Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/35482/2014
IA/05997/2015

THE IMMIGRATION ACTS

At Birmingham Justice Centre	**Decision & Reasons Promulgated**
On 22nd February 2019	**On 4th June 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

Marie [E]
David [E]
(no anonymity direction made)

Respondents

For the Appellant: **Mrs H. Aboni, Senior Home Office Presenting Officer**
For the Respondent: **Ms E. Norman, Counsel instructed by Jacobs Law Solicitors**

DECISION AND REASONS

1. Mrs Marie [E] is a national of Jamaica born on the 4th September 1970.

2. The Secretary of State has been trying to deport her for some time. On the 11th February 2014 she was convicted of supplying crack cocaine, a Class A controlled drug. She was sent to prison for 18 months. As a result of that conviction she was

notified of her liability to deportation under section 32(5) of the United Kingdom Borders Act 2007, and an order signed, on the 19th March 2014.

3. Twice the First-tier Tribunal has allowed, on human rights grounds, her appeal against that decision. Twice the Secretary of State has appealed to the Upper Tribunal, and twice have the decisions of the First-tier Tribunal been set aside, most recently by Upper Tribunal Judge Allen in his decision dated the 8th November 2018. The matter comes before me for 're-making' pursuant to the transfer order of Upper Tribunal Judge O'Connor dated the 13th November 2018.

4. Mr David [E] is a national of Jamaica born on the 30th March 1961. He finds himself before this Tribunal for no reason other than the fact that he is married to Mrs [E], and his status in this country is dependent upon hers.

The Legal Framework

5. The legal framework to be applied in these linked appeals is uncontroversial.

6. Mrs [E] is, by reason of her criminal conviction, liable to automatic deportation: s32(5) Borders Act 2007. She can succeed in resisting deportation if she can show that any of the exceptions in section 33 of the Borders Act 2007 apply. That section contains 6 exceptions, only one of which is potentially engaged on the facts: s33 (2)(a), that her deportation would breach her Convention rights, that is to say her rights under the European Convention on Human Rights.

7. Mrs [E] relies on Article 8, submitting that her deportation would be a disproportionate interference with both her private and family life in the United Kingdom. Because she seeks to rely on Article 8 I must have regard to the provisions in respect of the public interest set out in s117C of the Nationality, Immigration and Asylum Act 2002:

> '(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.'

8. It is not contended that Mrs [E] can meet 'exception 1' set out at s117C(4). Although she has lived in the United Kingdom with leave since 2000 she spent the preceding 30 years living in Jamaica. She has not therefore been lawfully resident here for most of her life. Nor can she meet 'exception 2', which relates to family members, since she has neither a qualifying partner or minor children in the United Kingdom. By operation of sub-section (3) it would therefore seem that her claim was *prima facie* defeated:

> '(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.'

If statute provides that the public interest requires her deportation, that would arguably be the end of the matter.

9. Not so, say the Court of Appeal. In NA (Pakistan) & Another v Secretary of State for the Home Department [2016] EWCA Civ 662 the Court noted the apparent lacuna in s117C in respect of persons who receive a sentence of less than 4 years but like Mrs [E], cannot bring themselves within one of the exceptions. Unlike criminals sentenced to four years, whose position is covered by s117C(6), the statute does not set out any framework for consideration of their Article 8 claims. From paragraph 24 of NA Lord Justice Jackson puts it like this:

> 24. A curious feature of section 117C(3) is that it does not make any provision for medium offenders who fall outside Exceptions 1 and 2. One would have expected that sub-section to say that they too can escape deportation if "there are very compelling circumstances, over and above Exceptions 1 and 2". It would be bizarre in the extreme if the statute gave this right to serious offenders, but not to medium offenders. Furthermore, the new rule 398 (which came into force on the same day as section 117C) proceeds on the basis that medium offenders do have this right.
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> 25. Something has obviously gone amiss with the drafting of section 117C(3). In *Inco Europe Ltd v First Choice Distribution* [2000] 1 WLR 586, HL, at 592-593, Lord Nicholls (with whom the other members of the Appellate Committee agreed) explained the circumstances in which the courts in

> interpreting statutes can correct obvious drafting errors. In our view the lacuna in section 117C(3) is an obvious drafting error. Parliament must have intended medium offenders to have the same fall back protection as serious offenders. Mr Tam invited us so to rule.
>
> 26. In reaching this conclusion it is important to bear in mind that the new Part 5A of the 2002 Act is framed in such a way as to provide a structured basis for application of and compliance with Article 8, rather than to disapply it: see the title of Part 5A, the general scheme of the provisions in that Part and, in particular, section 117A(1). If section 117C barred medium offenders from asserting any Article 8 claim other than provided for in subsections (4) and (5), that would plainly be incompatible with Article 8 rights (either their own or Convention rights of individuals in their family) in some cases. Equally plainly, it was not Parliament's intention in enacting Part 5A to disapply or require violation of Article 8 in any case. We also place reliance on section 3(1) of the Human Rights Act 1998. That provision requires courts to construe legislation in a way which is compatible with Convention rights, if it is possible to do so. It is possible to do so here. In accordance with the guidance given by Lord Nicholls, the words which need to be read into section 117C(3) so as properly to reflect Parliament's true meaning are clear, namely the same words as appear in sub-section (6) and in para. 398 of the 2014 rules, which came into effect at the same time as part of an integrated and coherent code in primary legislation and the Immigration Rules for dealing with deportation cases.
>
> 27. For all these reasons we shall proceed on the basis that fall back protection of the kind stated in section 117C(6) avails both (a) serious offenders and (b) medium offenders who fall outside Exceptions 1 and 2. On a proper construction of section 117C(3), it provides that for medium offenders "the public interest requires C's deportation unless Exception 1 or Exception 2 applies or unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

10. Before me the parties agreed that the NA interpretation of s117C was the framework I must apply. I must therefore consider whether there are "very compelling circumstances, over and above those described in exceptions 1 and 2" in Mrs [E] case. Of this test Lord Justice Jackson underlined the high threshold to be met when he said this:

> 28. Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.

11. There has been some delay in the making of this decision, at least in part because I was awaiting the decision of a Presidential panel of this Tribunal (Lane J, Upper Tribunal Judges Coker and Gill) addressing the matter of how the test "very compelling circumstances" should be interpreted. That decision is now available: MS (s.117C(6): "very compelling circumstances") Philippines [2019] UKUT 00122

(IAC). In the end I have not considered it necessary to revert to the parties for further submissions, since the conclusions of the panel about the proper legal approach accorded in substance with the position adopted by the parties, that being:

> *(1) In determining pursuant to section 117C(6) of the Nationality, Immigration and Asylum Act 2002 whether there are very compelling circumstances, over and above those described in Exceptions 1 and 2 in subsections (4) and (5), such as to outweigh the public interest in the deportation of a foreign criminal, a court or tribunal must take into account, together with any other relevant public interest considerations, the seriousness of the particular offence of which the foreign criminal was convicted; not merely whether the foreign criminal was or was not sentenced to imprisonment of more than 4 years. Nothing in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 demands a contrary conclusion.*
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> *(2) There is nothing in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 that requires a court or tribunal to eschew the principle of public deterrence, as an element of the public interest, in determining a deportation appeal by reference to section 117C(6).*

12. Mr [E] is not a criminal. He appeals the decision of the Secretary of State dated the 28th January 2015 to refuse to grant him further leave to remain as the spouse of Mrs [E]. Mr [E] previously had leave in this capacity, and in December 2014 made an in-time application to extend such leave. his was refused on the grounds that Mrs [E] had, by virtue of the deportation order, lost her settled status, since her ILR was revoked. The parties before me therefore agreed that his appeal was entirely dependent on his wife's: if she succeeds, so shall he.

The Factual Matrix

13. Mrs [E] has lived in this country since December 2000 when she arrived with leave to enter as visitor. She subsequently varied that leave so as to be granted leave as student, and then as a spouse. She was granted indefinite leave to remain in 2006. It is therefore accepted by the Secretary of State that Mrs [E] had valid leave to enter or remain from the time of her arrival until the day that the deportation order was signed in 2014. For the sake of completeness, Mrs [E] now acknowledges that a previous assertion by her to have had an entitlement to British nationality was without merit, that application having been made after receiving legal advice that was not just flawed but criminally fraudulent: I understand that Mrs [E] is now seeking redress with the relevant authorities in respect of that matter.

14. Mrs [E] was arrested on the 11th July 2013 in connection with an investigation into the distribution and supply of crack cocaine. The circumstances leading to her arrest and charge are set out in her uncontested witness statement. They were as follows. In 2002 her son [SR] arrived from Jamaica as a visitor, and remained here. [SR] is Mrs Edward's only son, and in her own words, she was "often manipulated" by him. He became involved in dealing drugs. He was caught, and sent to prison. In January 2012 Mrs [E] went to visit him. He asked her if she would do something for him. She

was to telephone his friend and ask him how many "brown ladies" there were, and how many "white ladies" there were. The friend told Mrs [E] that there was one of each. She relayed this information to her son on her next visit to prison. It turned out that this was code for drugs: white ladies were crack cocaine, brown ladies heroin. On another occasion her son telephoned her and asked her if she could give him her bank details so that a friend of his could pay him some money he owed him into her account. She supplied those details and a total of £200 was paid into her account. The sum of £185 was also delivered to her at her home. She paid all of this money to her son. These were the matters that led the police to attend at her home with a warrant for her arrest.

15. Mrs [E] avers that whilst she was being held at Shrewsbury Police Station she received legal advice from a man named Hamar Chiles. He told her that as a black woman she would not receive justice in the English justice system. He told her that if she fought the charges and was convicted, she would be sent to prison for 6 years. He advised her to plead guilty. She was remanded into custody. At the age of 42, having been of previous good character, a professional carer and a devout Christian, Mrs [E] suddenly found herself in prison, an experience she describes as "terrifying". Her body and mind went into a "state of shock". She tried to kill herself on a number of occasions: "I couldn't cope with the situation I was in; the most painful thing was that my son, my only child, had done this to me". Afraid that she would spend the next five years in jail she therefore decided to plead guilty. She was sentenced to 18 months on the 7th February 2014, having already spent 164 days on remand.

16. Mrs Edward's son [SR] has now been deported to Jamaica.

17. Mrs [E] recognises the legal framework as it is summarised above. It is submitted on her behalf that there are in her case "very compelling circumstances" such that the substantial public interest in her deportation is outweighed. These are, cumulatively, that :

    i) She has a period of 18 years continuous residence during which she has established a strong private life; *and*

    ii) Fourteen of those years were with lawful leave; *and*

    iii) She is extremely ill; *and*

    iv) She is of previous good character; *and*

    v) The Judge at her criminal trial accepted that she was naïve and manipulated by her son; *and*

    vi) She is unfit to travel; *and*

    vii) She is effectively housebound and extremely unlikely to ever offend again.

18. Mrs Aboni did not dispute that Mr and Mrs [E] have established meaningful private lives in the United Kingdom. The evidence indicates that Mrs [E] has lived here since 2000, and that she has nothing and no-one in Jamaica apart from her criminal son

from whom she is now estranged. Her mother, aunt, sisters and cousins are all living in the United Kingdom. In addition to Mrs [E]'s own statement I have been provided with signed statements by her mother, Mrs [YL], her sister [KT], her cousin [KW] and her aunt [MM]. All three witnesses attest to the close and supportive family network in this country, and to the fact that prior to her conviction and illness, Mrs [E] was a law-abiding and hardworking member of the community. These family members also allude to the challenges that she faced in dealing with her son [SR]. The bundle also contains several heartfelt character references from people who know Mrs [E] from church, including Father John Reid, the Parish Priest of St Mary's Priory, who describes Mrs [E] as a "courteous, selfless person of integrity, moral goodness and deep faith".

19. Mr [E] has lived in this country since 2012. He also has a number of close family members living in the United Kingdom, including brothers, nephews and nieces. He also has one son who lives in Jamaica. Both Mr and Mrs [E] were regular church-goers until Mrs [E] became housebound.

20. The Secretary of State accepts that Mrs [E] is extremely unwell. In his determination dated the 16th November 2017 First-tier Tribunal Judge Chohan summarises her condition as follows:

> "The first appellant suffers from poor health. She has been diagnosed as suffering from asthma, problems of the thyroid gland and high blood pressure. However, the most serious illness that the appellant suffers from is a condition called Lymphangioleimyomatosis (LAM). This is a rare disease which affects women. Cysts form in the lungs, causing significant airflow obstruction and impairment of gas transfer, which requires the first appellant to use supplemental oxygen for most of the day. The first appellant is on an experimental treatment with a drug called Rapamycin. The first appellant is under the care of Prof Simon Johnson at Nottingham University Hospital. Indeed, it is the only hospital in the United Kingdom, which deals with this particular disease."

21. I have before me correspondence from the University Hospital Birmingham, which confirms that Mrs [E] is currently being prescribed at least 17 different medicines, for a variety of conditions including LAM. These letters and reports also confirm that Mrs [E] is now dependent upon ambulatory oxygen canisters to assist with her breathing. They also reveal that in addition to breathing problems, a further symptom of LAM is tumours on the kidneys. Due to her lack of mobility Mrs [E] has also been diagnosed with Deep Vein Thrombosis in her axillary, brachial and basilic veins. Several of the very many medical documents before me indicate that as a result of these cumulative conditions Mrs [E] is not fit to travel. This includes a letter written by her GP on the 8th January 2016 to confirm that due to her deteriorating lung function she is not fit to fly as she would not be able to tolerate a long distance flight. Mrs Aboni accepted that in light of the available material indicating this to be a deteriorating and irreversible lung condition it is not likely that this medical opinion would have changed. In a letter dated 12th July 2017 Professor Johnson, Mrs [E]' supervising clinician, describes her as a "particularly complex

case", and expresses doubt about whether she would be able to obtain any effective treatment in Jamaica. Rapamycin is an unlicensed therapy and is being administered on a trial basis in the United Kingdom's dedicated LAM unit.

22. In terms of the day-to-day effects that LAM has on Mrs [E] I have had regard to the statement of Mr [E] dated 4 September 2017. He states that in order to survive his wife takes over 200 tablets per week, including morphine to combat the excruciating chest pain that she often suffers. I have further been referred to the 'Home Care Support Plan' put in place by the agency who are charged with providing personal care to Mrs [E] in her home. This confirms that Mr Edward's is the primary carer for his wife who suffers from "lung disease, kidney failure and has had three mini strokes in August 2015". The plan shows that carers attend the family home seven days a week, twice each day. They come in the morning for an hour to assist her in getting out of bed, washing and attend to her personal care. They come back in the evening for another 45 minutes to again attend to personal care and help Mrs [E] get ready for bed.

23. Mrs [E] maintains that there is no treatment available for LAM in Jamaica. She has produced fact sheet produced by charity 'LAM Action' which contains a list of clinics worldwide where the condition can be treated. There are none in the Caribbean. She further produced on online article about the general healthcare available in Jamaica. This states that although every parish has at least one small hospital offering free medical care this is generally of poor quality. The system suffers from 'brain drain' with the most qualified clinicians choosing to work abroad. Public hospitals are underfunded and overcrowded. Mrs Edward's GP writes that the Nottingham Centre is the only specialist centre in the United Kingdom and "no such treatment is available in Jamaica". Ms Norman was unable to tell me how the GP might know that to be the case, but she did point out that if the Nottingham Centre is the only specialist centre here, and the LAM Action material did not show a clinic in Jamaica, it was safe to assume that the GP was correct.

24. As to the matter of rehabilitation, it was Mrs [E]' case that until February 2014 she had never been convicted before, and she has never been convicted since.

Discussion and Findings

25. As I have set out above, it is for Mrs [E] to demonstrate that notwithstanding that it is strongly in the public interest to deport her, she should nevertheless be permitted to remain in this country, because there are in her case "very compelling circumstances over and above" the exceptions set out at s117C. The parties agreed that in determining whether a factor or a collection of factors takes these circumstances "over and above" a breach of Article 8 (as codified in the 'exceptions') I am looking for a personal consequence of *greater* adverse impact than a 'standard' disproportionate interference with family or private life rights. That is to say, the consequences for the individuals concerned must be very serious indeed. In her case, those consequences must be of sufficient severity to outweigh the substantial public

interest in deporting an individual who has become involved in the distribution of Class A drugs.

26. I am certainly satisfied that Mrs [E] has an established Article 8 private life in this country. I note that despite having pursued an appeal to the Upper Tribunal on *GS (India)* grounds, before me the Respondent also accepted this to be the case. That being so, it cannot be said that Mrs [E]' case rests solely on her medical condition. It is one part of her case, and a factor upon which she asks me to place considerable weight, but it is not the only element of Article 8, which on the facts was engaged long before she became ill, or indeed became a criminal. Mrs [E] had always, until her deportation order was signed, had valid leave to be in this country. From 2006 on her leave was indefinite and it is unsurprising that with such leave Mrs [E] felt secure in going about her business, making friends, forming relationships, having a job, attending church, establishing a home and generally integrating into the community. I accept that her relationships here include Article 8 relationships with her mother, sister and other relatives. I therefore attach what weight I can to that Article 8 family and private life. I note however that whatever significance Mrs [E] may have attached to the word "indefinite" her leave was, as subsequent events have demonstrated, in fact precarious. I am further satisfied, and indeed Mrs Aboni did not suggest otherwise, that Mr [E] has established a meaningful private life in the seven years that he has lived in this country.

27. I am satisfied that the deportation of the Appellants would interfere with their Article 8 rights and that Article 8 is therefore engaged.

28. I am satisfied that the decision to deport Mrs [E] and to refuse leave to Mr [E] was properly taken by the Respondent in pursuit of the legitimate Article 8(2) aim of preventing disorder or crime.

29. The question remains whether the Respondent's decisions are a proportionate response to that aim. I begin my assessment of proportionality by considering the nature of the offence and why it is so strongly in the public interest that Mrs [E] be removed from this country.

30. Class A drugs, specifically crack and heroin, are so obvious a scourge it needs little elaboration. As well as bringing misery and ill-health to the lives of their users these drugs cause a ripple effect of harm that reaches far and wide into society. For instance, family members are left behind by addicts who die; habits are funded by the proceeds of crime such as burglary and street robbery, events which are in themselves frightening and traumatic; the trafficking of narcotics can invariably be traced to organised crime and in turn other crimes such as trafficking in persons; the cost to the taxpayer, through policing, the criminal justice system, social services, the NHS and drug treatment centres is huge. Having assessed the evidence, I am able to accept without hesitation Mrs [E]' claim to have been naïve, and to some extent to have been manipulated by her son. I also accept that her guilty plea largely resulted from her being terrified of a long sentence. I am not however prepared to accept that she was 'not guilty', or that she necessarily would have been acquitted had she

fought the charge. The terms used in the telephone call were patently obvious code for drugs, and I am satisfied that no matter how naïve she might have been, Mrs [E] did not think that she was actually asking her son's friend whether he had "brown ladies" at his house. That said, it was plain from the circumstances of the offence that Mrs [E] was not a habitual crack-dealer. I accept that her involvement was limited and stemmed from his misplaced devotion to her son; that this is so is reflected in the relatively low sentence she received.

31. Another factor to which I must give significant weight is the need to deter criminality through the consistent enforcement of immigration control. In MS (Philippines) the President of this Tribunal underlined that this continues to be an important consideration in deportation appeals, notwithstanding how the remarks of Lord Wilson in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 might be interpreted:

> "Importantly, Hesham Ali contains no analysis of Part 5A of the 2002 Act, since the cases with which the Supreme Court were concerned pre-dated the introduction of that Part. We consider that, by making the seriousness of the offence the touchstone for determining the strength of the public interest in deportation, Parliament, in enacting section 117C(2), must have intended courts and tribunals to have regard to more than the mere question of whether the particular foreign criminal, if allowed to remain in the United Kingdom, would pose a risk to United Kingdom society.
>
> In any event, it is clear from paragraphs 69 and 70 of the judgments in Hesham Ali that Lord Wilson did not intend to resile from the view that the general deterrent effect upon foreign citizens "of understanding that a serious offence will normally precipitate their deportation [might] be a more powerful aid to the prevention of crime than the removal from the UK of one foreign criminal judged as likely to re-offend" (paragraph 69). As is evident from paragraph 70, in accepting Lord Kerr's criticism of what Lord Wilson had said in OH (Serbia), Lord Wilson was doing no more than accepting that his categorisation of the matter "as an expression of society's revulsion at serious crimes" was "on reflection, too emotive a concept to figure in this analysis". There is also the point that the majority of the Justices who took part in Hesham Ali had nothing to say on these issues.

32. Although this is a case pursued on 'criminality' grounds alone Mrs Aboni further asked me to weigh in the balance the fact that Mrs [E] is likely to be costing the NHS a large amount of money: this was one of the GS (India) points pursued in the Secretary of State's grounds to the Upper Tribunal. Of course, there is no question of Mrs [E] being a 'health tourist'; but for the deportation proceedings she would be entitled to the care she currently receives on the NHS. Nevertheless it is one factor and I weigh it in the balance.

33. Against these matters I weigh the following. It is not in dispute that prior to her conviction Mrs [E] was of good character, and that since that conviction in February 2014 there has been no further offending. Now that she is housebound, dependent upon an oxygen cannister and more importantly entirely estranged from her son, I find that the prospects of her ever offending again to be effectively non-existent. It is

further accepted that Mrs [E] has lived in this country a long time, and that until she was served with the deportation order every single day of it was with leave to be here. I accept and find as fact that over the past 18 years Mrs [E] has established a deep-rooted and meaningful private life with friends, close family members, fellow congregants in her church and in her local community.

34. That is a private life that will, now, be very difficult for her to replicate in Jamaica. She is housebound in this country, and so, the medical evidence overwhelmingly indicates, would she be in Jamaica. In this country however she has the benefit of regular visitors, including her mother, sister, cousin, aunt, parish priest and friends. These people play an important role in breaking up Mrs [E]' day, supporting her through her very challenging and debilitating illness and in providing her with some social stimulation. There are no immediately obvious candidates for such a role in Jamaica. The only family member there is [SR], with whom she has no contact. Given the very fraught family history I cannot think that any such contact, should it be resumed, would be helpful to, or welcomed by, Mr and Mrs [E].

35. The day to day reality of return to Jamaica is, I accept, likely to be stark. At present Mrs [E] benefits not just from twice daily care visits for 'personal care' and the like, but from the medical intervention of a multi-disciplinary care team specialising in her rare, serious and relatively little understood disease. Whilst it is true that her main carer, her husband, is going to go with her, it is difficult to see how he will be able to cope without the input of the professional carers and clinicians who currently help him to look after his wife. Without friends and family, professional carers or the presence of doctors able to deal with this "particularly complex case" of LAM, I find it likely that Mr [E] would be unable to maintain the basic, albeit diminished, level of dignity that his wife currently enjoys.

36. Mrs [E] is currently taking approximately 200 tablets per week, of a total of some 17 different medications. It may be that some, or many, of these would be available in Jamaica, as no doubt would ambulatory oxygen. It is however clear from the medical evidence before me that there would be virtually no prospect of her being able to obtain the main drug that is currently being used, on an experimental basis, to treat her LAM: Professor Johnson's clear evidence is that Rapamycin is unlicensed and is only currently prescribed by his specialist unit. The primary symptoms of LAM mentioned in the medical evidence are cysts on the lung which obstruct breathing (eventually preventing it altogether), tumours on the kidneys and deep vein thrombosis; I further note from the care records that Mrs [E] has already suffered a series of mini-strokes. The reality is that this is a disease that will likely kill her wherever she lives. The difference between her death in Jamaica, and her death here, is that in this country she will have the greatest prospect of her final years being pain free, dignified and supported.

37. I further place some weight, although I stress that it was minimal, on the fact that Mrs [E] has already paid a very heavy price for her criminality. Most if not all foreign criminals facing deportation will have been to jail, and that factor cannot, self-evidently, negate the weight to be attached to the public interest in deporting them.

It is however relevant to note that Mrs [E] went into a "state of shock" when she was sent to prison: her unchallenged evidence is that her incarceration led to a very serious, rapid and prolonged decline in her mental health, leading to more than one suicide attempt. No doubt more painful for her is her betrayal by, and estrangement from, her only son.

38. Having considered all of the above I am satisfied, that in the very particular circumstances of this case, the facts cumulatively assessed are sufficiently compelling to outweigh the high public interest in the deportation of Mrs [E]. I need make no separate finding about Mr [E], since the Secretary of State accepts that if it would be disproportionate to deport her, then it would be disproportionate to remove, or refuse leave to, Mr [E].

39. I underline as a postscript to my decision the medical evidence that Mrs [E] is not fit to travel, and the fact that she is very unlikely to be so in the future. I have had no regard to that matter in my decision making: I have treated it as a 'technical obstacle to return' rather than a factor capable of weighing against the public interest in deportation. It is nevertheless obviously a factor that the Secretary of State would wish to take into account in any future decisions about her case.

Decisions

40. The decisions in both appeals are remade as follows: "I allow the appeal on human rights grounds". There is no order for anonymity.

Upper Tribunal Judge Bruce
25th May 2019