress that she has made to date. She would be able to continue to have access to the healthcare system of the UK.

93. When the appellant was in prison her sister, C, looked after her. This was with the assistance of her other sister, P. I accept that during that time B's schoolwork suffered, as is evident from the information from the school and the witness statements. There is a letter dated 15 October 2013 from her primary school at page 23 of the appellant's bundle. It states that her attendance was very good and she was regularly collected by the appellant, her primary carer. The appellant engaged with the school, liaising with the school and attending meetings and parent consultations, and the like. Shortly after the appellant went to prison it states that B's attendance dropped below the national average and although her sisters took very good care of her in the appellant's absence, the school was aware that it was a difficult situation as B's mother was not around for her. It states that the absence of B's mother did have a detrimental impact on her education, both emotionally and academically.

94. To varying degrees both C and P explained why they would not be able to care for B if the appellant were removed to Jamaica. I am satisfied that they gave credible evidence of the difficulties that each of them in their own way would experience in looking after B, because of their own family responsibilities, their plans for the future and their particular circumstances. However, it is not suggested that they would see B taken into care if the appellant were removed to Jamaica. Whilst I do not underestimate the practical difficulties that caring for B would create for either or both of them, the evidence does not indicate that they would not, either individually or together, be able to fulfil the role of primary carers, in the sense of facilitating B's education, access to healthcare and in growing up with their physical and emotional support.

95. Whilst I acknowledge the expertise of Peter Horrocks in his particular sphere of expertise, I do not accept what he says in his report at 4.19 about the ability of C or P to care for B. As I have indicated, undoubtedly

there would be practical difficulties, even hardship, but the evidence does not indicate that they in either case are unable to care for B, or collectively. Thus, I reject the suggestion at paragraph 5.3 that there are no alternative options other than for B to be cared for by the local authority.

96. Mr Horrocks describes B's vulnerability, referring to her anxiety, which has manifested itself in various different ways, showing her particular anxiety about being separated from the appellant and indeed from other family members. Whilst he suggests that she is vulnerable in terms of her mental health, I do not accept as suggested at paragraph 4.9 that B believes that responsibility for the decision as to whether the appellant leaves the UK or stays here, remains with B. There is little to support the suggestion at 4.11 that B would see herself as being punished for her mother's actions and that if the appellant had to go to Jamaica B would blame herself for what had occurred which would be harmful for their relationship.

97. On the other hand, I do accept, as is apparent from my observations thus far, that as stated at paragraph 4.24, B's needs are for security, stability and continuity.

98. I also accept that returning the appellant to Jamaica would have a negative impact on B, given her age, her closeness to the appellant and the anxieties she demonstrated when the appellant was imprisoned.

99. I have also taken into account the best interests of the appellant's grandchildren, A and TW. C's daughter A is about 5 months old. P's daughter, TW is aged 5. The evidence, including from Mr Horrocks' report, is that TW has an affectionate relationship with the appellant. He witnessed that when he went with the appellant and P to collect TW from school. It is reasonable to conclude that those children's best interests would also be best served by the appellant remaining in the UK, although plainly at their ages they are young enough to adapt to her absence and I do not consider that a consideration of their best interests is of very much significance in the overall circumstances.

100. It goes without saying that the appellant has a strong desire to remain in the UK with her children and grandchildren and that her removal would have a significant emotional impact on her. Expert evidence is not needed to come to that view. Similarly, the matriarchal-type structure of the family, with the appellant as the head of it, and the close relationships with P and C suggest that they would also be significantly emotionally affected by the appellant's removal. However, I do not consider that either the appellant's wishes or the effect on P and C of her removal, are of very great significance on their own, when set against the powerful public interest factors in play.

101. Whilst specific evidence of the family's financial circumstances was not provided, there is sufficient evidence from which to conclude that it would

not be possible for visits by the appellant's children to take place on a very frequent basis. In addition, the nature of the family circumstances of C and P do not reveal that they would be able to leave the UK to live in Jamaica with the appellant.

102. The question of whether the appellant's removal, and separation from her family, is unduly harsh must be informed, as I have already indicated, by the seriousness of the offence that was committed by her. I have referred to the judge's sentencing remarks. It is clear that this was a serious offence.

103. There is nothing to contradict what is said about the low risk of the appellant's reoffending, and her behaviour and attitude since her conviction and after her release reinforces that view. However, it has repeatedly been said that the risk of re-offending is but one factor, and not the most important factor, to be taken into account. Regard must be had to the deterrent effect of deportation, and the expression of the public's abhorrence of serious offending. So much is clear from decisions such as SS (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 550. There is a potent public interest at play.

104. I consider however, that the fact that B has only one parent in her life, namely the appellant, is a very significant factor to be taken into account. It is also important to take into account that the separation between the appellant and B would be for a period of at least ten years, during which time B would not have the direct and close personal contact, guidance and emotional support from her only parent, whatever could be said about the contact that could be maintained by phone, Skype or the like, letters and the occasional visit. B's age at which she would be separated from her mother (13), and the fact that she would be deprived of the daily interactions with her during an obviously very important developmental period of her life, I consider to be of great significance.

105. Considering the evidence in the round, and reflecting again on the potent public interest factors in play, I am satisfied that the circumstances are such that on the particular facts of this case it would be unduly harsh for B to remain in the UK without the appellant. For the reasons I have given, I also consider that it would be unduly harsh for B to leave the UK to live in Jamaica with the appellant.

106. The same conclusion results from an analysis of s.117C of the 2002 Act. On the facts of this case the outcome under the Immigration Rules, and within a consideration of s.117C, is the same.

107. Accordingly, I allow the appeal because an exception to the automatic deportation provisions of the UK Borders Act 2007 applies, i.e. the appellant's deportation would involve a breach of her human rights under Article 8 of the ECHR, applying the Immigration Rules with reference to paragraph 399(a).

Decision

108. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision of the First-tier Tribunal is set aside and the decision re-made, allowing the appeal.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

In order to preserve the anonymity of the children involved in these proceedings, unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek 16/06/15