**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/16371/2017

**THE IMMIGRATION ACTS**

| **Heard at Birmingham** | **Decision & Reasons Promulgated** |
|---|---|
| **On 20th January 2020** | **On 29th January 2020** |

**Before**

**UPPER TRIBUNAL JUDGE KEITH**
**and**
**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**JASON [K]**
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms U Sood, Counsel instructed Direct Access
For the Respondent: Mr D Mills, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Jamaica. His appeal against a decision dated 6th November 2017 to refuse a human rights claim was dismissed by First-tier Tribunal Judge Pacey for reasons set out in a decision promulgated on 19th October 2018.

2. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Buchanan on 26th July 2019. The matter comes before us to determine whether the decision of First-tier Tribunal Judge Pacey is vitiated by a material error of law, and if so, to remake the decision.

3. In order to put matters into context, it is appropriate for us to set out in some detail the background to the respondent's decision of 6th November 2017 and the appeal before First-tier Tribunal Pacey.

The background

4. The appellant last arrived in the United Kingdom November 2003 with entry clearance as the spouse of Claudine [M], valid until 21 November 2005. He remained in the UK unlawfully when his leave to enter ended. On 11th November 2010, the appellant was convicted of possession of a class B controlled drug (cannabis) with intent to supply, supplying a class A controlled drug (crack cocaine) and supplying a class A controlled drug (heroin). He received a total sentence of three years and six months imprisonment. A deportation order was signed on 1st February 2013.

5. The appellant appealed the respondent's decision to deport the appellant and his appeal was dismissed for reasons set out in a decision promulgated by First-tier Tribunal Judge Colyer on 1st July 2013. For present purposes it is sufficient to note that in the grounds of appeal advanced by the appellant, the appellant claimed to have established an extensive family and private life in the UK. The appellant claimed that he is in a genuine and subsisting relationship with his long-term partner, Karine [R], and that he maintains a genuine parental relationship with his son [RK], who was born on 23 September 2005, and with his ex-partner's daughter [CK]. The appellant relied upon a report dated 26th April 2013 prepared by Christine Brown an independent social worker instructed

by the appellant's solicitors. At paragraph [59] of the decision, First-tier Tribunal Judge Colyer said:

> "It is argued that it would not be appropriate for the appellant's child to grow up without a father figure. Regrettably the child has had his father removed from his life at an early stage, but that is due to the appellant's leaving the family home and the further cut-off of the regular contact that was due to his lengthy imprisonment due to his own criminal actions. Again we do not place as much credence on his assertion because the separation of the appellant from the child has already occurred. He was arrested some time ago and remained in detention for a significant period. The deportation will be a repetition of the physical separation of the appellant from the child because of his own criminal actions. The principal schism has already occurred. The child has now not lived together with the appellant for a significant period of time. In addition the time he had been in custody had a severe limitation on the relationship with the child."

6. The First-tier Tribunal accepted [RK] has a relationship with his father and the relationship would be interfered with, by the deportation. The Tribunal noted the child will continue to be looked after by his primary carer, his mother, as he was after the appellant left the family home when the child was very young, and while the appellant was in prison. At paragraph [61] of its decision, the First-tier Tribunal said:

> "Responsibility for the detrimental effect that this has had on his child rests entirely at the appellant's door. No doubt the child will find it hard if the appellant is removed to Jamaica. However he is young and with the appropriate support and counselling he will recover. The child will of course continue to live in the same family unit in future as he does at present namely with his mother and siblings. Contact between the child and the appellant has been limited in the past following the appellant's arrest, imprisonment and detention and the difference in this contact by his deportation will not be therefore as great as it might have been had he been living with the child throughout."

7. The First-tier Tribunal also considered the appellant's relationship with Karine [R]. The Tribunal accepted the appellant met Miss [R] in late 2006 and they entered into a relationship in early 2007. At paragraph [65], the First-tier Tribunal said:

> "Miss [R] is an intelligent individual and is training to be a solicitor. We were somewhat surprised at her claimed lack of knowledge of the appellant's status and drug dealing before his arrest. Despite being a trainee employment lawyer she contends that she did not ask questions to the appellant as to his status although she was aware of his Jamaican citizenship. It would appear that the appellant was in a relationship with Miss [R] throughout the period of his serious criminal drug dealing but she contends that she knew nothing of this. We find this surprising in view of the fact that drugs were found at the appellant's home as was a significantly large sum of cash. In addition the appellant now blames the offending on mixing with the wrong crowd. Miss [R] was mixing with the appellant but submits an innocence of the appellant's drug dealing, cash and acquaintances which we do not find credible. We note that she was unable to prevent the appellant's criminal activities in the past."

8. It was uncontroversial that the appellant was in a relationship with Miss [R]. The Tribunal noted that on 20th July 2012 the appellant was granted immigration bail to her address. At paragraph [70] of its decision, the First-tier Tribunal said:

> "Miss [R] has now provided her home as the appellant's bail address and their cohabitation commenced at a time when she knew that the respondent intended to deport the appellant; she was also aware of his criminal activities. We find that she entered into this form of family life knowing that there was a significant prospect of deportation. We find that she should have given some thought to the continuation of their relationship being subject to the appellant returning to Jamaica. It is not apparent what enquiries she has made as to relocating to Jamaica, for example as to the recognition of qualifications in gaining employment in that country. We find that it is not been established that it would be unreasonable for Miss [R] to relocate to Jamaica if she wishes her relationship with the appellant to continue.

9. Having considered all relevant matters, the First-tier Tribunal concluded that the public interest in deportation is not outweighed by the claim by the appellant that his deportation would be in breach of his Article 8 rights, and his appeal was dismissed.

10. Following the conclusion of that appeal the appellant was detained in January 2014 with a view to his deportation. The appellant responded, on 30th January 2014 with an application to revoke the deportation order, and on 2nd February 2014, with a claim

for asylum. The claim for asylum was refused and certified as clearly unfounded and the appellant was deported to Jamaica on 23rd February 2014.

11. The appellant exercised his out of country right of appeal, and that appeal was dismissed by First-tier Tribunal Judge Colyer on 14th October 2014 for reasons set out in a decision promulgated on 30th October 2014. At the hearing of that appeal, the appellant's partner Karine [R] gave evidence. The judge noted her evidence that following the previous appeal before the First-tier Tribunal, she and the appellant had become engaged. She had wanted a proper wedding and arranged to attend a pre-marriage course with the Church Minister, but that was not due to start until March 2014 by which time the appellant had been deported. The judge also heard evidence from Carolyn Gilmore, who told the Tribunal that Karine [R] had found it hard to cope with the appellant in prison and, between his release and removal to Jamaica, the appellant and his partner came to church at least every two weeks. She gave evidence that [RK] attended Sunday school and since the appellant was removed she had seen the children at Sunday School only once.

12. The judge addressed the appellant's asylum claim at paragraphs [52] to [73] of the decision. The judge found the core of the appellant's claim to be lacking in credibility and rejected his claim that he faces serious harm in Jamaica. At paragraph [63] of his decision, First-tier Tribunal Judge Colyer said:

> "I accept that Jamaica has an enviable record in terms of criminal violence. However, there is no evidence that the appellant was involved in criminal activities before he left Jamaica either as a participant or as a victim. There is no evidence that he has engaged in criminal activity after his return and therefore would not be seen as a rival to any of the existing gangs."

13. The judge found, at [65], the appellant has not provided credible evidence to establish that he may be subjected to persecution in Jamaica by "Mark" due to the alleged UK drug debt.

14. Having rejected the core of the appellant's account as lacking in credibility and having found the appellant has not established that he faces serious harm in Jamaica, the Judge did not accept that he has been, or will be persecuted. The judge went on to address the Article 8 claim and considered the relationship between the appellant and his son. He stated at [86]:

> "I accept that during his periods of liberty the appellant kept in contact with the children and participated in some of their events including school and church and leisure time activities. However it was a limited relationship because the appellant was not living with the children on a day-to-day basis. There may have been some overnight stays at his house or that of his current partner, but the full-time permanent carer of both children was their mother who had a pivotal role in their care. Quite clearly the best interests of the children were and remain for them to be with their mother who has had their care and interests throughout their life."

15. The Judge found the appellant's son is in a stable family environment with his mother and her current partner of some four years. The judge again considered the report of Christine Brown, the independent social worker and found that it would not be reasonable to expect the children to relocate to be with the appellant. However the children's day-to-day care is the responsibility of their mother, who is their sole carer and who appears to be able to provide for their day-to-day well-being, general development and welfare. The judge found it is not unduly harsh for the children to remain in the UK without the appellant.

16. At paragraphs [95] to [117] of the decision, First-tier Tribunal Judge Colyer considered the appellant's relationship with his partner Karine [R] at some length. The judge referred to the background to that relationship, the findings previously made in the decision promulgated on 1st July 2013 and the further evidence relied

upon by the appellant and his partner. There was evidence before the Tribunal regarding the employment of Miss [R] and the problems that she would face relocating to Jamaica. The judge accepted that Karine [R] has a most impressive CV and has overcome considerable obstacles to achieve a professional goal of being a successful commercial solicitor in a reputable international law firm. The judge accepted that given her current speciality and desire to progress in a particular field of commercial law in the UK, that would not be practical if she were to relocate to Jamaica. The judge accepted that there are not the same options with regard to international law firms in Jamaica. The judge considered the dilemma that Miss [R] expressed of remaining in the UK without the appellant but with her family and thriving legal career or relocating to Jamaica to be with the appellant but being forced to live in poverty, suffering career detriment and living a secluded and isolated existence. The judge noted, at [106], that Miss [R] had investigated the options of qualifying as a lawyer in Jamaica and the judge accepted the documentation that she had produced that she would have to qualify under their local regulations requiring further expense of time and money. The judge also considered the impact the appellant's actions have had upon her, noting the medical evidence that Miss [R] is very anxious and stressed due to her partner's ongoing immigration case and is suffering with erratic sleep and poor concentration for which she is on medication. At paragraph [111], First-tier Tribunal Judge Colyer stated:

> "I accept that the deportation of the appellant has had a traumatic effect on Ms [R]. The relationship between her and the appellant have (*sic)* obviously changed as he is no longer living with her. She has decided not to relocate to Jamaica to be with the appellant. That is her choice. She continues her life in the UK and has commenced what appears to be a successful career in law. She has no significant dependency needs of her own that require the attendance here of the appellant. She has maintained contact with the appellant. It is open to her to visit him in Jamaica when she can afford the airfare."

17. At paragraphs [115] to [116], First-tier Tribunal Judge Colyer concluded:

> "115. Ms [R] refers to the high crime rate in Jamaica and the consequences on that to both the people of Jamaica and to foreign tourists and visitors. However, visitors and tourists continue to go to Jamaica. There is an operating police force throughout Jamaica. I accept that there are pockets of considerable criminal activity, but these districts are well-known and can be avoided.
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> 116. To echo what was said by Sedley LJ in AD Lee v SSHD [2011] EWCA Civ 348, the effect of deportation in this case has been to break up this family forever because of the appellant's bad behaviour. That is what deportation does. The appellant did not have the best interests of his current partner or his child at heart when he embarked on committing these very serious offences. The appellant has, by his own serious criminal actions become separated from his current partner and from his child."

18. The appellant made a further application for revocation of the deportation order. It was the refusal of that application by the respondent for the reasons set out in the decision dated 6th November 2017, that was the subject of the appeal before First-tier Tribunal Judge Pacey.

The decision of First-tier Tribunal Judge Pacey

19. The judge summarised at paragraph [4] of her decision, the matters relied upon by the appellant in support of his application for revocation of the deportation order. The background to the appeal, and the appellant's immigration history is set out at paragraph [5] of the decision. At paragraph [14], the judge refers to the bundle of documents relied upon by the appellant and confirms that she has read and taken the evidence into account. The judge refers briefly to the evidence that was before the Tribunal at paragraphs [16] to [26] of the decision. The judge also refers to the sentencing remarks made by the Crown Court Judge when the appellant was sentenced on 26th November 2010, and the previous decisions of the First-tier Tribunal.

20. In considering whether the decision to refuse to revoke the deportation order would be in breach of Article 8 ECHR, the judge referred to paragraph 390 and 391 of the immigration rules, noting in particular that paragraph 391 of the immigration rules provides that in the case of a person who has been deported following conviction for a criminal offence, the continuation of a deportation order against the person will be the proper course, in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than four years, unless 10 years have elapsed since the making of the deportation order. The judge noted, at [48], that here, 10 years have not elapsed.

21. At paragraphs [54] to [62] of her decision, the judge addressed the evidence relied upon by the appellant. At [54], the judge noted that [RK] has been physically separated from the appellant for a large part of his life. The judge noted the best interests of [RK] have been considered by the First-tier Tribunal on two occasions previously, and that there is no evidence relied upon by the appellant to enable the judge to depart from the findings previously made.

22. The judge addressed the claim that Ms [R] would be unable to work in Jamaica without requalifying, at paragraph [56] of the decision. the judge addressed the claim that Ms [R] cannot maintain the current level of expenditure on visits to Jamaica to see the appellant at paragraph [58] of the decision. Insofar as the expert evidence was concerned, the judge stated, at [60] and [61], as follows:

> "60. I have read the experts reports. I do not attach considerable probative weight to that from Dr Headley. He states that the appellant would not be likely to reoffend if allowed into the UK. However, he states that he is an expert on Jamaica. It is unclear therefore on what basis he claims to be able to give a professional opinion on anyone reoffending in the UK. Further, he did not, it appears, actually meets the appellant although they were both in Jamaica. His conclusions therefore can only be opinion not based on evidence about the appellant personally.

> 61. I accept the evidence provided as to the difficult conditions pertaining in Jamaica. However, this fact cannot alone enable the appellant's appeal to succeed. I reiterate that, as previous Immigration Judges have held, in effect he has brought his present predicament on himself, by offending in the UK and by marrying a UK citizen when he knew he would not be able to return to the UK."

23. The judge noted, at [62], the report of the independent social worker, Ms Brown, had been considered by the First-tier Tribunal Judge previously and there is no reason to depart from the findings previously made. The judge concluded that the public interest in the exclusion of the appellant is not outweighed by other factors and the decision to refuse to revoke the deportation order is proportionate, such that the refusal is not in breach of Article 8.

The appeal before us

24. The appellant advances a number of grounds of appeal. First, it is said that although the judge states, at [14], that she has read and considered the material contained in the appellant's bundle, the judge failed to engage with the evidence relied upon by the appellant. Second, the judge dismissed the experts reports without any proper consideration of the matters set out in the reports. The appellant claims the judge rejected the report of Mr L de Noronha, at [22], because his report was written on the basis of documents only, whereas Mr L de Noronha had confirmed that he had "*recently returned from Jamaica in September 2017 having spent five weeks in Jamaica"* and set out other periods that he had spent in Jamaica and the research carried out by him. The appellant claims the judge disposed of the report of Professor Bernard Headley in a cursory fashion because Professor Headley had expressed an opinion as to the risk of reoffending, without having any apparent expertise to do so. That is, the appellant claims, to disregard the evidence of Professor Headley as to the appellant's vulnerability, the risk of reprisals and the inability of Ms [R] to obtain employment in Jamaica.

Third, the judge failed to engage with the evidence regarding the ability of the appellant's partner to requalify and secure employment in Jamaica. It is said the judge also erred in relying upon the decision of First-tier Tribunal Judge Colyer promulgated on 30th October 2014, in which it was said, at [115], that *"... there are pockets of considerable criminal activity but these districts are well known and can be avoided."*. The appellant claims the evidence of Mr Luke de Noronha confirms that crime statistics have escalated to record levels in Jamaica in 2016, 2017 and 2018, such that the previous conclusion of First-tier Tribunal Judge Colyer was undermined and could no longer be relied upon.

Discussion

25. The focus of the submissions made before us by Ms Sood has been the judge's treatment of the expert evidence that was before the First-tier Tribunal. Ms Sood submits the judge's failure to engage with the evidence of Mr Luke de Noronha and Professor Headley establishes a material error of law in the decision of the First-tier Tribunal, such that the decision should be set aside. The evidence, she submits, was relevant to an assessment of whether it would be unduly harsh for the appellant's partner to live in Jamaica and whether there are any exceptional circumstances such that the public interest in maintaining the deportation order are outweighed by other factors.

26. As a general statement of law, Mr Mills accepts that a failure to engage with expert evidence is capable of amounting to a material error of law. However, it is now well established that it is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case, provided the judge identifies and resolves key conflicts in the evidence and explains in clear and brief terms their reasons, so that the parties can understand why they have won or lost

27. The judge stated at [14] that she had been provided a large bundle of documents all of which she has read and taken into account. Having made that clear, an Appellate Tribunal should in our judgement be slow to go behind what is said by the Judge, unless it is clear that there was evidence before the Tribunal that was material to the issues, that the judge failed to engage, with or has overlooked. We are quite satisfied the judge did consider the evidence relied upon by the appellant. Much of that evidence had been considered by the First-tier Tribunal In 2013 and 2014. The evidence was considered by the First-tier Tribunal Judge Pacey, but not to the extent desired by the appellant.

28. We reject the claim that the judge failed to engage with the expert evidence. At paragraphs [21] and [22] of her decision, the judge does nothing more than to set out, albeit briefly, the expert evidence of Dr Headley and Mr Luke De Noronha, that was before the Tribunal. The evidence is addressed at paragraphs [60] and [61] of the decision.

29. We have carefully read the reports of Dr Headley and Mr De Noronha for ourselves. Dr Headley addresses a number of matters in his report that are identified in his summary. They are

a) the reality for deported persons to Jamaica and their families;
b) reintegration and rehabilitation of Jamaican deportees;
c) general implications of relocation to Jamaica for foreign nationals;
d) Crime in Jamaica and the increase in murders within areas not traditional *(sic)* known as “crime hotspots”;
e) Whether the appellant’s fear of reprisal is justified in my knowledge and experience; and
f) My opinion on the likelihood of the appellant reoffending if granted leave to remain in the UK.

30. For reasons that are neither explained nor apparent, despite First-tier Tribunal Judge Colyer having rejected the

core of the appellant's asylum claim, and making adverse credibility findings against the appellant, Dr Headley was not provided with a copy of the decision of the FtT Judge and based his consideration of the appellant's fear of reprisals, upon the account given by the appellant. First-tier Tribunal Judge Pacey did not feel able to attach considerable probative weight to the report, but that is not to say that the judge attached no weight to that report. Although as Mr Mills accepts, the judge's consideration of the two reports is brief and it would have been preferable for the judge to set out in a little more detail what is said in the reports, the failure to do so, is not in itself a material error of law.

31. We accept, as Mr Mills submits, the context in which the decision of the First-tier Tribunal was reached is important. We have set out the background to this appeal at some length in this decision. This was in effect, the appellant's third appeal before the First-tier Tribunal and much of that relied upon by the appellant had been considered previously. The focus of the evidence set out in the experts' reports was the difficulties that may be encountered by those that are deported to Jamaica, and their families. Dr Headley refers to areas of Jamaica as being very popular tourist destinations but notes that Jamaica is not renowned for foreign migration to the island and living in mainland Jamaica on a permanent basis differs materially to short-term holidays in tourist resorts. Foreign immigrants, such as the appellant's partner would by their very nature belong to a small subpopulation in mainland Jamaica that are stigmatised, and it is likely that the appellant and his partner would live a secluded and isolated existence in Jamaica away from their family in the UK. The report of Mr De Noronha was to like effect and expressed the opinion that the appellant's partner should be very wary about returning to live in Jamaica with her husband. It is however clear in our judgement that the First-tier Tribunal Judge had those matters in mind. She stated, at [61];

> "I accept the evidence provided as to the difficult conditions pertaining in Jamaica. however, this fact alone cannot enable the appellant's appeal to succeed…"

32. We reject the claim, that the judge failed to engage with the evidence regarding the ability of the appellant's partner to requalify and secure employment in Jamaica. The Judge accepted at [56], that Ms [R] would be unable to work in law, in Jamaica without requalifying. The judge considered that claim in light of the fact that Ms [R] was well aware that the appellant had been deported as a foreign criminal when she married him. She should have reasonably been aware that there was a very strong chance that he would be unable to return to the UK at least for a number of years and that therefore their married life and attempts to start a family would have to be conducted in Jamaica. It is understandable, that Ms [R] may not wish to give up the successful career she has established in the UK, but as the judge noted, she married the appellant after he had been deported and at a time when it must have been plainly apparent that they would be unable to continue their married life together in the UK for a number of years.

33. In SSHD -v- ZP (India) [2015] EWCA Civ 1197, the Court of Appeal held that those determining applications made by a deported foreign criminal under paragraph 391 of the Immigration Rules to revoke the deportation order before the end of the prescribed period have to assess the proportionality of maintaining the order in place for the prescribed period, balancing the public interest in continuing it against the interference with the applicant's private and family life. They should only order earlier revocation if there are compelling reasons to do so. At paragraph [24] Lord Justice Underhill said:

> "… Decision-takers will have to conduct an assessment of the proportionality of maintaining the order in place for the prescribed period, balancing the public interest in continuing it against the interference with the applicant's private and family life; but in striking that balance they should take as a starting-point the Secretary of State's assessment of the public interest reflected in

> the prescribed periods and should only order revocation after a lesser period if there are compelling reasons to do so. "

34. Here, the judge accepted the difficult conditions the appellant and his partner would face in Jamaica, but properly noted that, that alone could not lead to a successful appeal. The judge was entitled to find that the appellant has brought his present predicament on himself, by offending in the UK and by marrying a UK citizen when he knew he would not be able to return to the UK. On the findings made by First-tier Tribunal Judge Pacey and by the Tribunal previously in 2013 and 2014 there were no compelling reasons to outweigh the public interest in maintaining the deportation. The judge had regard to the public interest and was not satisfied that the refusal to revoke the deportation order is in breach of the appellant's Article 8 rights. That was a decision that in our judgement was properly open to the Judge on the evidence and facts.

35. It follows that in our judgement the decision of First-tier Tribunal Judge Pacey is not tainted by a material error of law and the appeal is dismissed.

**Notice of Decision**

36. The appeal is dismissed

37. The decision of First-tier Tribunal Judge Pacey stands.

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

The First-tier Tribunal did not make an anonymity direction. No application for an anonymity direction was made before us, and no such direction is made.

Signed Date 20th January 2020

Upper Tribunal Judge Mandalia

**TO THE RESPONDENT**
**FEE AWARD**

We have dismissed the appeal and there can be no fee award.

Signed Date 20th January 2020

Upper Tribunal Judge Mandalia