Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12719/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 January 2020	**On 7 April 2020**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

K.N.
(ANONYMITY DIRECTION MADE)

Appellant

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Ms. E. Sanders, Counsel, instructed by Bindmans LLP
For the respondent: Mr. T. Melvin, Senior Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a national of Jamaica. He is presently aged 20. He appeals against a decision to refuse him leave to remain in this country on human rights grounds. The respondent previously made a decision to deport the appellant to Jamaica.

2. The appeal was initially considered by Judge of the First-tier Tribunal O'Garro who allowed it on article 3 grounds by means of a decision dated 27 June 2019. The

respondent appealed against the decision of Judge O'Garro and following an error of law hearing held on 17 September 2019 I found that the Judge had materially erred in law and set aside her decision. I directed that save for the findings made in relation to the 1951 UN Convention on the Status of Refugees no other findings were to stand. The error of law decision was sent to the parties on 25 September 2019.

3. The matter was listed before me for the resumed hearing on 23 January 2020.

Anonymity

4. I issued an anonymity direction on 25 September 2019 and no application was made by either party for it to be set aside. I therefore confirm that the following direction remains in place:

> 'Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant, his partner or close members of his family. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.'

5. I make the direction to avoid a likelihood of serious harm arising to the appellant from his mental health concerns becoming known to the general public.

Background

6. The appellant's mother died when he was aged 1 and he then lived with a maternal aunt in Jamaica until he was approximately aged 11. Following a successful appeal before the First-tier Tribunal in February 2011 the appellant was granted a settlement visa valid from 8 June 2010 and was permitted to join his father in this country (OA/17001/2010). Settlement was backdated so as to be valid from the date of the original refusal decision. The appellant has enjoyed lawful residence in this country since the grant of settled status, a period of approaching ten years.

7. Upon his arrival in this country the appellant was reunited with his father. Unfortunately, he experienced difficulties residing with his father and when aged 13 he moved to reside with a female cousin. Problems arose in their relationship and from November 2015 he was looked after by the London Borough of Lewisham. A foster placement broke down relatively quickly in 2016 and at the age of 17 he was placed in semi-independent living accommodation.

8. For the purpose of the Children Act 1989, as amended by the Children (Leaving Care) Act 2000, the appellant remains a 'former relevant child' until he reaches his twenty-first birthday and the local authority has a duty to assist him in respect of employment, education, training and contributing to the expenses of accommodation.

Criminal convictions

9. Since the summer of 2016 the appellant has accumulated several convictions for possessing class A drugs (heroin and cocaine) with intent to supply and possession of class B drugs (cannabis). All but one of the offences were committed when the appellant was aged 17 and 18. He was initially sentenced to fines and a youth rehabilitation order but on 18 January 2018 the Central London Magistrates' Court revoked the youth rehabilitation order and imposed a 12-month detention and training order.

10. On 1 November 2017 the appellant was sentenced to 28 days at a Young Offenders' Institute for contempt of court. This arose from the appellant's unwillingness to support a criminal prosecution through personal fear.

11. On 8 October 2018 the appellant was fined for possessing a class B drug (cannabis).

Decision to deport

12. Following the imposition of the 12-months' detention and training order on 18 January 2018, the respondent served upon the appellant a decision to deport on conducive to the public good grounds under section 5(1) of the Immigration Act 1971. This decision is dated 6 March 2018. The appellant subsequently made a protection and human rights claim based upon the high level of crime in Jamaica and his own personal circumstances. The respondent refused the protection and human rights claim by means of a decision dated 22 October 2018. The respondent concluded that the asylum claim did not raise a Convention ground, and as to the humanitarian protection claim there was a sufficiency of protection existing in Jamaica.

13. The respondent observed as to article 8 that under paragraph 399A the appellant was unable to satisfy the requirement that he have lawfully resided in the United Kingdom for most of his life. The respondent further concluded that very compelling circumstances do not arise in this matter so as to outweigh the public interest in the appellant's deportation.

Hearing

14. The appellant attended the hearing before me and gave oral evidence. A friend, Karen Williams, gave oral evidence as did Conrad Brady, his personal advisor from the local authority Leaving Care Team. The appellant's partner, LJ, who is pregnant with the couple's child, attended but did not give evidence. Though not living together, I was informed that the couple see each other regularly.

15. The appellant provided details as to the reasons why he was taken into care and also as to events surrounded the death of a friend by means of his witness statement dated 29 April 2019. Such personal history is given weight in my assessment below, but I have concluded that it is not necessary for me to expressly detail such history in this decision.

16. As to his prior criminality, the appellant details in his witness statement:

> 'It was around this time that I got into trouble. I really do regret my actions and I am sorry for the trouble that I have caused. I was in a bad way and vulnerable at that time. I got in with a bad crowd who I thought at the time were helping me and I thought they were friends, but I realise now that were not. They were older than me and started buying me things and treating me and then they got me into trouble. I really wanted to be liked and was happy that they seemed to want to be my friends. I suppose you could I was exploited by them. I am not in touch with these people any longer. I am trying hard to mend my ways.'

17. In his evidence before me the appellant confirmed that his personal feelings were variable, up and down, but that he was not taking medication. He is now living on his own, having until two months previously lived in a flat with four other young adults under supervision. The move is part of a process of enabling him to become more independent. He is spending several days a week with LJ, who had occupied her own property for approximately a month prior to the hearing before me. He confirmed that he had not completed educational courses that he had embarked upon prior to the First-tier Tribunal hearing, nor had he pursued a business plan relating to the clothing industry. He explained that both events were consequent to his being unable to establish that he was lawfully present in this country. He confirmed that he has two aunts residing in Jamaica, and also a half-brother with whom he has had limited contact via Facebook but there has been no contact since the appellant went to prison in 2018.

18. The appellant was supported by Mr. Brady who confirmed that he had regular contact with the appellant, who he observed was 'transitioning in terms of maturity, particularly as he will soon be a father' and in recent times was 'communicating on another level'.

19. Ms. Williams adopted her witness statement in which she detailed:

> 'I know [the appellant] got lost along the way and he has made some poor choices. I am a social worker and I have spoken to him about his criminal convictions. He was vulnerable and made an error of judgment. I believe that he really wanted to make the most of his chance of coming to the UK, but he was vulnerable and started listening to the wrong people. When I see him now, I check in with him and the way [the appellant] speaks is with honest regret. I think his intentions are good, genuine and honourable. He wants to do something with his life. He has talked to me about the fact that he may have to return to Jamaica. He wasn't angry when he told me. He spoke with sadness and humility. He realises that his place in the UK is at serious risk and he understands the gravity of this and is worried by the prospect of having to return to Jamaica.'

20. By way a letter dated 24 March 2019, the appellant's former local authority personal advisor, Ms. Szolene Lowe, detailed the circumstances leading to the appellant being placed in care. She observed, *inter alia*:

> 'Nonetheless by the age of 16 [the appellant] had already experienced family breakdown, death of a parent, isolation, abandonment, disturbed sleep patterns, identity issues and loss of housing stability, and as a result was left exposed to become a victim of child exploitation by older individual(s) in his peer group. By March 2016, [the appellant's] foster placement had broken down and [he] was placed in … a semi-independent living placement. These periods in [the appellant's] life were particularly challenging and sadly mirror him engaging in criminality. This led to [the appellant] receiving two drug related convictions.'

21. Ms. Lowe further observes a manager at the semi-independent living placement describing the appellant as:

> '... 'charismatic', 'charming' and confirmed he enjoys 'making other laugh whilst socialising'. [The appellant] developed his independent living skills further and has learned how to budget his finances appropriately.'

22. A social worker, Cady Morrison, detailed by a letter dated 24 April 2019:

> 'During the time that I worked with [the appellant] I found him to be a polite, respectful and reflective young man who struggled with feeling isolated and rejected by his family both in the UK and his country of origin. Whilst he had made some poor choices with regards to criminal activity, out of the many people I have worked with [the appellant] was one of the most vulnerable and emotionally fragile. He struggled hugely with abandonment from his father and isolation from his family, further exacerbated by his feelings of helplessness with regards to his situation and struggling to be able to separate himself from his criminal affiliations who are known to prey and groom vulnerable and isolated young people. He often would become tearful and distressed when discussing his situation and was able to express regret and insight.'

23. I confirm that I have also considered written evidence from Tanesia Williams, Jacqueline Banton, Raimar Banton, Maria Rollins, Shandon Aubrey, Dawn Cudjoe, Naiha Ali, Gabrielle Hibbert, Delroy Latty, Ricky Gardner, Ian Buckingham and Sheresa Millington.

Decision

Vulnerability

24. I was asked by Ms. Sanders to treat the appellant as a vulnerable witness. Mr. Melvin opposed the application. Reliance was placed by the appellant upon a psychological assessment conducted by Dr Neil Egnal, consultant clinical psychologist and clinical neuropsychologist, following an interview. The report is dated 28 April 2019 and Dr Egnal opines that the appellant has moderate PTSD and appears to be severely depressed occasioned by childhood experiences in Jamaica and in this country. The appellant is further identified as being of low average intelligence, to have memory and concentration difficulties and to have visuo-motor difficulties. The respondent did not challenge the medical diagnosis. I further accept that the appellant is dyslexic and

observe the Equal Treatment Bench Book (March 2020), at pgs 306-309. I accept that the appellant's various conditions impact upon his ability to present his case in a court setting. Consequently, I make it clear than in considering the appellant's evidence I have had regard to the '*Joint Presidential Guidance Note No. 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance*' and my assessment of his evidence has been considered in the round, taking due account of the medical evidence.

Credibility

25. The decision of Immigration Judge Wellesley-Cole, dated 24 February 2011, concerning the appellant's entry clearance appeal, confirms that evidence was filed as to the appellant's mother dying when he was aged 15 months and further confirming that he resided with his mother's sister, and her three children, whilst in Jamaica. It was found that the appellant's father had not abrogated parental responsibility and he remitted money to Jamaica for the appellant.

26. The appellant's personal history is, on any assessment, a sad one with significant, adverse personal experiences. Much of his history as to his life in Jamaica and in this country, including the circumstances in which he was place in care when aged 15 and his subsequent criminal activity, is corroborated by reliable evidence. I am satisfied to the requisite standard, namely the balance of probabilities, that such personal experiences resulted in the appellant being, in his late youth and early adulthood, a vulnerable and isolated person who was targeted and groomed by older persons involved in criminal activity.

27. The evidence presented by means of the entry clearance application was that the appellant had limited family in Jamaica, and I am satisfied to the requisite standard that as a young child living in care in this country the limited contact he enjoyed with family members in Jamaica has been all but extinguished since he commenced residing in this country. I accept that the appellant's limited contact with one male relative via Facebook has not resumed from the time of his incarceration. There may be many reasons as to why his relative broke off contact, but I accept that the appellant has been unsuccessful in resuming contact. I therefore find that the appellant will enjoy no familial support on return to Jamaica.

28. I further accept that the witnesses who gave evidence supporting the appellant provided honest and measured evidence on his behalf. Such evidence was not challenged by Mr. Melvin. I find that the appellant, identified as being vulnerable and emotionally fragile, is developing maturity, in part due to the impending birth of his child. He has secured personal strength, and developed skills in avoiding his criminal peers, consequent to his relocation away from his former home area and the strength he finds in his relationship with LJ, in particular as he taken steps in his preparation for parenthood. I accept that he is remorseful as to his criminal behaviour, and has sufficient insight to understand the impact his vulnerability had in his being targeted and groomed by criminals.

29. I further find that the appellant is pro-social and is taking positive steps to avoid further criminal offending. He has developed around himself a network of friends and professionals to aid him as he grows in independence and maturity and has proven willing to rely upon this support network.

Article 3

30. Ms. Sanders advanced the contention that the appellant would be at risk of his article 3 rights being breached upon his return to Jamaica. The Tribunal had, it proved erroneously, understood from Ms. Sander's skeleton argument that the appellant was contending that he would be at risk of sex trafficking on return to Jamaica. The Tribunal was helpfully informed that this was not a risk being advanced.

31. The appellant contends that his return to Jamaica would be in circumstances where he would suffer deprivation that meets the test of very exceptional circumstances. Reliance is placed upon his medical diagnosis, vulnerability and that he has no-one to look after him in Jamaica.

32. It is well-established that the responsibility of a State will be engaged under the ECHR where substantial grounds are shown for believing, for example in a deportation case, that the person concerned, if deported, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country of return. In so far as any liability under the ECHR is or may be incurred, it is liability incurred by the contracting State that is seeking to deport by reason of its having taken action which as a direct consequence exposes an individual to proscribed ill-treatment: *Soering v. United Kingdom* (1989) 11 EHRR 439, at [96]. The Strasbourg court has confirmed that there is no exception to the real risk test, even on national security grounds: *Chahal v. United Kingdom* (1997) 23 EHRR 413, at [79]-[82].

33. Ill-treatment has to reach a minimum level of severity to fall within the scope of article 3 and the question as to whether the minimum level has been reached in any given case will depend upon the facts, calling for an intensely fact-sensitive inquiry. In this matter, the inhuman treatment complained of is not directed to the appellant by the Jamaican authorities. Rather, it is said to be the absence of support from such authorities that will lead to homelessness and destitution. In *Secretary of State for the Home Department v. Said* [2016] EWCA CIv 442; [2016] Imm AR 5, Burnett LJ (as he then was) held, at [18]:

> 'These cases demonstrate that to succeed in resisting removal on article 3 grounds on the basis of suggested poverty or deprivation on return which are not the responsibility of the receiving country or others in the sense described in para 282 of [Sufi & Elmi v United Kingdom (2012) 54 EHRR 9], whether or not the feared deprivation is contributed to by a medical condition, the person liable to deportation must show circumstances which bring him within the approach of the Strasbourg Court in the [D v United Kingdom (1997) 24 EHRR 423 and N v United Kingdom (2008) 47 EHRR 39] cases.'

34. There is no merit in the appellant's efforts to assert that he more readily satisfies the test of 'very exceptional circumstances' by the threshold of interference being lowered, because he was recently a child. He is an adult, aged 20, and does not possess the 'special vulnerability' enjoyed by children that impacts upon the scope of the obligation placed upon contracting states to protect children from breaches of article 3. There is no sliding scale for the protection of young adults in a manner akin to the special protection provided to children, either under the ECHR or in international law generally, and so he cannot lawfully assert that the proportionality assessment as to the interference in his protected rights is accordingly amended.

35. Reliance is placed upon a generic report authored by Luke de Noronha, who at the time of authoring the report was in the third year of his DPhil in anthropology studies at the University of Oxford. The report is undated, and its contents strongly suggest that it was written soon after Mr. de Noronha's return from Jamaica in November 2016. Whilst Mr de Noronha may have an ever-developing experience and knowledge as to the return of persons to Jamaica, in his report he provides no detail as to his qualifications or his expertise to address mental health and housing provision in Jamaica. His source material for his report is limited, and he provides limited information as to the 'many people' he spoke to when compiling the report. Being mindful of the approach adopted to expert evidence by the Supreme Court in *Kennedy v. Cordia (Services) LLP* [2016] UKSC 6; [2016] 1 W.L.R. 597, at [38]-[61], I do not accept on the basis of this report alone, without more, that Mr de Noronha is an expert on issues of mental health care services, housing provision and destitution in Jamaica. Consequent to my concerns as to the substance of this generic report, I place limited weight upon it.

36. Beyond Mr de Noronha's report, Ms. Sanders relies upon objective material identified at paragraphs 22 and 23 of her skeleton argument, consisting of: Jamaican and British newspaper articles addressing poverty, mental illness and crime in Jamaica; a paragraph from the US State Department's 'Trafficking in Persons Report 2019 – Jamaica'; and a general assessment as to crime figures in Jamaica contained within OSAC's 'Jamaica 2019 Crime & Safety Report'. Having read these documents with care, even when taken cumulatively and at their highest, they come nowhere close to meeting the requisite article 3 threshold. The appellant's appeal on article 3 grounds is therefore dismissed.

Article 8

37. Section 117A-D of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Acct') and paragraphs 398, 399 and 399A of the Rules detail the requirements that are to be considered when considering article 8 rights. Section 117C is a statutory provision specifically addressing the article 8 rights of persons liable to deportation as foreign national offenders. The Court of Appeal in *NA (Pakistan) v. Secretary of State for the Home Department* [2016] EWCA Civ 663; [2017] 1 WLR 207 confirmed that the Rules provide clear guidance regarding article 8 rights and deportation. Foreign criminals are divided into two categories: those with sentences of between one year and four years

imprisonment (medium offenders) and those sentenced to four years or more (serious offenders). 'Safety nets' provide for possible escape from deportation for medium offenders, including parent/partner provisions under paragraph 399 and long-term residency under paragraph 399A. Otherwise, there have to be 'very compelling circumstances' under paragraph 398. The appellant is for the purpose of the deportation regime classified as a medium offender.

38. The Rules in this context do not amount to complete code but they remain a relevant and vitally important consideration. The Supreme Court held in *Hesham Ali v. Secretary of State for the Home Department* [2016] UKSC 60; [2016] 1 WLR 4799 that paragraphs 399 and 399A do not alone govern appellate decision-making as to the balance between the public interest in deporting foreign criminals and the criminals' rights under article 8. It remains for the Tribunal to judge whether the factors weighing against the public interest lead to the conclusion that deportation would be disproportionate. The respondent's policies are an important consideration because they represent the minister's assessment of the general public interest. However, the Rules are not a lens and do not alone govern appellate decision-making. They remain a relevant and important consideration but are not law. The Tribunal is to conduct its own assessment and judge whether the countervailing factors lead to the conclusion that deportation would be disproportionate. The respondent's assessment is not to be disregarded. The critical issue is, generally, whether giving due weight to the public interest the article 8 claim is sufficiently strong to outweigh it.

39. The appellant asserts that his personal circumstances concerning his article 8 private life rights are such that very compelling circumstances arise outweighing the public interest in his deportation. The Court of Appeal confirmed in *NA (Pakistan)* that the very compelling circumstances exception established by paragraph 398 of the Rules is also to be read into section 117C(3) of the 2002 Act.

40. In *Hesham Ali v. Secretary of State for the Home Department* [2016] UKSC 60; [2016] 1 W.L.R. 4799, at [47]-[50] the Supreme Court endorsed a structured approach to proportionality. The critical issue for the Tribunal is generally whether, giving due weight to the strength of the public interest in the deportation of the offender in the case before it, the article 8 claim is sufficiently strong to outweigh it. In considering as to whether very compelling circumstances exist, this Tribunal is to have regard to the totality of the evidence: *Assad v. Secretary of State for the Home Department* [2017] EWCA Civ 10.

41. As to the appellant's private life I initially consider the private life exception established by section 117C(4) of the 2002 act and paragraph 399A of the Rules: a) the offender has been 'lawfully resident' in the United Kingdom for most of their life, b) they are 'socially and culturally integrated' into United Kingdom society and c) there would be 'very significant obstacles' to integration in the society of the proposed country of removal. The elements are conjunctive and so all three must be satisfied before this exception can be relied upon. Ms. Sanders appropriately accepted that the appellant cannot satisfy (a) as he has lawfully resided in this country for a period just

shy of half of his life. *Secretary of State for the Home Department v. SC (Jamaica)* [2017] EWCA Civ 2112; [2018] 1 W.L.R. 4004.

42. As to 'social and cultural integration', I observe that the appellant has resided away from Jamaica since the age of 11 and has enjoyed limited connection to the Jamaican community in this country since he was placed in care at the age of 15. I find, on balance, that the appellant is truthful as to considering the United Kingdom to be his home and that he has limited personal connection with Jamaica, including its culture. It is clearly apparent that his pro-social friendships, and his life with LJ, are rooted in this country. The Court of Appeal recently confirmed in *CI (Nigeria) v. Secretary of State for the Home Department* [2019] EWCA Civ 2027, at [58]:

> '... a person's social identity is not defined solely by such particular relationships but is constituted at a deep level by familiarity with and participation in the shared customs, traditions, practices, beliefs, values, linguistic idioms and other local knowledge which situate a person in a society or social group and generate a sense of belonging. The importance of upbringing and education in the formation of a person's social identity is well recognised, and its importance in the context of cases involving the article 8 rights of persons facing expulsion because of criminal offending has been recognised by the European Court. Thus, in the Uner case at para 58, the court considered it 'self-evident' that, in assessing the strength of a foreign national's ties with the 'host' country in which they are living, regard is to be had to "the special situation of aliens who have spent most, if not all, of their childhood in the host country, were brought up there and received their education there.'

43. Having considered the evidence of the appellant and his witnesses with care, I do not find that he is alienated from British society. His social and cultural identity have primarily been formed in this country. Children aged 11 and above, attending secondary school in this country, make rapid strides in their integration within their local community, developing a myriad of social interactions outside of the family home. The appellant's links with this country developed greater depth when living in care and therefore residing away from his Jamaican family household. His offending was primarily committed between the ages of 17 and 18. I have found that his criminal behaviour was rooted in his having been groomed by older criminals who exploited his vulnerability. He has mental health problems but does not suffer from addiction and he is not socially isolated. I have found that he possesses a growing maturity, in part aided by his moving into accommodation encouraging greater independence, but also consequent to his developing relationship with LJ and his preparations for fatherhood. Since his release from prison, and his move away from his criminal peers, the appellant has been pro-social. I find that in the circumstances of this matter the integrative links established by the appellant through living here were not severed by his offending and imprisonment to such extent that he was no longer socially and culturally integrated in this country.

44. As for the third limb of the exception established by section 117C(4) of the 2002 Act and paragraph 399A of the Rules I have found that the appellant has no connection with any family residing in Jamaica and would return to the country enjoying no

familial support. The appellant is presently a 'former relevant child', supported by a local authority, with very limited, if any, contact with his wider family in this country. It is self-evident that he would have no financial support upon his return to Jamaica and no immediate means of securing accommodation. He has been diagnosed with low average intelligence. He possesses memory and concentration difficulties and has visuo-motor difficulties. Whilst these do not preclude the ability to eventually secure employment, likely to be of a low-paid nature, I am satisfied that they will initially, and significantly, impede his ability to secure employment and accommodation for a time after his return to Jamaica. He will return in circumstances where he does not have familial support and having left Jamaica at the age of 11 is not enough of an insider in terms of understanding how life in Jamaican society is carried on, and lacks capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to his private life: *Secretary of State for the Home Department v. Kamara* [2016] EWCA Civ 81

45. In the circumstances arising in this appeal I find that there would be significant obstacles to the appellant's integration on his return to Jamaica.

46. These findings are carried forward into my assessment as to whether very compelling circumstances exist so as to outweigh the public interest in the appellant's deportation. However, these findings are not determinative, merely a part of the balance sheet assessment I am required to undertake, as the question to be answered by this Tribunal is whether there are very compelling circumstances 'over and above' the statutory Exceptions to the public interest in deportation.

47. As to 'very compelling circumstances', Nicol J held in *Chege (section 117D: Article 8: approach)* [2015] UKUT 165 (IAC); [2016] Imm AR 833 that 'compelling' as an adjective means having a powerful and irresistible effect and the annexing of the word 'very' indicates the very high threshold that has to be passed to meet this requirement of the Rules.

48. I observe the importance of not overlooking that the primary responsibility for the public interest vests in the respondent, see Wilson LJ in *OH (Serbia) v. Secretary of State for the Home Department* [2008] EWCA Civ 694; [2009] I.N.L.R. 109, at [15(d)], and to similar effect the observations of Maurice Kay LJ, at [29]. I am very mindful that the public interest in the deportation of criminals is not merely to protect against the risk of further offending; it is also to deter others and to ensure that the public maintain confidence in the effective treatment of foreign criminals.

49. I place significant weight on the appellant's criminal offending and also as to the public interest in deportation being, in part, a deterrence against foreign national offenders conducting criminal activity in this country. However, it is appropriate to observe that in this matter such offending was mainly within a relatively short period, some of which was whilst the appellant was a minor. Weight can appropriately be placed upon the appellant, a vulnerable, emotionally fragile and isolated adolescent, having been

groomed by elder, criminal peers, but this is not determinative of the question to be answered by the Tribunal nor does it enjoy significant weight. I note that the appellant has been subject to two custodial terms: a 12-month detention and training order and 28 days for contempt of court.

50. The words 'circumstances, over and above those described in Exceptions 1 and 2', which are used in section 117C(6) and which the Court of Appeal in *NA (Pakistan)* held are to be read into section 117C(3), do not prevent a person facing deportation from relying on matters falling within the scope of the Exceptions to establish 'very compelling circumstances' at the second stage of the analysis: *JZ (Zambia) v Secretary of State for the Home Departmen*t [2016] EWCA Civ 116, at [28]-[30]. Nor is a person facing deportation denied the ability to establish very compelling circumstances because he cannot meet one or both of the Exceptions: *Chege*, at [27]-[28]

51. As recently confirmed by the Court of Appeal in *Akinyemi v. Secretary of State for the Home Department (No. 2)* [2019] EWCA Civ 2098 Part 5A of the 2002 Act reinforces the policy statement found in the Immigration Rules and set the intended balance of relevant factors in direct statutory form. However, it is consistent with the Strasbourg jurisprudence that the strength of the public interest is not fixed but is capable of being reduced by factors in the individual case. The object of Part 5A of the 2002 Act is through a structured approach to produce a final result that is compatible with article 8. To ensure that this is achieved, it is necessary when considering whether circumstances are sufficiently compelling to outweigh the public interest in the deportation of a 'foreign criminal' to take into account the jurisprudence of the European Court of Human Rights, including the important decision of *Maslov v. Austria* (application no. 1638/03) [2009] INLR 47, at [71]-[74]:

> '71. In a case like the present one, where the person to be expelled is a young adult who has not yet founded a family of his own, the relevant criteria are
>
> – the nature and seriousness of the offence committed by the applicant;
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> – the length of the applicant's stay in the country from which he or she is to be expelled;
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> – the time elapsed since the offence was committed and the applicant's conduct during that period; and
>
> – the solidity of social, cultural and family ties with the host country and with the country of destination.
>
> 72. The Court would also clarify that the age of the person concerned can play a role when applying some of the above criteria. For instance, when assessing the nature and seriousness of the offences committed by an applicant, it has to be taken into account whether he or she committed them as a juvenile or as an adult (see, for instance, Moustaquim v. Belgium, 18 February 1991, § 44, Series A no. 193, and Radovanovic v. Austria, no. 42703/98, § 35, 22 April 2004).

> 73. In turn, when assessing the length of the applicant's stay in the country from which he or she is to be expelled and the solidity of the social, cultural and family ties with the host country, it evidently makes a difference whether the person concerned had already come to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult. This tendency is also reflected in various Council of Europe instruments, in particular in Committee of Ministers Recommendations Rec(2000)15 and Rec(2002)4 (see paragraphs 34-35 above).
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> 74. Although Article 8 provides no absolute protection against expulsion for any category of aliens (see Üner, cited above, § 55), including those who were born in the host country or moved there in their early childhood, the Court has already found that regard is to be had to the special situation of aliens who have spent most, if not all, of their childhood in the host country, were brought up there and received their education there (see Üner, § 58 in fine).'

52. The appellant enjoyed settled status in this country from June 2010 and so satisfies the 'lawful residence' requirement to engage the statement of general principles in *Maslov*: *DM (Zimbabwe) v. Secretary of State for the Home Department* [2015] EWCA Civ 1288; [2016] 1 W.L.R. 2108. The reference to the general principles applying to persons who enjoyed settled status for most of their childhood, as detailed by the Strasbourg Court in *Maslov*, at [75], is not to be read as legislative text. It identifies a conventional balancing exercise with no bright line as to length of lawful residence: *CI (Nigeria) v Secretary of State for the Home Department* [2019] EWCA Civ 2027, at [111]-[114].

53. Though serious enough to attract a custodial sentence, the most significant sentence imposed by the criminal courts is at the lowest level that automatically leads to deportation. In this matter deportation is sought on conducive to the public good grounds and there is a significant public interest in foreign national offenders being deported. However, I am satisfied that though the appellant committed the offences, and was correctly convicted, as to the majority of them he was groomed by persons who identified and manipulated his vulnerability. I observe the contempt of court conviction, which arose in particular circumstances. This conviction was clearly correct, but the custodial sentence imposed is at the lower end of the permitted scale for a custodial sentence concerning a young offender: section 108(1) Powers of Criminal Courts (Sentencing) Act 2000.

54. I am satisfied that the experiences addressed in the evidence filed with this court as to events in Jamaica and, in particular, events arising after his entry into this country combined to leave the appellant as a vulnerable, isolated and emotionally fragile adolescent who was targeted by criminal exploiters. He is now pro-social, surrounded by a professional and personal safety net that has enabled him to move away from his criminal peers. He is socially and culturally integrated into this country and I have found that he would experience significant obstacles to his integration on his return to Jamaica. I further find that he has spent his formative years in this country, lawfully resident throughout such time, and having left Jamaica as a child he has lost contact with that country. I have found that there is solidity in his social and cultural ties to this country, and he will soon have family ties with LJ, a British citizen, and their child.

I accept that he considers himself to be British with Jamaican heritage. His is a special situation as identified by the Strasbourg court in *Maslov*. The Supreme Court confirmed in *Hesham Ali* that the correct approach to that balancing exercise is to recognise that the public interest in the deportation of foreign criminals is a flexible one, and that there will be a small number of cases where individual circumstances reduce the legitimate and strong public interest in removal. I find for the reasons detailed above that the instant case is such a case.

55. I note the apt observation of Mr. Bramble, the Senior Presenting Officer who represented the respondent at the error of law hearing, that the appellant may well have a meritorious appeal under article 8. Consideration of the evidence presented in this matter, including the appellant's personal history and the predatory exploitation of his vulnerabilities by criminal elders, leads to there being only one reasonable conclusion, namely that very compelling circumstances arise outweighing the public interest in the appellant's deportation.

56. I allow the appeal on article 8 grounds.

Notice of decision

57. By means of a decision dated 25 September 2019 this Tribunal set aside the Judge's decision promulgated on 27 June 2019 pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007 ('TCE').

58. The decision is re-made, and the appellant's appeal is allowed on human rights (article 8) grounds.

Signed: D O'Callaghan

Upper Tribunal Judge O'Callaghan

Date: 25 March 2020

TO THE RESPONDENT
FEE AWARD

No fee was paid and therefore there can be no fee award.

Signed: D O'Callaghan

Upper Tribunal Judge O'Callaghan

Date: 25 March 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email