



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/03780/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 November 2018**

**Decision & Reasons  
Promulgated  
On 22 November 2018**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**AP**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: Mr D Sellwood, Counsel, instructed by Sutovic & Hartigan

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department (SSHD) against the decision of Judge of the First-tier Tribunal Gribble (the judge), promulgated on 23 August 2018, allowing AP's appeal (hereafter claimant) against the SSHD's decision, dated 26 February 2018 refusing the claimant's protection and human rights claim.

## Background

2. This appeal has a somewhat complex history. The issue for me to determine is however narrow. Did the judge err in law in her assessment of the internal relocation alternative available to the claimant?
3. The SSHD has not challenged any of the judge's factual findings. The essential, and now unchallenged factual matrix is as follows. The claimant is a national of Jamaica born in 1966. In 1992, while living in Jamaica, she was attacked with acid whilst pregnant and blinded in one eye. She informed the police of the identity of her attacker, but his associates visited her and threatened her. They were members of the "Rat Bat" gang. She again reported the threats to the police and then moved away with her 5 children... The claimant's cousin visited her a few months later but was shot dead in an act of reprisal. The claimant again informed the police.
4. The claimant attained some protection from the gang when she entered a relationship with DH in 1993, who had his own 'connections'. They separated however in 2000 and, in the same year, the claimant was then shot in the leg by Rat bat gang members. She began moving between friends' homes to stay ahead of the gang and eventually fled to the UK in 2002 leaving her children in the care of her sisters and other relatives. She sought leave to enter as a visitor but was refused and absconded after being granted Temporary Admission. She came to light in 2005 and made an asylum claim based on her fear of the Rat Bat gang. The application was refused and an appeal dismissed in September 2005. The claimant was found to be incredible by the AIT judge.
5. The claimant's niece and nephew were shot dead in Jamaica in August and October 2005 respectively, and another nephew died after being shot in the chest. Interviews carried out by the BBC outlined that the claimant's name and face had been broadcast on Jamaican television in early December 2005 with a report that she was being deported to Jamaica. Newspaper cuttings provided from the same time supporting this. Then in April 2008 the claimant's partner was shot and killed in Jamaica. The claimant was granted Indefinite Leave to Remain (ILR) under the legacy policy in June 2010.
6. In May 2012 the claimant was convicted after trial of an offence of wounding with intent to cause grievous bodily harm and sentenced to 12 years in prison. In 2015 the Bat Gang killed another family member, a nephew. She was informed that she was liable for deportation in 2016. A deportation order was made on 23 February 2018 and on 26 February 2018 the SSHD refused her protection and human rights claim, leading to the appeal before the First-tier Tribunal. The SSHD issued a s.72 certificate in respect of the asylum

aspect of the claim to the effect that the claimant was presumed to have been convicted of a particularly serious crime and to constitute a danger to the community in the UK.

### **The First-tier Tribunal decision**

7. The judge had a large bundle of documents before her including, *inter alia*, the AIT decision from 2005, the sentencing judge's remarks, the Reasons for Refusal Letter, medical reports on the claimant's physical and mental health, a Country Expert report, and a bundle of background material including the most recent Country Policy and Information Note 'Jamaica, background information including actors of protection and internal relocation' from March 2018. The judge noted that the conclusions of the various medical reports were not challenged. The judge heard oral evidence from the claimant and from JC, who formerly employed her as a cleaner, and summarised that evidence in clear terms.
8. The judge summarised the expert report from Prof Shirley Tate (which concluded that there would be no sufficiency of protection for the claimant due to police underfunding, corruption and involvement in criminal gangs, that internal relocation would be ineffective due to the size of the island and the fact that the claimant's name and face were known because of the BBC interview, and that in addition, her need for health care would mean her whereabouts would become known, and the claimant would not be protected by the witness protection programme because she had not been a witness in a major crime), and the psychological assessment filed by Dr Mohammed Abou-Saleh. The medical evidence indicated that the claimant had diabetes and pancreatitis, that she had pain in her leg and needed to walk with a stick, that she had angina, thyroid disease and a gynaecological problem. In terms of her mental health, the claimant was prescribed antipsychotic medication and an antidepressant. Her psychological symptoms were consistent with the diagnosis of PTSD. Dr Mohammed Abou-Saleh diagnosed the claimant as suffering from complex PTSD with excess anxiety, depressive and psychotic symptoms (hallucination) in the context of her PTSD. He concluded that, if returned, she would most likely experience constant and intense fear and her psychiatric condition would worsen further with increased risk for self-harm. It was noted that the claimant said she would take her own life if removal was imminent. Dr Abou-Saleh said that the claimant's perception of the reality of the threat to her life was such that there were no reasonable mechanisms to minimize the risk of further deterioration in her mental health condition and the risk of self-harm and suicide.
9. The judge accurately directed himself in respect of the legal test under article 3 and the appropriate burden and standard of proof.

10. In the section headed “Consideration of the Evidence and Findings” the judge indicated that she had read the medical reports and considered the evidence with anxious scrutiny. The judge upheld the section 72 certificate. The judge then considered the claimant’s credibility since the decision of the AIT and, based on the significant volume of evidence not available to the AIT, found that the claimant’s account was likely to be true. The judge found that the claimant wholeheartedly believed she would be at risk from the criminal gang in Jamaica, and that her fear from the Rat Bat gang was well founded. The judge then found that the claimant would be unable to access the witness protection programme because she was not a current witness, which was consistent with the Home Office Guidance. The judge concluded that there would be no sufficiency of protection if the claimant returned to her home area. There has been no challenge to any of these findings.
11. The judge then considered the issue of internal relocation, and properly directed herself as to the “unduly harsh” test. At [85] the judge noted that, as a deportee, the claimant would be entitled to some money from the Facilitated Returns Scheme, but that Jamaica was a small island when news travelled fast, that there had been a spike in the murder rate of returnees, albeit that they were British citizens, and that there were also reports of baggage handlers and taxi drivers at the airport tipping off gangs about returnees, leading to a risk that wherever she was the claimant may be found.
12. Then at [86] the judge took into account the claimant’s age, lack of education and her physical and mental health problems, and concluded, by reference to **AH (Sudan)** [2007] UKHL 49, that she would not be able to live a relatively normal life in another part of Jamaica as she had no family she could rely on, had been away for over 13 years, was to all intents and purposes unemployable, and that any funds available to her to rent accommodation would soon run out, leading her to poverty and a likely return to the “garrison” areas of Jamaica which were all she knew. The judge consequently allowed the appeal against the refusal of the protection claim under Article 3.

### **The grounds of appeal, the grant of permission and the parties’ submissions**

13. The Grounds contend, that the judge failed to apply the country guidance case of AB (Protection -criminal gangs-internal relocation) Jamaica CG [2007] UKAIT 00018 in respect of the availability of internal relocation. Reference was made to paragraph 164 of AB where it was found that, except in high-profile cases, persons in the appellant’s position would not face a real risk of being detected by criminal gangs based in inner-city urban areas. Given that it was not suggested that there was no medical treatment available for the claimant, and the acknowledgement that assistance was available

from the FRS, it was submitted that the judge failed to give clear reasons why this claimant would be considered a high-profile case and therefore incapable of internally relocating in Jamaica. In granting permission the First-tier Tribunal held the grounds to be arguable and noted that the judge's conclusions appeared to lack of rigour.

14. Mr Avery submitted that the judge failed to adequately consider AB (Jamaica), that welfare provisions were available in Jamaica, and that the appellant in AB (Jamaica) was also in a vulnerable psychological state (although it was accepted that AB did have family support whereas the appellant, on the unchallenged factual finding, had no family support). Mr Sellwood submitted that the narrow grounds of appeal related to whether the judge was entitled to find that the claimant would be targeted by the criminal gang outside her home, area and not to the judge's findings that it would be unreasonable or unduly harsh for other reasons for her to relocate. It was open to the SSHD to amend his grounds but he did not do so. In any event, the judge found that the claimant was a high profile risk given the severity of the attacks on her and her extended family, and the media interest in her return. It was submitted that the judge clearly had AB (Jamaica) in mind and that the judge gave adequate reasons for concluding that it would be unduly harsh to expect this particular claimant with her particular characteristics to relocate.

15. I reserved my decision.

## Discussion

16. I am satisfied, for the following reasons, that the decision does not disclose a material error on a point of law.

17. I appreciate that the judges' direct assessment of the availability of internal relocation is relatively brief, but this assessment cannot be considered in isolation. In a detailed and well-structured decision, the judge carefully set out her findings of fact which included a large number of very serious and deadly attacks on the claimant and her family over a prolonged period of time. The judge found that the claimant's estranged children were effectively in hiding outside of the 'garrison' areas and that they continued to receive threats and face harassment. There has been no challenge to these findings. The judge found that the claimant's name and face had been broadcast on Jamaican television in December 2005 and that there had been newspaper articles published at the time concerning her possible return to Jamaica. This indicates that the claimant's case is high profile, as understood in **AB (Jamaica)**. It is clear from the decision, read as a whole, that the judge was acutely aware of the Country Guidance case and that she must have considered the claimant to be a high-profile target of this particular criminal gang. At [85] the judge noted that news was likely to travel fast given the small size of

Jamaica and that there were reports of baggage handlers and taxi drivers at the airport tipping off gangs about returnees. Given the judge's previous findings that the claimant had been long sought by the criminal gang, that members of her family had been shot dead in retaliation over a period of years, that her remaining family were still living in fear under constant threats, and the significant media interest in her, it is necessarily and irresistibly implicit in the judge's findings that she considered the claimant to be a high profile case and that there was a real risk she would be found where ever she went. I therefore find no error in the judge's analysis of the internal relocation alternative so far as risk from the criminal gang is concerned. This is sufficient to dispose of the SSHD's appeal.

18. I am nevertheless satisfied, in the alternative, that even if the judge was not entitled to find that the claimant would still be at risk in other parts of Jamaica, that her assessment as to whether it would be unreasonable or unduly harsh to expect this particular claimant to relocate does not disclose any legal error. The judge properly asked herself whether it would be unduly harsh to expect the claimant to relocate to another part of Jamaica, properly referred to the applicable authority on internal relocation (**AH (Sudan)**), and properly took into account the claimant's particular characteristics. These included the judge's unchallenged findings that the claimant was, to all intents and purposes, unemployable, the absence of any network of family or other informal support for the claimant, and the claimant's significant physical and mental health problems, as outlined in paragraph 8 of my decision, indicating that she would most likely experience constant and intense fear wherever she went given her perception of the reality of the threat to her life. While the judge did not delve into detail in her assessment at [86], she referred to all factors relevant for an internal relocation assessment and her findings in respect of internal relocation have to be read in conjunction with her earlier factual findings. I consequently find that the judge entitled to her conclusion in respect of the availability of internal relocation for the reasons she gave.

### **Notice of Decision**

**The First-tier Tribunal's decision did not involve the making of an error on a point of law. The SSHD's appeal is dismissed.**

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.

A handwritten signature in cursive script, appearing to read 'Blum', is located in the upper left quadrant of the page.

15 November 2018

Signed  
Upper Tribunal Judge Blum

Date