



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

Appeal Number: HU/10730/2019

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 21 January 2020**

**Decision & Reasons Promulgated  
On 28 January 2020**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**CARLON [C]  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer  
For the Respondent: Ms Radford, instructed by Braitch solicitors

**DECISION AND REASONS**

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born on 30 November 1993 and is a male citizen of Jamaica. He appealed against a decision of the Secretary of State dated 1 March 2019 to refuse his human rights claim, the Secretary of State having made an order to deport him to Jamaica. The First-tier Tribunal, in a decision promulgated on 8 October 2019, allowed the appeal on Article 8 grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appellant had arrived in United Kingdom at the age of five years with his mother in 1999. He was first granted leave to remain on 27 January 2016, the leave valid until 27 July 2018. Prior to that date, an application made by his mother for indefinite leave to remain had been refused. On 25 January 2019, the appellant was convicted at Warwick Crown Court of possession of Class A (cocaine/heroin) with intent to supply. He was sentenced to 30 months in prison.
3. The judge found that the appellant has a partner with whom he has two children who are British citizens. The respondent accepted that the relationship with the partner and children is both genuine and subsisting. However, the respondent argued that it would not be unduly harsh for the partner and children to leave the United Kingdom with the appellant and live in Jamaica or to remain here in this country whilst the appellant is deported. The judge concluded [51 and 54] that the appellant cannot meet the requirements of paragraph 399 of HC 395 (as amended) or section 117C of the Nationality Immigration and Asylum Act 2002. She found that it would not be unduly harsh for the appellant to be deported Jamaica whilst his partner and children remain living in the United Kingdom; the argument that the entire family could relocate to Jamaica does not appear to have been maintained before the First-tier Tribunal nor was it advanced before the Upper Tribunal. At [53], the judge observed that, although the appellant had been in the United Kingdom since he was five years old, his residence had only become lawful from January 2016. However, the judge accepted the submission that, whilst the appellant could not as a consequence meet the statutory exception, the length of the appellant's residence in this country and the reasons why his residence had only become lawful in the last few years (whilst a minor, he had no power to alter his immigration status) may be of relevance in determining whether there existed very compelling circumstances beyond the application of the statutory provisions and exceptions.
4. In determining whether very compelling circumstances existed, the judge found that the appellant, an able-bodied young man in good health, would be unable to obtain assistance from various state agencies in Jamaica offering support to vulnerable adults. Moreover, the judge found that the appellant, notwithstanding his criminal defending, is culturally and socially integrated in the United Kingdom. She identified very significant obstacles to the appellant's integration into life in Jamaica, a country with which he has no links say for his nationality and where no family members are living who would be able to assist him. Consequently, the judge found that in the light of these very compelling circumstances, the appeal should be allowed on Article 8 ECHR grounds.
5. At the initial hearing, Ms Radford, who appeared for the appellant, submitted that six points arose from the grounds of appeal. I shall address those points in the order in which she raised them in her submissions.
6. First, the Secretary of State has made a global reasons challenge that to the decision. That challenge, submitted Ms Radford, was not tenable. I

agree. The decision as a whole is very carefully reasoned. Whether or not one agrees with the conclusion, any reader of the decision would be left in no doubt as to the reasons why the judge allowed the appeal. Secondly, Ms Radford submitted that challenge in the grounds to the judge's findings as to the appellant's cultural and social integration were essentially made on the basis of rationality. Mrs Pettersen, who appeared for the Secretary of State, agreed that the outcome of the appeal was not irrational or *Wednesbury* unreasonable *per se*. She acknowledged that it would be possible for the appellant to succeed on the basis of the facts (which remain unchallenged) as found by the judge. However, Mrs Pettersen submitted that an error of approach on the application of relevant law had led the judge into error particularly as regards the treatment of the appellant's rehabilitation/integration. The courses which the appellant had undertaken in prison had been given too much weight in the analysis; the appellant had every motive to behave well whilst imprisoned so as to prevent any delay in his release.

7. I agree with Ms Radford that the jurisprudence does not exclude all those who have dealt in drugs ever being able to prove that they are culturally and socially integrated in British society (see *CI [2019] (Nigeria)* EWCA Civ 2027). Consequently, the judge did not err by considering whether, on the particular facts, the appellant had achieved integration. I find the judge's reasoning at [65-66] to be clear and cogent. There is no suggestion that the judge has considered factors which were not relevant. The judge fully accepted the respondent's view that the appellant's integration had been diminished by his offending but she was also entitled to be 'satisfied that it was not so diminished that I can attach no weight to it in the balancing act required. [66].' I can identify no legal flaw in the judge's approach or her application of the law.
8. I agree also with Ms Radford's submission that it was for the judge to determine what weight to give to her findings as regards the appellant's rehabilitation. The judge was fully aware that rehabilitation hitherto has taken place in prison and has not, as the grounds that state, 'been effectively tested.' However, it was open to the judge to observe that the appellant did not have a 'long list of convictions with a variety of previous interventions' [64] Her finding that 'some weight should be attached to the fact that [the appellant] has had the opportunity to address his offending and confront the impact this has had on him his family and society at large' is not irrational. I note the use of the qualifying 'some'; I reject the respondent's submission that the judge has attached excessive weight to the appellant's efforts at rehabilitation.
9. I also agree with Miss Radford that the judge's finding as regards the very significant obstacles facing the appellant as regards reintegrating in Jamaican society is not irrational but, rather, cogently reasoned. Mrs Pettersen criticised the reference made by the judge to various agencies of the state and NGOs in Jamaica which offer assistance to vulnerable adults and the fact that the appellant would be unable to access such assistance because he is not vulnerable. On first inspection, it is not clear

why the judge should consider such assistance at all until one recognises that the issue was first raised by the Secretary of State in the decision letter. It is not now reasonable for the respondent to criticise the judge for considering matters which respondent himself had introduced. Having said that, I agree that the appellant cannot access such assistance with the consequence that, although he is an able-bodied young male with work experience in the United Kingdom, he has not been to Jamaica since he was five years old and would have no family or other assistance on the ground there to assist any attempt he might make to integrate into that society. The point made by the judge that the appellant might place himself at risk by attempting to befriend strangers in Jamaica is also well made and supported by the background material.

10. The respondent criticises the judge for failing to refer to any help which the appellant's mother and sister might be able to provide. Ms Radford acknowledged that the judge does not refer in any detail to the mother and sister but she submits that it was not necessary for the judge to deal with each and every aspect of the appeal. In any event, she submitted that the mother has little money available to assist the appellant whilst the sister is only 15 years old. I agree with Miss Radford. Even if the judge may be criticised for failing to make specific findings regarding the mother and sister, I cannot see that the outcome of the appeal would have been altered in any way had she included those family members in her otherwise very detailed analysis.
11. Both parties are in agreement that the country guidance of *AB (Protection-criminal gangs-internal relocation) Jamaica* [2007] UKAIT 00018 is not relevant despite what is stated in the grounds at [8]. There is no suggestion that the appellant will be at threat from criminal gangs seeking to target him in Jamaica.
12. The judge has, as she was required to do, considered first the statutory provisions, including the exceptions, of section 117C. She did not fall into legal error by finding that, although the appellant could not establish that he met the requirements of the exceptions, his lengthy residence in the United Kingdom, the reasons why he had not regularised his status before 2016 and his complete lack of links to or possible assistance within Jamaica, there exist very compelling circumstances in this appeal. Her decision is detailed, cogent and fully reasoned. The Secretary of State accepts that, on the same facts, it is not inevitable that the appeal should fail. I acknowledge that, on the same facts, a different judge may have reached a different conclusion. However, that is not the point. For the reasons I have given, I find that the judge's decision is not flawed by legal error as pleaded or at all.

### **Notice of Decision**

This appeal is dismissed

Signed

Date 21 January 2020

Upper Tribunal Judge Lane