



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

Appeal Number: PA/09869/2018

THE IMMIGRATION ACTS

**Heard via Microsoft Teams at Field
House
On 5 November 2021**

**Decision & Reasons Promulgated
On 7 November 2022**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**AA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Akinbolu, Counsel instructed by R.O.C.K Solicitors
For the Respondent: Mr Walker, Senior Presenting Officer

DECISION AND REASONS

History of the Appeal

1. This appeal comes before me for re-making. I set aside the decision of First-tier Tribunal Judge Peer dated 27 November 2020 dismissing the appellant's Article 3 ECHR protection claim on the basis that there had been a material error of law for the reasons given in the decision dated 18 June 2021 appended to this decision. The judge's decision to uphold the Secretary of State's decision certify the appeal pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act")

because the appellant is a danger to the community of the UK was upheld. The judge's decisions that the appellant is excluded from Humanitarian Protection, that he does not succeed on an Article 3 ECHR health claim and that there would be no disproportionate breach of Article 8 ECHR to remove him from the UK were all similarly upheld.

The issue in this appeal

2. The error of law decision was overturned in respect of the Article 3 ECHR protection claim only, the remainder of the decision was upheld. The only question outstanding is whether the appellant would face a real risk of serious harm from criminal gangs or a named previous criminal associate on his return to Jamaica contrary to Articles 2 or 3 of the ECHR. The effect of this would not be that he is entitled to Humanitarian Protection because he is excluded from this by reason of his risk to the community of the UK and his serious offending, but that he would not be removable to Jamaica at the present time.
3. Since it is now conceded by the Secretary of State that the appellant would be at risk of serious harm in Kingston from criminal elements within the St Andrew South Area (Binns Road), this re-making decision entails consideration of whether those criminal elements have the motivation and reach to locate the appellant elsewhere in Jamaica or whether the individual whom the appellant claims to fear has the motivation and means to harm him. If so, I must consider whether the Jamaican authorities would be able to provide sufficiency of protection. If sufficiency of protection is available, I must decide, looking at all of the circumstances of the appellant holistically whether it would be reasonable for him to relocate elsewhere in Jamaica

Appellant's Immigration History

4. The appellant is a citizen of Jamaica born on 2 May 1970. He is currently 52 years old. He originally entered the United Kingdom as a visitor on 9 May 1996 using his own identity. He was refused entry on arrival and claimed asylum. He was granted temporary admission and absconded. His claim for asylum was refused and certified on 17 February 1998. This is agreed.
5. In December 1997 he was caught using a credit card which was in the name of his ex-girlfriend and on 19 January 1998 he was convicted of obtaining property by deception and served a prison sentence of 4 days. On 17 April 1998, he received a further prison sentence of 1 day for ABH. The offence was committed on 5 October 1998. He claims that after he completed his sentence in January 1998, he was detained in Harmondsworth and removed to Jamaica in April 1998, although I am unable to locate any documents from the Secretary of State verifying that the appellant was deported or removed nor the date on which this took place. He was later convicted of obtaining property (a false British passport) by deception. The Police National Computer printout states that this offence took place on 2 January 1997.

- 6.** The appellant claims that after being deported he obtained a fake British passport in a different name which was sent to him in Jamaica from the UK. At this point the timeline becomes somewhat confusing. The Secretary of State has no record of the appellant's travel history because he was travelling as a British citizen. The appellant is confused about the timeline not least because these events occurred 25 years ago. He undoubtedly entered the UK on 2 February 1999 because he was arrested on arrival as a result of attempting to import class A drugs with a street value of £71,000. He was taken straight into custody where he remained firstly on remand and then serving a custodial sentence.
- 7.** However, he was also convicted of an offence of rape which is said to have taken place on 20 December 1998 which would place him in the UK on a date after which he claims to have been removed from Jamaica.
- 8.** The appellant has accumulated a significant number of convictions, spanning the period 1998 until 2017. On 17 December 1999 he was convicted of being knowingly concerned in fraudulently evading prohibition/restriction on import of a controlled drug class A for which he received a sentence of five years. On the same day he was convicted of rape for which he received a consecutive sentence of five years imprisonment and a life term on the sex offenders register. He was sentenced to a total of ten months imprisonment.
- 9.** On 30 November 2007 at Ipswich Crown Court, he was sentenced to a further sentence of five years for one count of conspiracy to supply Class A drugs.
- 10.** More recently on 13 March 2014 he was convicted of conspiring to supply a class A drug (cocaine) for which he received a sentence of 6 years imprisonment. On 13 January 2016, he was convicted of obtaining property by deception and making false representations for which, after appeal, he received 24 months imprisonment in total. All of these convictions were in the appellant's assumed identity as a British citizen.
- 11.** The appellant's real identity was not discovered until 2016 which is when the respondent commenced deportation proceedings. On 11 November 2016 the Secretary of State served a Notice of intention to Deport. In response, the appellant made a protection and human rights claim on 9 December 2016 and on 22 December 2016. He was interviewed on 21 March 2017. A deportation order was made on 24 July 2018. On 25 July 2018 the Secretary of State made a decision that Section 32(5) of the UK Borders Act 2007 applied to him, and that the appellant was liable to automatic deportation as a "foreign criminal". The respondent additionally decided to refuse the protection and human rights claim and to certify the asylum claim under s72 of the 2002 Act.
- 12.** Following the submission of further evidence in support of the appeal, the Secretary of State served a further supplementary decision refusing the protection claim on 26 February 2020. The re-making decision is in respect

of the original decision dated 25 July 2018 and the supplementary decision dated 26 February 2020.

Position of the parties

- 13.** The appellant's position is set out in counsel's skeleton argument and in her response dated 22 September 2021 to the respondent's position statement. The appellant previously lived in a dangerous area of Kingston where several very active criminal gangs operate. Prior to coming to the UK, he was targeted on several occasions by a criminal gang who both stabbed him and shot him twice. When he returned to Jamaica after being deported, he was targeted again. He has provided evidence from the Jamaican authorities that criminal elements from St Andrew's South have made plans to kill him. He also fears reprisals from a former criminal associate "YY" to whom he owes money. He says he is not able to access the Witness Protection Programme in Jamaica; there is no sufficiency of protection; he will be targeted wherever he is in Jamaica and if he returns to Jamaica, he will be tracked down and killed. The response also addressed the Secretary of State's objections to the expert evidence and submits that the report should be given weight. It is also submitted that due to the appellant's stress and anxiety it would not be reasonable for him to relocate to another area because the treatment he requires is located in Kingston and he will not be able to access it safely. He also lacks family and friends in Jamaica to support him.
- 14.** The position of the Secretary of State is set out in two position statements dated 6 September 2021 and 21 September 2021 respectively. It is not accepted that the appellant is at risk outside of his home area of Kingston. It is submitted that in his most recent statement the appellant has sought to embellish his account by claiming to have provided information to Trident (a unit of the Metropolitan Police Service). This was not previously asserted. The position statement attacks the expert report at length (see below) and asserts that no weight can be placed on it. It is submitted that the risk to the appellant is confined to Kingston and that he can reasonably and safely relocate to another area in Jamaica. The medical evidence provided by the appellant is out of date and in any event, he can access medication and treatment for his mental health condition outside Kingston.

Evidence before me

- 15.** I had before me the original respondent's bundle containing inter alia the appellant's asylum interview, his convictions and the respondent's decisions. I also had before me the appellant's original 111-page bundle of evidence, his original 32-page supplementary bundle which contained an updated witness statement dated 3 March 2020 and the evidence from the Jamaica Constabulary Force ("JCF"). In addition, I was provided with a 162 page "consolidated bundle" containing inter alia an updated witness statement, an expert report and a letter from the appellant's GP dated 13 September 2021. The appellant's OASys reports were on file. I have

considered all of the evidence before me including items not specifically listed.

- 16.** I also had sight of documentary evidence specific to the appellant from the Jamaican authorities which the respondent confirms is genuine as well as background evidence in the form of newspaper reports. I was provided with the most recent Country Policy and Information Note: Fear of organised criminal groups version 3 dated August 2019 (“CPIN”). A new more up to date CPIN version 4 was published in July 2022 after I heard the appeal and prior to writing the decision. However, this substantively replicates the previous CPIN and confirms that in the view of the Secretary of State the country guidance given in AB(Protection -criminal-gangs-internal-relocation)Jamaica CG [2007] UKAIT 00018 Jamaica is still valid. Since the CPIN has not changed substantively apart from confirming that there has been an increase in homicides and violence and an increase in the number of gangs which is not to the detriment of the appellant, and the CPIN does not depart from the country guidance of AB and since it reflects the current view of the Secretary of State, I decided that I could fairly rely on it without asking the parties to make further submissions.

Oral evidence

- 17.** I heard oral evidence from the appellant who was cross examined by Mr Walker. The appellant’s oral evidence was as follows. He claims that attended Wembley Police station and spoke to Trident after his release from prison in 2004. He spoke to the Trident team on a few occasions and gave them some information off the record. Trident wanted him to become a paid informant. The appellant refused. He was too frightened as he did not want to be labelled as a “snitch”. The Trident team then left him alone. He last had contact with Trident in 2012. They interviewed him in prison when one of his friends was murdered. He has not mentioned this earlier because he did not want anyone to think he is an informant but now feels the need to mention it because he is so frightened of being sent back to Jamaica.
- 18.** The appellant keeps up to date with what is happening in Jamaica through a friend Mr H who lives in Jamaica to whom he speaks to now and again through Whatsapp. Mr H cannot accommodate him and he has no friends or family in Jamaica. His partner’s family cannot assist him. He has no economic means and cannot support himself.
- 19.** He believes YY is in Jamaica although he does not know his exact whereabouts, but YY could easily find him in Jamaica as there are only 14 parishes. YY told him that he owes him money. He does not know if YY believes that he gave information about him to the police. The reason that YY did not harm him in the UK was because the appellant was in prison and YY was returned to Jamaica shortly after the appellant was released from prison in 2004. It is also safer in the UK. Jamaica is more dangerous then ever and social media means that it is easy to locate someone. The appellant feels extreme fear and is frightened every time he goes to report at the immigration centre.

- 20.** He stated that he was “in protection” inside jail. YY made it clear to him after he came out of prison in 2004 that he owed him money.

Expert report

- 21.** In support of his claim the appellant adduced an expert report prepared by Mr Andre Marjail Williams a reporter from “The Gleaner Company Media Limited” with 12 years covering news, entertainment and sports.
- 22.** Mr Williams describes his expertise coming from working as journalist in the field of crime for ten years which has taken him across the length and breadth of Jamaica reporting on gangs, criminal organisations and their activities in some of the most volatile communities. His work has been recognised by his peers in the Press Association of Jamaica and he is an APIC Japan (Journalism) fellow the only reporter in the 2020 core and the only selectee from Jamaica.
- 23.** The expert confirms that deportation to Jamaica provokes a lot of interest and discussion and is heavily monitored by the media who receive information on from where deportees are being returned and how many people are being returned. It is said most deportations from the UK are on Tuesdays. He refers to a recent deportation from the UK with 7 deportees arriving on 10 August 2021. Journalists often seek interviews with those being deported and their names are sometimes published which means that if someone has an interest in a particular individual information can be accessible. The collection area is the Mobile Reserve headquarters in Kingston where ordinary people mix with media personnel observing the process.
- 24.** The expert was not able to verify a gang with the name the “Binns Road gang” but confirms that Binns Road is located within St Andrew South, “the most murderous police division”. He states that criminal gangs are often connected by political affiliation or make links whilst in custody. The reach of gangs depends on “the forces that fuel it and the networking ability of its members”. Gang members may be known in several areas.
- 25.** The expert also states that gangs are the leading cause of Jamaica’s homicide rate and will use police if necessary. St Andrew South division is covered by the Hunts Bay Police station which is rife with corruption. For instance, 10 prisoners were able to escape over a 156-month period and no-one has been held accountable. Technological advances make it easier to infiltrate and track individuals through family and affiliates. Gangs can cross from one area to another and have spread through Jamaica. Gangs migrate to other communities, a fact which was recognised by the Senior Superintendent of police Clive Blair. Many criminals are part of established networks which span several parishes, nowhere in Jamaica is too far because it is a small territory. Criminals may wait many years to extract revenge.
- 26.** The opinion of the expert is that it is highly likely that the appellant will be killed if he returns to Jamaica. He can be targeted across Jamaica and the JCF will not be able to protect him.

Submissions

- 27.** Mr Walker relied on the respondent's two detailed submission statements and made very brief submissions. The position of the respondent is that the appellant is not at risk outside of Kingston from the Binn's Road gang and there is no evidence that YY has any ongoing involvement in gangs in Jamaica. There is sufficiency of protection outside Kingston. The appellant can access medical treatment for depression and has the option of internal relocation.
- 28.** Ms Akinbolu relied on her skeleton argument and response. She submitted that the respondent has accepted that the appellant is at risk from criminal elements in Kingston. It is accepted that the appellant has previously been shot at and stabbed in Jamaica both prior to leaving Jamaica and when he was returned to Jamaica from the UK which caused him to leave again. The situation in relation to YY arose after those attacks when the appellant returned to the UK because the appellant was caught carrying drugs given to him by YY to carry into the UK. The appellant talked about the threat from YY at length in his asylum interview and has referred specifically to a debt both in the interview and in his oral evidence. He has described being threatened. YY has made it clear that he considers that the appellant owes him money. YY is part of a large criminal organisation in Jamaica. It does not matter whether YY suspects the appellant of informing on him, the problem is that he considers that the appellant owes him a debt.
- 29.** She submitted that the risk is throughout Jamaica and relied on the respondent's CPIN in this respect which in turn refers to numerous articles on gang related activities and crimes.
- 30.** She asked me to give weight to the expert report. She highlighted that nothing in the expert report is actively contradicted by the background evidence including the CPIN. Newspaper teams are provided with details of incoming flights and will be provided with information on the deportees and journalists will try to obtain photographs, evidence and interviews. There is no privacy as members of the public can access the collection area. In Ms Akinbolu's submission the risk arises at the point that the appellant arrives in Jamaica, because anyone with any interest will be able to locate him. Once it is known that he is in Jamaica, he can be located anywhere in Jamaica because of the reach of the gangs. She emphasised the endemic corruption by the police who have known links to criminal gangs which is set out at 6.1 and 6.2 of the version 3 CPIN report. Individuals can easily be tracked across the small island through social media. Finally, gang members migrate and create networks across Jamaica
- 31.** The starting point is the Country Guidance of AB(Protection-criminal gangs-internal relocation) Jamaica CG [2007] UKAIT 00018 although we are now 14 years on from when this decision was promulgated. The Country Guidance speaks of measures taken to control gangs and in 2007 it was too early to know if these measures would be successful. It is

acknowledged in the recent CPIN that these attempts have failed. She refers to news reports quoting the Prime Minister on this issue and that there have been spikes of violence in other areas. The CPIN talks about corruption, organised gang activity and points to an increase in violence generally. Measures to curb gang activities have done little to reduce the harm or risk. The respondent appears to accept that there is no effective protection system.

32. Her submission is that there is no safe place that the appellant can relocate to. There is a live risk to him which is confirmed by the Jamaican police. His arrival in Jamaica will be notified. In view of the reach of criminal gangs the appellant is at risk throughout Jamaica.
33. The appellant's situation is exacerbated by his medical condition. He needs access to medication, therapeutic support and stability. It is unduly harsh to expect the appellant to relocate in Jamaica.

Preserved Findings

34. The following findings are preserved from the judge's decision:
35. The documents from the Jamaican Constabulary Force ("JCF") are genuine documents. The documents identify a current and "credible risk" to the appellant's safety and state that criminal elements within St Andrew South area are making plans to kill him.
36. The claim is consistent with the background evidence.
37. The appellant grew up in the Binns Road area of St Andrew's South. The appellant has previously been shot and stabbed in Jamaica. In 1994 he was shot in the leg at close range by gang members because a friend believed he had set him up to be robbed. The appellant was admitted to hospital. He then relocated to Clarendon for a few months and did some security work. In early 1995 he returned to Kingston. The day after his return, he was stabbed in the neck and was hospitalized. Ten months later he was shot again in his right leg by someone on a push bike and hospitalised.
38. In 1998 he was removed from the UK to Jamaica and was shot again.
39. The appellant was arrested on his arrival in the United Kingdom in 1999 carrying class A drugs which were confiscated, and he was convicted of importation of class A drug for which he received a sentence of five year's imprisonment.

Findings conceded by the Secretary of State

40. The appellant is at risk from criminal elements in the Binns Road area of Kingston and in Kingston at large. There is no sufficiency of protection in these areas

Further findings

- 41.** In order to decide whether the appellant would be at risk of Article 3 ECHR treatment in Jamaica, I need to make some additional findings which are relevant to this assessment. Specifically, I turn to the Secretary of State's submission that the appellant was not a gang member in Jamaica so there would be no reason for targeting him. I consider his profile as a criminal in the UK, the risk to him from his former criminal associate YY and whether he would be targeted outside of the Kingston area. These particular issues were either not considered by the judge or were in that part of the decision which has been set aside.
- 42.** I note firstly that the appellant's own credibility is undermined by his immigration history and his use of fraudulent documents. The appellant absconded shortly after his first entry to the UK, he has been convicted of obtaining a false British passport, he has lived unlawfully in the UK since his arrival in the UK and used an assumed identity throughout his criminal proceedings and the time he spent in prison. It was only when his true identity was discovered that he admitted that he had used a false identity. I find that section 8 of Asylum and Immigration (Treatment of Claimant's, etc) Act 2004 applies to him because of his use of false documents and the delay in his claim for asylum. First -tier Tribunal Judge Peer found him to be an unreliable witness and I also find his evidence to be very vague. It is also manifest from the OASys reports that probation officers considered him to manipulate the truth. I take the appellant's lack of honesty into account when I consider his evidence.

Was the appellant a gang member in Kingston?

- 43.** The respondent in the submission asserts that the appellant was not a member of a gang in Kingston and therefore would not be at risk of violence from inter or intra gang warfare. The basis of the respondent's submission is that when the appellant was asked if he was in a gang in his asylum interview, he stated "I wouldn't say I was a gang member. I was just from an area where there was a gang. They just played on my vulnerability that I didn't have any gang men in my family". It is also submitted that he also did not state that he was in a gang in his witness statement.
- 44.** I note and take into account firstly that the appellant also did not state that he was not in a gang in his witness statement, he was silent on this issue.
- 45.** The appellant's own evidence from his asylum interview is that he was involved with criminal activity since he was a young man in Jamaica. He describes himself as being a troubled child who hung out with a "bad crowd" and who brought problems to his family. He describes how his family effectively abandoned him because of their disgust and shame at his behaviour which included stealing from them. This appears consistent with his account that he was accused on various occasions of theft and was present during incidents where local residents carried out robberies. He states "I was trouble". It is also consistent with the fact that he was specifically targeted and shot at close range on more than one occasion.

Later when interviewed for the purposes of the OASys report prepared by a probation officer in 2016 he confirmed that he was expelled from school, was a cocaine user, mixed with the “wrong crowd” because he wanted the good things in life like fast cars and good clothes. He wanted to live a “flashy lifestyle”. His first encounter with the criminal justice system was at the age of 17. In his asylum interview he also states that he knew YY from his own area in Kingston and on his own evidence YY was an important gang member involved in the international transportation of drugs.

- 46.** First-tier Tribunal Judge Peer at [90] records the comments in the probation evidence in relation to the appellant’s tendency to blame others and struggle to accept responsibility for his offending behaviour. I find that the appellant has sought to downplay his involvement in gangs in Kingston in an attempt to demonstrate that he is now reformed.
- 47.** From reading the asylum interview as a whole, I find that the appellant admits in his asylum interview that he was involved in criminal activity in Kingston, which is consistent with his later pattern of criminal offending, (although he is not recorded as having any criminal convictions in Jamaica by the JCF). Prior to leaving Jamaica for the first time, the appellant was living in an area in Kingston where many criminal gangs were operative and where there was a high incidence of violence (which continues until the present today). The appellant was shot on two occasions, stabbed on one occasion and relocated to Clarendon before returning to his home where he was shot at again. I find from the targeted nature of the attacks, that those who attacked him were intending to kill him and that he was lucky to have survived. This strongly suggests that he was involved in gangs in Jamaica and not just an innocent bystander. This is consistent with the CPIN which identifies that those involved in inter-gang or intra-gang rivalry are likely to be at higher risk of being the victims of violence. I also give more weight to his initial asylum claim than to his later statements in which he sought to distance himself from his offending in order to argue that he is not a danger to the community of the UK. He was also able to obtain a false British passport within a few years of coming to the UK which demonstrates that he had links to the criminal community at that stage. I disagree with the Secretary of State’s submission that the appellant is not at risk because he was not a gang member.
- 48.** Further and in any event most importantly the respondent has accepted the JCF evidence that the appellant is still at risk from criminal elements in the Binns Road area after an absence of 20 years which in itself indicates that he had a significant profile in that area.

Criminal Profile in the UK

- 49.** Throughout the deportation proceedings, the appellant has sought to minimise his initial involvement in importing drugs by stating that he was pressurised into carrying the drugs by a large-scale drug dealer in return for assistance with fake documents and tickets to allow him to travel back to the UK to escape gang violence. This is contrary to the OASys report in

which it is reported that he agreed to import drugs to pay off drug debts which he had incurred as a result of his drug habit. He was said to be a regular user of crack cocaine. I do not have the judge's sentencing remarks and do not know on what basis he was sentenced.

- 50.** The starting point is the preserved findings of First-tier Tribunal Judge Peer in relation to s72 of the 2002 Act where he found that the appellant is a risk to the community of the UK because of his serious and longstanding criminal offending, with little demonstration of remorse.
- 51.** The appellant's initial sentence was for a total of ten years for both drug importation and rape, and he was not released until 2004. It may well have been that the appellant's involvement with drugs was more minimal in 1999, but having served his sentence, the appellant continued to be heavily involved in criminal activity. On 30 November 2007 he was convicted at Ipswich Crown Court of being involved in a large conspiracy to supply class A drugs in the Ipswich area of Suffolk. There were 10 co-defendants. The actual offences for which he was convicted took place on 16 August 2005 within a year after his release from prison when he was still on licence. This indicates that he was heavily involved with a serious organised crime group in the UK and was by no means a reformed character after being released from prison. He was sentenced to a further 5 years imprisonment and was released on 25 January 2010. He was recalled in March 2010 after being caught driving with excess alcohol. He was then released on licence into approved premises on 13 October 2010 and recalled for a second time for driving with excess alcohol. He was recalled on a third occasion for possession of crack cocaine and was in custody until July 2012. There was a further unsuccessful rape prosecution for an incident which took place in 2012.
- 52.** In November 2013, a mere 16 months after his release, he was arrested with the key to a premises where there was a large amount of crack/cocaine. He was found to be involved in the production and distribution of Class A drugs and was sentenced on 13 March 2014 to another six years imprisonment. The criminal judge found him to be responsible. This again indicates that he was closely involved with organised crime. He was not released until 19 September 2017 but was then in immigration detention until 25 May 2018.
- 53.** I am satisfied from this that the appellant has been heavily involved in the unsavoury world of drug dealing in the UK from 1999 until at least 2013 over a period of 14 years and that he has had many criminal associates in the past. He would have also met other criminals during his frequent periods of incarceration. Indeed, he told the writer of his 2013 OASys assessment that he became involved in the 2013 offence through an inmate at HMP Rye Hill and is described as having a "pro-criminal attitude". He is described as having links to addresses where criminal activity is carried out. His last conviction for obtaining property by deception was as recent as 2017 although this appears to have related to an offence of obtaining a British passport which took place in 1997 and

attempting to obtain a UK driving licence in 2011. He was sentenced to two years and 8 months which was reduced to 18 months on appeal.

- 54.** He has only been in the community since May 2018 for a small fraction of the time he has spent in the UK. The appellant has spent a large proportion of his adult life in prison in the UK. I find from this that he is likely to know and be known by other criminals. In his probation report in 2019 he said that he had a number of friends in the UK from prison and the reports also flag up connections to gangs, weapons and drugs. Although the appellant has not been convicted of any offences over the last four years, I find that he has been involved in organised criminal activity and will be known to other criminals including some of Jamaican heritage and with gang associations.

YY/Trident

- 55.** The appellant first refers to YY in his asylum interview. He states that YY purchased his ticket for him to return to the UK in 1999 and asked him to carry some “food” for him. He refers to YY as a “drug dealer, importer” who “ships drugs worldwide from Jamaica, smuggles traffics them”. He said that YY had a large operation and had a “good few” people working for him with money and power. He then states at Question 120 that he already knew YY because he is from “Marl Road which is linked to Waterloo 2”. The appellant has also stated that his former partner was friends with YY’s partner. From the fact that the appellant was arrested with drugs with a value of £71,000, I am satisfied that YY was involved in serious organised criminal activity and not lower-level turf rivalries. In his most recent witness statement, he states that YY has connections with the South St Andrew gang and family connections with other gangs in Jamaica. The respondent submits that this connection is first mentioned in his recent witness statement and is an embellishment, however I am satisfied that the appellant mentioned this connection in his original asylum interview in 2016 specifically at Question 120. Marl Road and Waterloo are both areas in St Andrew South.
- 56.** The appellant claims in his asylum interview to have been threatened by YY because of money owed to him. He was asked in his asylum interview if he was contacted by YY when he was released and stated, “Yes I saw him a few times”, “He said I was in debt to him. I said yeah when I come into some money, I will sort you out. He said I wasn’t moving correct. I was acting suspicious which is why they arrested me”.
- 57.** He stated in his asylum interview that he saw YY in West London “loads of times” and sometimes spoke to him and made promises to pay him when I came into money. “But then he got nicked for drugs and got deported”.
- 58.** He was asked if YY threatened him and he said “He just made it clear that he needed the money for the drugs I was arrested with. Yes he say you owe me blood. But I served 5 years for that”. He said that YY was in Jamaica and “was part of a larger operation as far as I know”. When asked if he had other people working for him, he said “a firm good few”. When

asked how wealthy YY was, he said. "They've got money they've got power". When asked how much influence has he got? He replied "They can make things happen. There's F, PJ, YY whose street name is J. They call themselves the "British crew". One of their members Mooney British or Mooney Warbus he was known and got killed the other day shot in the head by someone in Kingston. Those big fishes are not safe so imagine me".

- 59.** When asked exactly who he was frightened of he stated "it's a mixed bad(sic) now as I have nowhere to go. I fear these people I am petrified. From my past to now everything that I have told you I've been mixed up in is all catching up with me". He confirmed he was frightened of the people from the Binns Road area.
- 60.** He stated that people have long memories and "generations pick up the flag" and that people do not forget grudges.
- 61.** I am prepared to accept from the appellant's consistent evidence, his criminal profile and the fact that he was arrested importing drugs into the UK, that the appellant is known to YY and a larger criminal network and that he was threatened by YY in the past as a result of a debt. However, YY is said to have been deported to Jamaica many years ago. The appellant has not heard from him or been threatened by him since shortly after he was released from prison in 2004. His oral evidence is that he believes that YY is currently in Jamaica but that he does not know where he is.
- 62.** The appellant was given the opportunity to provide a further witness statement and it is surprising that he did not make more enquires into the current whereabouts of YY. His evidence is that people he knows in the UK have connections to YY and I give weight to the fact that the appellant did not try to ascertain his whereabouts in more detail. YY was deported to Jamaica long ago and the evidence before me is insufficient to persuade me that YY is still in Jamaica or indeed still alive. Given the seeming ability for criminal gang members to move internationally and the level of violence, either of these possibilities are plausible. The appellant's evidence is too vague in relation to YY for me to find on the lower standard that there is currently a real risk to the appellant from YY in Jamaica.
- 63.** I turn to the appellant's recent evidence in relation to attempts by Trident to obtain information from him back in 1999 and later. I am in agreement with the respondent that there is no good reason why the appellant could not have given this evidence in his asylum interview or previous witness statements and it appears to be an embellishment. In the event it matters very little either way. Even if Trident did visit the appellant and even if he did provide some limited information and refuse to become a paid informant, this does not create a heightened risk to him because on the appellant's own evidence nobody knew of these highly secretive meetings, not even his partner. The appellant did not agree to be an informant and therefore it is not possible that he could be at risk as a suspected informant.

64. The appellant has consistently expressed a fear of returning to Jamaica and he was very tearful when giving evidence. I have no doubt that he has a subjective fear of being murdered if he is returned to Jamaica and this is reinforced by the weighty evidence from the Jamaican police. The fact that he has been identified as being at risk in the area of Kingston so long after he left Jamaica is a strong indicator of the level of risk to him. Given the background evidence indicating the levels of violence and murders in Jamaica as well as the published and anecdotal evidence of British/Jamaican citizens being murdered after relocating to Jamaica on retirement it is unsurprising that he is frightened.

Risk to the appellant in the Kingston area

65. It is now conceded by the Secretary of State on the basis of the evidence from the JCF that there is a real risk to the appellant of Article 3 ECHR harm to the appellant in Kingston. This informs the holistic assessment of the risk to the appellant throughout Jamaica. It is also accepted that there is no sufficiency of protection for him in Kingston.

66. The evidence from the JCF which has been verified by the Jamaica High Commission and accepted by the respondent as genuine is as follows:

67. In a letter dated 28 June 2019 addressed to ROCK Solicitors, Karina Powell-Hood the Senior Superintendent of Police for the Jamaica Constabulary Force stated in relation to Mr AA:

“An evaluated report indicated that criminal elements within the St Andrew South area (Binns Road) are making plans to kill Mr AA on his return from the United Kingdom. The Police are mindful of the threat against Mr AA’s life”.

“Please be advised that if Mr AA is to be deported, we ask that ample notice be given prior to his deportation so that target hardening strategies may be implemented”.

68. On 6 March 2020 Desreine A Taylor from the Ministry of Foreign Affairs and Foreign Trade authenticated Karina Hood’s signature and on 16 March 2020 Tracey Blackwood described as Minister Counsellor for the Jamaica High Commission certified that signature was that of Desreine A Taylor, an authenticating officer at the Ministry.

69. On 29 November 2019 Karina Hood from the JCF wrote a further letter this time to Mrs Tracey Blackwood Minister Counsellor, Diaspora and Consular Affairs at the Jamaica High Commission.

70. “Subsequent to receiving your email, I made some checks in order to prepare a suitable response. Kindly note the following:

“Mr AA is afforded the security that is provided to all citizens and visitors to Jamaica by the State through the Jamaica Constabulary Force. We are mindful that, based on the initial assessments there is a credible threat to Mr AA’s safety, however we cannot provide 24 hour personal security to him. It is for that reason that target hardening was suggested which includes but is not limited to: relocation, a change in routine, self defense (sic) training”.

“Provisions are made for witnesses to be secured in the Witness Protection programme administered through the Ministry of Justice. These provisions apply to persons who have given statement in criminal matters that are being prosecuted by the State. Based on the information received on Mr AA, he does not qualify for the protection offered under this programme”.

- 71.** This document was also authenticated by Desreine Taylor and Tracey Blackwood.

Evaluation of risk outside Kingston

- 72.** The appellant relies on the evidence from the JCF, the Secretary of State’s CPIN and the expert report the contents of which I have summarised above as well as the appellant’s own statements and background evidence.

Expert report

- 73.** The position of the respondent is that I can attach little weight to the expert report for the following reasons which were set out at length in the updated position statement dated 21 September 2021.;
- (a) Mr Andre is not a recognised expert on Jamaican gangs,
 - (b) There is no indication that he has prepared any previous country expert reports nor that his published material has ever been peer reviewed.
 - (c) The expert assumes that the appellant will be killed like may deportees before him without attributing a source to this claim
 - (d) The expert asserts that the appellant is himself part of a criminal gang but the appellant himself makes no such assertion in either of his witness statements.
 - (e) The expert’s assertion that the appellant is a “widely known outlaw” is premised on this unsubstantiated assertion.
 - (f) A variety of the assertions made by the expert are not supported by any source of material or independent corroboration.
 - (g) The expert makes a series of assertions concerning pre-notification of deportee flights to the press, but no evidence has been adduced to support this assertion, such as who informs the press, how or why. The expert did not include any details of names which have previously been published.
 - (h) The expert was unable to locate any evidence of a Binns Road Gang and therefore cannot speculate to its reach or the forces which fuel it and the networking ability of its members. The expert therefore does not have knowledge of what alliances the gang has. If the expert is as knowledgeable on gangs as he claims, the absence of information relating to the named gang feared by the appellant undermines any suggestion that it is sufficiently influential or networked to locate the appellant throughout Jamaica.

- (i) The expert states that out of 379 gangs in Jamaica only 262 are considered active and 249 are located in police area 4. This suggests that only 13 gangs are active elsewhere in Jamaica. This supports the respondent's view that the appellant is able to relocate outside Kingston.
- (j) The expert fails to identify which other gang the appellant is at risk from (apart from the Binn's Road gang) and does not place the appellant at risk from a second-generation gang or any gang with a network/alliance across Jamaica.

74. The respondent suggests that their CPIN provides more extensive and reliable selection of source material.

75. The appellant asserts that the expert evidence can be relied upon. Ms Akinbolu submitted that the expert has set out his expertise. He has been a reporter for the Jamaica Gleaner for 10 years. He sets out his own perspective on the reach of gangs as a reporter from experience he has gained in the course of his work. He has the expertise to know the generalised risk faced by those wanted by gangs and the reach of gangs. There is no reason to disbelieve his assertion that deportations from the USA and UK are highly newsworthy. An article at page 66 of the bundle verifies this. Reports and opinion pieces in various Jamaican newspapers about the treatment of deportees from the UK corroborates what Mr Williams states about the level of interest.

76. I consider the expert evidence and the respondent's objections.

77. Mr Williams sets out his expertise in that he has been a reporter for the Jamaica Gleaner with his primary beat on crime. This would give him some knowledge of crime in Jamaica. The fact that he has not been an expert before does not preclude him from writing an opinion. He has set out those materials he has read, confirmed his duty to court and read the Practice Direction on expert reports. I am satisfied that he is qualified to write an expert opinion in his own area of expertise. Importantly he does not go outside his area of expertise, and he also honestly confirmed that he could not find a reference to a Binns Road gang which gives the report more weight. I agree with the respondent that there are a lack of source references although I also note that the expert refers to articles from the Gleaner, the Observer and Loop news as well as government statements and crime statistics provided by the JCF. These are the same sources which the respondent references and relies on in the CPIN.

78. For instance, the expert statistics on gang numbers and location appears to have been drawn from the same sources as in the latest CPIN report. The CPIN report source which are statistics from the JFC in 2021 are that there are 379 gangs of which 262 are considered active. These are the same figure provided by the expert from the same source which the Secretary of State has found to be reliable.

79. The submission that there can only be 13 active gangs outside Kingston is not made out. The CPIN details the number of gangs in each parish.

According to the CPIN by 2018 the JFC statistics state that there are gangs in every parish in Jamaica. In October 2019 Deputy Commissioner of Police Fitz Bailey noted that in 2018 in St Andrew South there were 75 gangs of which 28 were “very active”. In 2020 the Minister of National Security stated that although there are a large number of gangs in Area 4, in Area 5 there are 57 gangs and in Area One there are 51 gangs. Of the 249 gangs in St Andrew South, not all are active, so the submission that there are only 13 active gangs outside Area 4 by subtracting 249 from 262 is not sustainable.

- 80.** I have found that the appellant was in fact a member of a gang in the St Andrew’s South area for the reasons I have given above despite this not being mentioned in the witness statement. I do not find that the expert errs by describing the appellant as being part of criminal gangs. He was manifestly in a criminal gang in the UK and the expert was aware of his history of being targeted in his own area. The expert’s assertion that the appellant is a “widely known outlaw” in my view is a perhaps an imaginative use of language. However, I infer from the JCF evidence the appellant must be widely known in his own neighbourhood to be a confirmed target and the expert had sight of those letters. In any event and further for the reasons set out above I have found that the appellant has a long history of being involved in organised crime in the UK and that he has had associations with high level criminals within the Jamaican community who have been involved in international drug smuggling in addition to his involvement in a large-scale operation to supply drugs in the UK. I have found the appellant to have a significant profile and I do not find that the use of this phrase undermines the report.
- 81.** The Secretary of State submits that the assertion that the appellant is likely to be killed like other deportees is not substantiated. However, the expert had sight of the weighty evidence from the JCF which confirms a current credible and serious threat to the appellant. The assertion is substantiated. I give weight to the JCF documents and find that it is not unreasonable for the expert to conclude that the appellant is at risk of being killed based on those documents. The expert also gives examples of other returnees from the UK who have been targeted.
- 82.** I agree that the expert cannot identify a gang called the Binns Road gang. I find that this is indicative of the expert’s independence. I note however that the JCF evidence refers to criminal elements in the Binns Road area. In his original asylum interview the appellant does not refer to a gang called the “Binns Road gang” but to gangs in his local area which is near Binns Road. The expert confirms that Binns Road is popular thoroughfare in the Olympic Gardens community which falls within the most murderous police division St Andrew South. The respondent’s CPIN confirms that the Olympic Gardens Community is particularly violent and home to gangs and the JCF letter says the appellant is at risk from criminal elements in this area and indeed this is conceded by the Secretary of State. The fact that the expert could not identify a gang called “Binns Road gang” does not in my view undermine his evidence.

- 83.** My view of the expert report is that much of the report is substantiated by the CPIN which relies on the same sources as the expert report including statements from ministers, statistics from the JCF, articles in newspapers such as the Observer and indeed the Gleaner. The background material in the CPIN is consistent with much of the report.
- 84.** The report confirms that gangs often have links with other gangs throughout Jamaica. This is supported by the CPIN which confirms the expert's opinion that gangs have a reach throughout Jamaica and that this has increased over recent years. The gangs are said by the CPIN to have access to sophisticated weapons and links to corrupt police. The expert evidence does not beyond the CPIN which speaks of the splintering and proliferation of gangs and violence throughout Jamaica. Modern technology as well as the crack downs on areas by police may well have had a part to play in this.
- 85.** In my view the only area where the expert goes further than the Secretary of State is in his opinion that gang members would be aware of the return of a deportee who would be of interest.
- 86.** The Secretary of State questions how the media in Jamaica would have knowledge of deportation flights arriving and submits that the expert has not explained how this information is received. As a matter of common sense, it is not difficult to assume that relatives of potential deportees in the UK would be aware of upcoming deportations not least because of the many legal challenges that flow from these deportations and would inform family members in Jamaica. I find it plausible that the press and local population would take an interest in deportation flights from the UK as well as the USA and Canada not least because so many of the population have family living in these countries. The expert may not have explained this process in detail, however I am satisfied that as an experienced journalist, he has the expertise to speak of the press interest in such deportations and this is consistent with objective evidence in the bundle of newspaper coverage of deportations in the bundle.
- 87.** I do not find the expert evidence to be contentious or go very much beyond the Secretary of State's own CPIN and I place some weight on it.
- 88.** I agree that the expert does not explain how the gang who intends to target the appellant has the reach or means to find the appellant elsewhere in Jamaica and that he has not named a particular gang and that this is a weakness in the report. When evaluating the risk to the appellant outside of Kingston, I give more weight to the remainder of the evidence.
- 89.** As far as the appellant's own evidence is concerned, I have found that he subjectively believes that he will be targeted wherever he goes in Jamaica, and he has heard about returnees being murdered.
- 90.** My task to is to decide whether this objective fear is well-founded.

Sufficiency of protection

- 91.** In the Country Guidance case of AB (Protection-criminal gangs-internal relocation) Jamaica CG [2007] UKAIT 00018, heard on 19 December 2006 and promulgated on 22 February 2007, the Tribunal held that:

‘The authorities in Jamaica are in general willing and able to provide effective protection. However, unless reasonably likely to be admitted into the Witness Protection Programme, a person targeted by a criminal gang will not normally receive effective protection in their home area.’ (Headnote)

- 92.** The Tribunal in AB also held that

‘... it will be very important in Jamaican cases concerned with protection against a real risk of serious harm from criminal gangs, to first of all analyse whether the individual concerned will be able to receive assistance from this [witness protection] programme. Assuming it is decided a person on return will be admitted into this Programme, then we consider that the evidence overwhelmingly indicates that they will thereby be able to avoid any real risk of detection: we remind ourselves that no one has been “lost” to the programme so far. So far as the likely economic and social conditions faced by those within the Programme, whilst we do not rule out that unusual individual circumstances may make it unreasonable for them to be admitted into the programme, there is nothing to suggest that programme participants are generally exposed to destitution or unduly harsh living conditions.’

‘When we refer to persons being “admitted” into the programme, we do not consider that the test can be what the individual’s preferences are or whether there are hardships that will be involved (e.g., having to live for at least some period of time in difficult circumstances). The test is simply whether, if they sought access to it, they would be admitted to it.’ (paragraphs 162 to 163)

- 93.** The latest CPIN version 4 not before the Tribunal but does not differ from the previous one in respect of sufficiency of protection confirms that there is no reason to depart from the findings in AB.

- 94.** It states at 2.5.4:

‘The government has taken reasonable steps to establish an effective criminal justice system that is able to detect, prosecute and punish criminal actors, albeit its effectiveness is undermined by a number of structural and operational weaknesses. It has instituted a number of reforms which have led to some improvements in the availability of state protection since the promulgation of AB (see [Government response](#) and [Capability of security forces](#)). On the available country evidence, there are not strong grounds supported by cogent evidence to depart from the findings in AB’.

- 95.** The Secretary of State has accepted that there will be no sufficiency of protection for an individual who will not be able to receive assistance from the Witness Protection programme. The letters from the Jamaican Constabulary Force which the respondent concedes are genuine, confirm that the appellant will not be able to access this programme. His only recourse will be to “target hardening” techniques which include relocation, practising self-defence and carrying a weapon. On this basis I have no hesitation in finding that there will not be sufficiency of protection for the appellant if he is genuinely a target of a criminal gang.

Internal relocation- safety- the reach and intent of the gang threatening the appellant

96. In the Country Guidance case of AB, the Tribunal held that:

‘Whether such a person will be able to achieve protection by relocating will depend on his particular circumstances, but the evidence does not support the view that internal relocation is an unsafe or unreasonable option in Jamaica in general: it is a matter for determination on the facts of each individual case.’ (Headnote)

97. The Tribunal expanded on this assessment in the section on internal relocation:

‘... [The] first question to be asked is whether it is reasonably likely [a person]... will be traced and targeted in their new place of residence. As already indicated, we do not consider that, except in high profile cases, such persons would face a real risk of being detected by criminal gangs based within the [Kingston Metropolitan Area] KMA or other inner-city urban areas. But each case will turn on its own facts.

98. My starting point is the very strong evidence from the Jamaican authorities themselves that the appellant is wanted by criminal elements in the Binns Road area who plan to kill him and that there is a real, current and credible threat to his life. This is weighty evidence and indicates the strength of the interest of the gang in the appellant notwithstanding his long absence from the UK. The JCF, as the Jamaican state’s crime agency would manifestly have access to this type of information and the state itself believes there to be a threat, this indicates the seriousness of the threat. The threat is very serious, that is of death. I would not expect the JCF to divulge the source of this sensitive information. I find on this basis that the appellant is a person with a high profile. He also comes from one of the most gang ridden areas in Kingston, St Andrew South which is confirmed in the Secretary of State’s own latest CPIN.

99. At 5.3.2 it is said:

“The Jamaica Observer in its article dated 28 October 2019 reported: ‘[Deputy Commissioner of Police Fitz] Bailey noted that in St Andrew South alone, there were 75 gangs, 28 of which were very active.’ [\[footnote 58\]](#)”

100. At 5.3.3 JIS reported in May 2020:

“‘Dr. Chang [Minister of National Security] said that Area Four, which comprises the Kingston Western, Kingston Central, Kingston Eastern, St. Andrew Central and St. Andrew South Police Divisions accounted for 249 or 64 per cent of the total number of known gangs island wide.

“‘Of note, at the Divisional level, 78 of the gangs identified across the island, or 20.1 per cent, were resident within the St. Andrew South Police Division”.

101. At 5.3.4 The May 2020 Loop News article noted:

“‘...statistics [from National Intelligence Bureau (NIB) of the Jamaica Constabulary Force]... show that the vast majority of gangs are concentrated in the Corporate Area of Kingston and St Andrew... [Minister of

National Security, Dr Horace Chang] said this was consistent with historical trends...

“... St Andrew South is made up of such violence-plagued communities as Waterhouse, Tower Hill, Olympic Gardens, Seaview Gardens, Back To, Payne Land, Majesty Gardens, Whitfield Town, Waltham Park, Riverton and sections of Maxfield Avenue.’ [\[footnote 60\]](#)’.(My emphasis)

102. The CPIN also refers to

“14 June 2020: At an emergency press conference he [Andrew Holness] uses the term “super gangs” to describe the gangs, which he says are responsible for 80% of murders in Jamaica. He says they are evolving, that they are no longer community-based, but are forming networks to strengthen their organisations and target state projects. Minister of National Security [Dr Horace Chang](#) said two thirds of all gangs in Jamaica are rooted in the Kingston Central, Kingston East and Kingston West divisions, which are responsible for most of the murders in the Corporate Area.’[\[footnote 144\]](#)

103. It is manifest that some gangs are increasingly forming networks across the island and proliferating.

104. The position of the Secretary of State is that the expert is not able to identify the gang which intends to kill the appellant. Further it is said that the expert has not said if the gang is a first or second generation gang who will have the reach, intent and resources to track the appellant down outside Kingston. I find that a newspaper reporter will not have the same access to sensitive and confidential information held the JCF who is the relevant crime agency. The expert report is based on the JCF documents and he cannot be expected to be privy to this information.

105. I turn to the nature of various gangs as described in the CPIN which quotes the Royal United Services Institute (RUSI) an UK independent think tank engaged in defence and security research in the publication ‘Gangs and the Unattached Youth in Jamaica’ dated 15 March 2021. This research explains the hierarchal system of gangs.

‘Gangs fall on a spectrum ranging from the loosely organised to highly organised. Organised gangs or third-generation gangs usually have a strong and identifiable leader, as well as a formal hierarchical system with structurally assigned roles necessitating the deployment of actors to operate in specific territories. These (organised) gangs are typically characterised by high levels of violence and, commonly, access to wealth and power. Their activities involve gun and drug trade, robberies, assassinations, extortion and rape. Their criminal acts extend beyond the country of location (e.g., Shower Posse Gang), and they operate within both formal and informal economies, demonstrating unwavering access to corrupt avenues for local and transnational illicit trade.

‘Moderately organised or second-generation gangs may serve as pawns or foot soldiers for the third-generation gangs. Here, the level of violence extends beyond turf wars as actors are employed to carry out contract killings and enforce extortion orders, and usually possess consistent access to weapons to execute their criminal activities.

'Lastly, loosely organised gangs or first-generation gangs have little to no identifiable or consistent leadership and evidence low levels of cohesive activity. These gangs frequently engage in recreational activities such as the smoking of marijuana, parties, sports, and more ominous "community level" defence involving illegal guns and petty theft. They are usually comprised of delinquent and unattached youth engaged in armed conflict and turf wars with similar groups from rival communities. These gang members may work independent of the group to commit crimes since they lack a defined structure and any delineation of specialised roles.' [\[footnote 51\]](#)

106. At 5.1.8 of the CPIN: The Global Initiative against Transnational Organised Crime noted in its June 2021 report

'While criminal gangs are known to have strong ties to certain neighbourhoods, they are increasingly expanding and commuting to seize and defend turf, causing patterns of violence to spread. Gang members cite the splintering of existing groups due to internal feuds and social ties to other communities as reasons for their movement, although they also return to fiercely defend their original communities from rivals.' [\[footnote 52\]](#)

107. From the latest CPIN, I find that second generation gangs have reach outside of their locality and are able and willing to carry out contract killings.

108. The evidence in the CPIN is that there are at least 3 second generation gangs in the St Andrew South area and that there is serious corruption in police in that area.

109. I find that if the threat to the appellant were from a loosely organised gang with no cohesive activity as described above where the members play sports, smoke marijuana and engage in petty theft, the JFC enquiries would not have revealed a real and credible threat to the appellant after an absence of 25 years. For such a threat to exist and be known to the authorities, the threat must have come from a more organised criminal gang which I infer is a second-generation gang. This fits with the appellant's profile of being previously targeted in St Andrews South with attempts made on his life more than once; with his knowledge and connections to YY who he knew from his area at that time and who had links to international drug smuggling; the appellant's high level profile in the UK, where he has been involved with organised crime groups over a long period engaging in serious criminal offences including conspiracy to supply and the manufacture of class A drugs; that he has met other criminals in prison; is part of the Jamaican diaspora; knows other Jamaican nationals who are drug dealers some of whom have been deported and some of whom have been killed; and is said by probation to have had ties to gangs and weapons in the UK. I base my finding on the evidence as a whole and rely more on the JCF evidence, the CPIN and substantiated evidence such as the appellant's criminal profile than I do on the appellant's own evidence or the expert report.

110. The Secretary of State confirms that second generation gangs are likely to have links with gangsters in other parts of Jamaica and are able to carry out contract killings and this is consistent with AB.

- 111.** On this basis I am satisfied that there are substantial grounds for believing that the appellant will be traced and targeted in a different area of Jamaica by criminal elements that have the reach, means and motivation to do so and that as a result he is at real risk of serious harm contrary to Article 3 ECHR from criminal elements in the Binns Road area.
- 112.** It was not my understanding that the Secretary of State's submission is that the appellant could return to Jamaica without being identified, rather that his profile was not significant enough for him to be targeted or that the gang in question would not have the reach or intent to target him.
- 113.** In any event I find that the appellant's presence in Jamaica would not be difficult to establish. Jamaica is a small country with only a few parishes and a community-based population. The appellant confirms that his partner has ties to family and friends in Jamaica. Indeed, the appellant's evidence was that his partner was a friend of YY's partner. I find that were the appellant to be deported the word would spread amongst the friends and family of his partner. I also accept the expert's evidence that deportation is a huge topic of discussion and is usually heavily monitored by the media. I find that the expert is qualified to give this opinion being from the media and a publication quoted by the respondent in the CPIN. It is perfectly plausible that journalists would attempt to interview deportees as asserted by the expert. I would not expect the appellant to grant such an interview. Nevertheless, I accept the expert's evidence that pre-Covid the collection area was at the Mobile Reserve Headquarters in Kingston and would normally have regular persons mixed among media personnel. Further there is well documented corruption between criminal gangs and the police. The expert refers to Hunts Bay station in St Andrew South Division being rife with corruption and it is plausible that the authorities could notify local criminal elements of the appellant's return particularly as the JCF have specifically asked to be notified of his return. The appellant would not be able to isolate himself. He will need to obtain accommodation and employment and his presence in Jamaica would be shortly after arrival become known to members of the community.
- 114.** Since I have found that the appellant is at real risk of Article 3 ECHR harm throughout Jamaica, I have not gone on to make findings as to whether it would be unduly harsh for him to relocate elsewhere because of his health condition and individual profile.

Notice of Decision

The appeal is allowed on Article 3 ECHR grounds.

Anonymity Direction

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the

public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed R J Owens

Date 7 November 2022

Upper Tribunal Judge Owens

Appendix A



IAC-FH-CK-V1

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

Appeal Number: PA/09869/2018(V)

THE IMMIGRATION ACTS

**Heard remotely at Field House
By Microsoft Teams
On 10 June 2021**

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE OWENS

Between

**AA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Akinbolu, Counsel instructed by R.O.C.K Solicitors
For the Respondent: Mr Walker, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica born on 2 May 1970. He appeals against the decision of First-tier Tribunal Judge Peer sent on 15 January 2021 dismissing his appeal against a decision dated 2 July 2019 to refuse a protection and human rights claim. Permission to appeal to the Upper Tribunal was granted on 15 January 2020 by Upper Tribunal Judge Martin.
2. The hearing was held remotely and neither party objected to the hearing being held in this manner. Both parties participated by Microsoft Teams. I

am satisfied that a face-to-face hearing could not be held because it was not practicable and that all of the issues could be determined in a remote hearing. Neither party complained of any unfairness during the hearing and both parties confirmed at the end of the hearing that the hearing had been conducted fairly.

3. Appellant's Background

4. The appellant originally entered the UK in 1996 and his original claim for asylum failed. Thereafter he was removed to Jamaica in 1998. He returned to the UK using a different identity and was arrested on arrival. He has remained in the UK unlawfully since his release from prison.
5. The appellant has a number of convictions, the most serious of which are three separate offences for possession with intent to supply Class A drugs. He received sentences of five years in 1999 and 2007 and six years in 2014.
6. On 11 November 2016 the appellant was served with a Notice of intention to deport. He responded by making further representations in respect of a protection and human rights claim. The appellant contacted the Jamaican authorities to verify his safety on return. The Jamaican Constabulary Force ("JCF") provided letters about the risk to him on his return which have been verified as genuine by the respondent.
7. The appellant asserts that he is at risk of serious harm contrary to Article 3 ECHR if returned to Jamaica both from the Binns Road gang and from criminal elements connected to his previous offending.

The Respondent's decision

8. The respondent's decision is dated 22 May 2019. The respondent considers that the appellant should be excluded from asylum and humanitarian protection pursuant to s72 of the Nationality, Immigration and Asylum Act 2002. The respondent does not accept that the appellant is at risk of Article 2 or 3 ECHR harm in Jamaica. The respondent does not accept that it would be a breach of Article 8 ECHR to deport the appellant to Jamaica. He was sentenced to over 4 years imprisonment. He does not meet either exception under paragraph 399 of the immigration rules because it would not be unduly harsh for his partner nor children to remain in the UK without him. He does not meet paragraph 399A of the immigration rules because he has not been lawfully resident in the UK for most of his life. Further there are no very compelling circumstances over and above the exceptions which would render his deportation disproportionate.

The Decision of the First-tier Tribunal

9. The judge found that the s72 certificate applies to the appellant because he has been convicted of a particularly serious crime and constitutes a danger to the UK. The judge also dismissed the Article 8 ECHR claim

finding that the appellant could not meet the exceptions under the rules and that there were no very compelling circumstances which would render his removal disproportionate.

10. With respect to Articles 2 and 3 ECHR the judge found that the appellant was not a credible witness, but accepted that the events described by the appellant occurred because the claim was broadly corroborated by the objective evidence. The judge went on to find that the events were unlikely to give rise to any risk of ill-treatment in Jamaica and alternatively that the appellant could relocate within Jamaica to avoid any risk.

11. The judge dismissed the appeal on all grounds.

12. The Grounds of Appeal

13. The appellant does not challenge the judge's finding that the s72 certificate applies to the appellant, nor the findings in respect of s117C of the Nationality, Immigration and Asylum Act 2002 and paragraphs 399 and 399A of the immigration rules in respect of Article 8 ECHR.

14. The challenge solely relates to the judge's findings and conclusions in respect of Article 3 ECHR.

Ground 1: The judge fails to address the appellant's profile as a whole

15. It is asserted that the judge failed to separate out the risk profile of the appellant as a whole. The judge failed to take into account various factors. The appellant's case was not just that he was wanted by the Binns Road gang but that he is at risk from criminal elements who suspected him of informing on known gang members deported from the United Kingdom. The judge failed to take into account that the appellant would be identifiable as a deportee and easily located and that he faced enhanced scrutiny. The judge failed to identify the nature of the risk posed and his characterisation of the risk as non-specific was irrational.

Ground 2 - Standard of proof

16. The judge applied the incorrect standard of proof. There were genuine documents before the judge to demonstrate that there is a genuine and credible threat to the appellant's life. The judge imposed a significantly higher standard of proof than that necessary for a protection claim.

Ground 3 - Flawed application of the Country Guidance case when assessing risk.

17. The judge failed to apply AB (Protection -criminal gangs - internal relocation) Jamaica CG [2007] UKAIT 00018 in which the Tribunal found that if there was a real risk from a criminal gang, the availability of internal relocation was dependent on the failure to access the witness protection program.

Ground 4 - Failure to take into account the appellant's poor mental health when assessing whether internal relocation would be unduly harsh.

- 18.** The appellant produced evidence that he has post-traumatic stress disorder. The judge dealt with the medical evidence in relation to an Article 3 ECHR "stand alone" claim only but failed to consider the evidence in relation to the reasonableness of relocation in Jamaica.

Rule 24 response

- 19.** There was no rule 24 response.

Submissions

- 20.** At the outset of the appeal, Mr Walker conceded for the respondent that there was a material error of law in the decision because there was a clear evidence of risk to the appellant in the form of the letters from, the JCF. He conceded that the judge's approach to this error is perverse. He also conceded that the judge appeared to be requiring a higher standard of proof than that of a "real risk". Mr Walker did not attempt to defend the decision.

- 21.** Ms Akinbolu expanded on Grounds 3 and 4 in her oral submissions.

Discussion and conclusions

Ground 2

- 22.** This ground was conceded by Mr Walker. The standard of proof in relation to Article 3 ECHR is set out in Kacaj (Article 3- standard of proof - non state actors) Albania [2002] UKIAT 00018 and is that of a "real risk". The risk of persecution or other violation of human rights must be "real" and the standard is relatively low. This was confirmed in AM (Zimbabwe) and Another v SSHD [2018] EWCA Civ 64.
- 23.** At [109] the judge finds that the documentary evidence provides "some" support for the appellant's account that there is a threat to life and risk to him if he is returned to Jamaica. At [112] the judge accepts that the JCF clearly attribute weight to the information they hold and believe that there is a threat to the appellant. The judge also notes that the threat is current.
- 24.** The judge then at [112] goes on to raise a number of questions as to the source of the threat, the type of threat and the likelihood of the threat arising.
- 25.** At [113] the judge goes on to state;
- "I find that the evidence available to me does not demonstrate that the appellant faces loss of life or article 3 treatment with near or virtual certainty on return which is the requisite threshold".

26. This is manifestly the incorrect standard of proof and this is conceded by Mr Walker. This is repeated at [126] when the judge again refers to “near certainty of loss of life or treatment in breach of Article 3 ECHR”.
27. The judge then goes on to state that “is impossible to evaluate on the limited evidence available” to her, the potency of the threat, the likelihood of the threat being acted upon and/or the specific nature of the links to those gang related elements. It. She explains that she does not know how the report was evaluated by the JCF and that there was no concrete evidence about the source of the information to them.
28. The documents from the JCF are from the state itself and from that arm of the state who would plausibly have knowledge about threats by criminal elements. They were accepted by the respondent to be genuine as acknowledged by the judge at [109]. The respondent had an opportunity to carry out further investigations or challenge the documentation but chose not to do so. Given that the letters from the JCF were recent and categorised the risk as “credible” and to be from “known criminal elements” and involved a “risk to life”, when finding that this evidence is not sufficient to discharge the burden of proof, I am of the view that the judge has elevated the standard of proof. This is further borne out by a reference at [105] when the judge finds that “it is more likely than not” that he has been involved in violence previously and been injured in this context given his criminal history. The judge has again manifestly applied the incorrect burden of proof. I am also satisfied that the finding that the appellant is not at risk of serious harm is perverse in the light of this evidence.

Ground 1

29. This is also conceded by Mr Walker for the respondent, and I am in agreement with him for the following reasons. The appellant via his representatives provided two letters from the JCF. The first letter was from the Senior Superintendent of Police in Kingston dated 28 June 2019 and addressed to the appellant’s solicitor. The second was dated 29 November 2019 and is to a Minister Counsellor at the Jamaican High Commission. The letters which were verified by the Jamaican Ministry of Foreign Affairs and the Jamaican High Commission in the UK have been accepted by the respondent to be genuine. The letters state that the criminal elements within the St Andrew South area (Binns Road) are “making plans to kill” the appellant on his return from the United Kingdom and refer to a “threat to life”. The letter from the JCF identifies a “credible” threat.
30. In these circumstances I find that the judge has not adequately explained why she considers that the threat is “unspecified” at [113]. The finding that the risk is unspecified is contrary to the evidence and perverse. There is manifestly in the view of the JCF, a current credible risk that criminal elements are planning to kill the appellant.

- 31.** I am also in agreement that the judge erred by conflating the risk from the Binns Road gang with the risk from criminal elements due to a potential drug debt or belief that the appellant was an informer from organised crime gangs. The appellant stated in his asylum interview that a large-scale judge smuggler who had been deported to Jamaica believed that he had informed on him. The judge notes that it is recorded that the appellant was sentenced for the importation of drugs. The judge then does not take this any further in evaluating the likely motivation, reach and potential of that criminal gang to locate the appellant. The judge has also failed to address the evidence put forward by the appellant's representatives that returnees on chartered flights are regularly identified and can be located without difficulty and apply that evidence to the situation of the appellant rather than to the general risk of violence to the wider Jamaican community. I am satisfied on this basis that the judge failed to take into account relevant evidence.
- 32.** I am satisfied that Grounds 1 and 2 are made out and that the judge erred when finding that there was no Article 3 ECHR risk to the appellant. Mr Walker did not attempt to persuade me that these errors were not material.
- 33.** For the sake of completeness, I turn to the remainder of the grounds which are relevant to the issue of materiality.

Ground 3

- 34.** The judge was aware that the relevant country guidance is AB (Protection, criminal gangs, internal relocation) v SSHD [2001] UKAIT 00018 and referred to this at [33] to [36] and when turning to consider sufficiency of protection at [117].
- 35.** At [152] to [155] of AB the Tribunal found that where gangs have a serious and specific interest in targeting an individual they will be able to do this outside of their own "turf" areas unless an individual is in a witness protection programme and that there is a "protection gap". The JCF letters indicate that the appellant is ineligible for the witness protection programme and would receive advice on "hardening" such as martial arts to protect himself or relocation. The clear implication from these letters is that the police are not able to offer protection to the appellant.
- 36.** I do not agree that the judge erred by failing to follow the Country Guidance in relation to sufficiency of protection. The judge was clearly aware of the guidance and the gap in protection. The judge found that AB did not apply to the appellant because the judge was not satisfied that the appellant is an individual who is being targeted by a criminal gang based on her finding that the risk was not specific.
- 37.** I am satisfied that because the judge's underlying finding in respect to the risk is flawed that this affects the application of the Country Guidance. Had

the judge found that there was a real risk to the appellant from a criminal gang the judge may have come to a different conclusion.

Ground 4

- 38.** Finally, Mr Walker also concedes that in the paragraphs where the judge addresses the issue of internal relocation at [122] to [125] there is no mention of the appellant's mental health problems. The appellant has previously been stabbed and shot at several times in the past. He produced medical evidence from the Nottinghamshire NHS Trust and a Nurse mental health practitioner which diagnosed him as having chronic and complex difficulties and a diagnosis of depression and anxiety.
- 39.** At [124] the judge stated;
- “there was no cogent evidence before me that he was not sufficiently resilient and resourceful to relocate again including to the other side of the island or even a more rural area.”
- 40.** This finding is not sustainable in the light of the medical evidence before the Tribunal.
- 41.** I am in agreement with the appellant that the judge failed to apply the principles in Januzi v SSHD [2006] UKHL 5 where Lord Bingham held that any assessment of reasonableness of relocation must be directed to the situation of the particular appellant, whose age gender experience, health, skills and family ties may all be very relevant. Without proper evaluation of the appellant's individual situation the assessment of whether it was unduly harsh for the appellant to relocate internally is flawed. There is no evaluation by the judge on the impact of the appellant's mental health on his ability to relocate.
- 42.** Given that the issues of sufficiency of protection and internal relocation are central to this appeal and the judge's findings and the approach to internal relocation is flawed, the error is material.

Conclusion

- 43.** That part of the decision from [103] to [126] relating to the risk of Articles 2 and 3 ECHR ill treatment is set aside. The finding that there is no real risk of Article 3 ECHR harm is set aside as are the findings as to the nature and extent of the risk given that I have found these findings to be perverse and that the incorrect standard of proof has been applied. There is also an absence of findings in relation to the threat from the individual said to be a large-scale drug smuggler who arranged for the appellant to bring £71,000 of drugs to the UK.

Preserved Findings

- 44.** I preserve only the following findings from that part of the decision which has been set aside:

- a) The documents from the JCF are genuine documents which identify a current, credible risk to the appellant from an identifiable gang who are making plans to kill him.
- b) The claim is consistent with the background evidence.
- c) The appellant has been previously shot and stabbed in Jamaica.
- d) The appellant was arrested on his arrival in the UK in 1999 carrying Class A drugs which were confiscated, and he was convicted of importation.

45. Those parts of the decision relating to s72 of the Nationality, Immigration and Asylum Act 2002, Article 3 ECHR on medical grounds and Article 8 ECHR are not under challenge and the findings on these issues are preserved in their entirety including the findings that the appellant has been convicted of a particularly serious crime and is a danger to the community.

Disposal

46. I have had regard to paragraph 7.2 of the Senior President's Practice Statement and despite the fact that there are factual findings to be made in this appeal, in relation to the nature and extent of the risk to the appellant, sufficiency of protection and internal relocation, given the complexity of the issues, I find it appropriate to re-make the appeal in the Upper Tribunal.

Decision on error of law

47. That part of the decision of the First-tier Tribunal relating to Articles 2 and 3 ECHR risk of ill treatment did involve the making of an error of on a point of law such that it is unsafe and cannot stand.

48. That part of the decision of the First-tier Tribunal relating to Articles 2 and 3 ECHR risk of ill treatment is set aside as are all the factual findings in this section apart from those preserved findings above.

49. The appeal is adjourned for re-making on a date to be notified.

Anonymity Direction

50. This appeal concerns a claim made under the Refugee Convention. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings

shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Directions

51. Despite having considered the present need to take precautions against the spread of Covid-19, and the overriding objective expressed at rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and also at rule 2(2) to (4), I have reached the provisional view that it would in this case be appropriate to hear the appeal by means of a face-to-face hearing because of the extent of the oral evidence.

52. I therefore make the following directions:

- a) The Secretary of State is to file and serve, no later than 28 days before the resumed hearing, a skeleton argument/position statement addressing the following:
 - i. Is it accepted on the basis of the JCF evidence that there is a real risk of Article 3 ECHR harm to the appellant in the Binns Road area of Kingston and in Kingston in general?
 - ii. Sufficiency of protection in the light of any such acceptance
 - iii. Internal relocation
- b) The appellant is, no later than 21 days prior to the hearing, to file a consolidated up to date bundle of evidence. The relevant rule 15(2A) notices must be served in respect of any new evidence.
- c) The appellant is to file and serve a position statement/skeleton argument in response to that of the respondent no later than 7 days before the resumed hearing.
- d) Liberty for the parties to provide reasons as to why a remote hearing is required in this matter no later than 7 days after this notice is sent out (the date of sending is on the covering letter or covering email).

Signed

R J Owens

Date June 2021

Upper Tribunal Judge Owens