**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-003607
First-tier Tribunal No: HU/55499/2021
IA/13702/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 26 March 2023**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Damian Alphonso Clarke — Appellant
**(ANONYMITY ORDER NOT MADE)**

And

The Secretary of State for the Home Department — Respondent

Representation:
For the Appellant: Mr M Moksud, of Counsel, instructed by Metro Law Solicitors.
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer.

Heard at Field House on 13 January 2023

**DECISION AND REASONS**

1. The appellant, a national of Jamaica born on 3 December 1980, appeals against a decision of Judge of the First-tier Tribunal Parkes (hereafter the "judge") who, in a decision promulgated on 6 July 2022 following a hearing on 4 July 2022, dismissed his appeal on human rights grounds against a decision of the respondent of 3 September 2021 to refuse his human rights claim subsequent to the making of a deportation order on 1 September 2021 under s.32 of the UK Borders Act 2007.

2. Deportation action was commenced after the appellant was sentenced to a period of imprisonment of 4 years 2 months and 9 days at Croydon Crown Court following

his conviction on 19 November 2019 at Bromley Magistrates' Court of being knowingly concerned in the importation of Class A controlled drugs and breach of bail.

3. According to the decision letter, the appellant has used various aliases and dates of birth, including the name Kenardo Alphonso Baker (mentioned below).

4. The appellant's human rights claim was based on his length of residence, his relationship with his partner ("MT") and their son ("DA"), his relationship with his family in the UK including his sister, "DC", who has health problems. In addition, it was argued that the appellant cannot return to Jamaica as it has been many years since he lived there; he has no family in Jamaica and there would be insurmountable obstacles to his doing so. It was his case before the judge that the circumstances overall amounted to very compelling circumstances over and above those in section 117C(4) and (5) of the 2002 Act (para 14 of the judge's decision).

5. The grounds are as follows:

(i) Ground 1 (paras 5-9 and the first sentence of para 10 of the grounds): The judge erred in finding that it would not be unduly harsh for the appellant's partner and his son to relocate to Jamaica with the appellant. The partner and son are both British citizens and have never been to Jamaica. The partner works in the United Kingdom. She and the appellant have been in a relationship for 11 years. The partner would not be able to relocate to Jamaica easily. The son was born in the United Kingdom. It would be against his best interests for him to leave the United Kingdom. It would be unduly harsh for them both to remain in the United Kingdom if the appellant is removed.

(ii) Ground 2 (para 11 of the grounds): The judge failed to address para 276(1)(vi) of the Immigration Rules and failed to consider whether there were very significant obstacles to the appellant's reintegration in Jamaica. The appellant has lived in the United Kingdom for more than 20 years. He has nothing to return to in Jamaica. He has a strong family life in the United Kingdom. It would be impossible for him to leave his partner and child and live in Jamaica.

(iii) Ground 3 (para 12 of the grounds): The judge failed to provide reasons how the appellant's deportation would impact upon the best interests of his son. The appellant's deportation would not be in his son's best interests.

(iv) Ground 4 (para 3 of the grounds): The judge failed to consider the impact of deportation on the appellant's mother.

(v) Ground 5 (para 4 of the grounds): The judge considered Article 8 outside the Immigration Rules briefly and in one sentence at para 47 which reads: "*There is nothing in the appellant's case that would justify allowing the appeal outside the Immigration Rules under article 8."* The appellant's Article 8 claim deserved to be considered at great length, given that he has a partner, child, mother, siblings and extended family members in the United Kingdom.

6. At the commencement of the hearing, Mr Moksud accepted that para 13 of the grounds is incorrect in contending that the deportation of a foreign criminal under section 3 (5) of the Immigration Act 1971 (the "1971 Act") is discretionary and that evidence of serious or persistent criminality must be proved before any deportation order is made. I agree, for two reasons. Firstly, it ignores the fact that the deportation order made in the instant case was made under s.32 of the UK Borders Act 2007 and not under s.3(5) of the 1971 Act. Secondly, it is plain that the respondent's decision was made not on the ground that the appellant was a persistent offender but on the ground that he had been sentenced to a period of imprisonment of at least 4 years.

Immigration history

7. At para 16 of his decision, the judge said that there appears to be some confusion about the appellant's immigration history. It appears that he entered the United Kingdom on 29 March 1998 on his own passport. He was given temporary admission but he was then removed in July 1998. He re-entered in September 1998 on a false passport. An application on 30 March 2010 for leave to remain under Article 8 was refused, the refusal subsequently being maintained on 29 July 2021 upon reconsideration at the request of the appellant's then solicitors. Upon making an application on 28 February 2012 for leave to remain on human rights grounds, he was granted leave to remain on 23 April 2013 for 30 months valid until 23 October 2015 as he had provided sufficient evidence to show a genuine and subsisting relationship with his son, DA.

8. The judge noted at para 17 of his decision that the appellant therefore had not had leave since October 2015.

The appellant's criminal convictions

9. The judge described the appellant's criminal convictions at para 18 of his decision. In March 2001, the appellant was cautioned for possessing cannabis. He first before the criminal courts in May 2011 at Birmingham Magistrates Court for a number of offences including possession of cannabis, various driving offences and obstructing a constable. He was convicted of an offence of possession of cannabis in March 2013. In that same year, he was arrested for the drugs importation offence. He did not surrender to bail and did not finally appear before the courts until 2019.

The judge's decision:

10. In what follows under this section of my decision, I have had to pull together what the judge said on a particular issue, although by and large his decision does follow a logical pattern.

11. In relation to the appellant's use of the name Kenardo Baker, the judge noted (para 23) that the deed poll by which the appellant changed his name to Kenardo Alphonso Baker is dated October 2014 and the deed poll by which he changed his name back to Damian Clarke is dated 4 November 2019. He then set out the appellant's explanation for the change of name at para 20 which reads:

> 20. … In the course of the evidence the Appellant said that the name used in this appeal is his real name and he changed to it to Kenardo Baker as he did not like the name Damian, this was supported by his partner. He

> changed it back as he could not get a Jamaican passport. He denied that he had changed his name to avoid the Police between 2013 and 2019. The Appellant also admitted to having used a number of different names, including that of his brother, when stopped by the Police when he was in the UK illegally. The Appellant did not recall using the name Smith although that is recorded on the PNC.

12. It is clear from paras 22-23 that the judge did not accept the appellant's explanation of the reason for his name change, observing (para 23) that *"[t]he period of time by which he was known by a different name encompasses the time that the Appellant was wanted by the courts following his failure to attend the Crown Court in August 2013 and the change back follows the execution of the bench warrant at the start of the November 2019"*.

13. At paras 24-26, the judge considered the information that the appellant gave in his 2016 application for leave to remain, as follows:

(i) The judge noted that the appellant stated in his application form at section 6.5 that he had never been charged in any country with a criminal offence for which he had not yet been tried in court, observing that this was not true following from his failure to attend court in August 2013.

(ii) The judge did not accept that there was an error by the appellant when he stated, at section 6.2 of the application, that he had no convictions given that the guidance made it clear that this included road traffic offences. The judge found that: "*… to have revealed his previous convictions would have risked his triggering the execution of the bench warrant"*.

(iii) At para 26, the judge noted that, at section 5 of the form, gave details of his accommodation, being the address of the flat of his sister, DC, but the appellant indicated in the form that the flat was privately rented by him and that he lived there alone. The judge then observed:

> … Given that it is the Appellant's case that he provides support to his sister it would be surprising if he had forgotten that he lived in her flat and the implication appears to be that giving her details might have had undesired consequences. These points alone inform the assessment of the Appellant's credibility and those of the underlying claims about his circumstances, they do not in themselves inform the final decision on proportionality.

14. At para 32 of his decision, and referring to the appellant's 2016 application, the judge observed that the application was made when the appellant had failed to surrender to bail and was wanted on a bench warrant and that he failed to mention in his application that he was wanted by the police or the nature of the charges that were outstanding.

15. At paras 29-34 and 36-37, the judge considered the evidence from or relating to the appellant's partner MT and his sister DC and set out at para 38 his conclusion on the evidence concerning the appellant's whereabouts and the claims made in the evidence about the strength of his relationship with his son DA and his partner MT. Paras 29-34 and 36-38 read:

"29. The Appellant's circumstances over the years were not as clear as they might have been either. The Appellant's child [DA] is his son who was born on the [dd.mm.2011]. His mother is the Appellant's partner, [MT] whose witness statement is at page 27. The Appellant said that he had been granted 30 months leave to remain as the spouse of [CH] in 2013. The application had been made on the 28th of February 2012 and the relationship with her had started in 2010, at the time of the application he had been living with her, they married in 2012. They have not divorced as the Appellant does not know where she is. The relationship broke down sometime in 2013, he did not recall when.

30. Cross-examined about his relationship with his partner who he referred to by her middle name, [MT] the Appellant said that started about 11 years ago and agreed it was about 2010. He had not been in 2 relationships at the same time and said that there had been a break in one when seeing the other. His 11 year relationship with [MT] had been continuous.

31. The solicitors covering letter, dated the 25th of February 2016, at page 234 suggested that the Appellant arrived in March 1998 as a visitor with a valid visa. It also stated that he had been granted leave to remain as the parent of [DA] and the spouse of [CH] but the relationship with his spouse had broken down.

32. …

33. The Appellant's account of his relationship with [MT] is not what she said. From her point of view they had been in a relationship since 2011, [DA] had been born on [dd.mm.2011] and they had lived together in 2012 and 2013. As far as she was aware he had not been in another relationship although she did know he had married someone else, she did not know the year. Told that he had married in 2012 there was a pause before she said that it was at the start of 2012. When [DA] was born there had been difficulties, she was not in a good place and that affected their relationship, they were apart for 4 or 5 years.

34. Although not in a relationship the Appellant had always been there for them but she did not know where he had been living. She thought he had been living in Birmingham but added he spent time in London where he has family and he supports his sister who had mental health problems.

35. …

36. The Appellant's sister, [DC], gave evidence that since his release from prison the Appellant regularly stays with her at her address in [xyz] providing support to her with her bi-polar disorder and medication. She has a social worker who asks her which family members are around. The Appellant last stayed for 3 or 3 *[sic]* a few months ago.

37. There is additional evidence relating to [DC] at page 104 from Hendrix Famutimi, her Mental Health Social Worker, date *[sic]* the 10th of January 2022. The letter outlines the difficulties that [DC] has with the Appellant's current situation and what may happen. The letter names their mother, [J] as [DC's] carer and states that her mother, brothers and sisters help support her taking it in turns to stay and provide support for her and her daughter.

> **38. The shifting sands of the accounts of the Appellant's whereabouts and relationships undermine the claims made about the strength of his relationship with both his son and [MT]. The Appellant's living arrangements do not appear to have been consistent over the years when he was not in prison and he still spends time in London. When added to the time spent in prison it does not suggest that the Appellant is a constant feature in the lives of [MT] or [DA]**."

(my emphasis)

16. At para 40, the judge found that the relationship between the appellant and MT was not as committed as claimed particularly from the appellant's point of view and the relationship between the appellant and DA was not as committed as circumstances would permit. Para 40 reads:

> **"40. I accept that the Appellant and [MT] are in a relationship but, against the background discussed above, it is not strong or as committed, particularly from the Appellant's point of view, as it could be. Similarly while the Appellant is the father of [DA] and has a parental relationship with him the absences indicated by the evidence suggest that the Appellant's presence in the UK and contact he has is not as committed *[sic]* circumstances would permit."**

(my emphasis)

17. A number of individuals had submitted letters of support in the appeal which the judge considered at para 39. The judge said that their descriptions of the appellant in glowing terms, and as "*honest*", "*reliable*" and of "*good character*" amongst others "*would call into question how well they actually know him. I would accept that in the interactions between the writers and the Appellant they may have positive experiences but that is only part of the picture."*

18. In relation to the ability of the appellant to reintegrate in Jamaica, the judge said, at paras 28 and 42:

> "28. The fact that the Appellant was able to set up a limited company to hire out cars and to deal with the associated paperwork indicates a degree of resourcefulness and ability. It undermines the appellant's claims not to have understood the questions put in the 2016 application form. It also indicates suggests *[sic]* that the Appellant has a number of abilities and approach that he can put to use when required. I bear in mind that this was done when he was at large and so in a very precarious position, in criminal law and immigration law terms.
>
> 42. The Appellant has lived in Jamaica and has, during his time in the UK, shown that he is resourceful and adaptable and can provide for himself in difficult circumstances. I accept that Jamaica will have changed in the years that he has been in the UK but having managed to transfer to the UK there is no evidence to show that he would be unable to make the return transfer back to Jamaica."

19. At paras 43-47, the judge drew the strands together and set out his conclusions on the exceptions in s.117C(4) and s.117C(5) and Article 8 and follows:

"43. Considering the exceptions set out in section 117C(4) the Appellant has not been lawfully resident in the UK for most of his life. The bulk of his time in the UK appears to have been without leave of any sort. The Appellant's claim to integration is undermined by his convictions, willingness to live here illegally and evade the Police when wanted on warrant. I do not accept that it can be said that there are very significant obstacles to his reintegration to Jamaica. The unwillingness of his partner and son to move there with him is evidence of the choice they intend to make, it is not an obstacle to his reintegrating.

44. With regard to section 117C(5) **while the Appellant is in a genuine and subsisting relationship with [MT] and has a parental relationship with their son [DA] the closeness of the relationships has been exaggerated.** For the reasons given above it would not be unduly harsh for them to move to Jamaica with the Appellant nor would it be unduly harsh for them to remain in the UK in his absence.

45. **The evidence of the parental relationship is not so strong as to suggest that [DA's] best interests require his presence.** [DA] will continue living with his mother and his circumstances will not change dramatically. I accept he will miss the Appellant as will [MT] but the evidence does not show that the effect on their arrangements could be said to be unduly harsh.

46. **The effect on others is a relevant consideration. In this aspect of the case it is the position of [DC] which is the strongest.** It is not disputed that she has mental health problems and that she needs family support in maintaining herself and keeping to her treatment regime. From the Mental Health Social Worker's letter it is clear that she receives support from a large circle of family members and while the Appellant does provide support the last time was a few months ago for a few days. It is not the case that the Appellant provides a significant or regular level of support and there is a large body of individuals available to do so. I accept that his sister would miss the Appellant and harbour fears for the future but she has access to support from her family and medical professionals.

47. Taking all of the above into consideration I find that the evidence does not show that there are very compelling circumstances over and above those in sections 117C(4) and (5). There is a strong public interest in the deportation of foreign national offenders as reflected in the Immigration Rules and the 2002 Act and the evidence does not show that, considering the Appellant's immigration and offending history, that *[sic]* his private and family life is such that the public interest is outweighed. In short the Appellant's deportation is proportionate and would not place the UK in breach of its international obligations. **There is nothing in the Appellant's case that would justify allowing the appeal outside the Immigration Rules under article 8."**

(My emphasis)

## ASSESSMENT

20. Although Mr Moksud began with ground 5, this is best left until I have dealt with the remaining grounds.

21. I begin with ground 3.

Ground 3

22. I asked Mr Moksud what evidence there was before the judge of the impact on the appellant's son of the appellant's deportation. Mr Moksud referred me to paras 8, 9, 10, 12, 16 and 18 of MT's witness statement.

23. Mr Moksud also referred me to the letter from MT to the appellant whilst the appeal was in prison, at page E21 of the respondent's bundle. He submitted that this letter shows that, even when the appellant was in prison, the appellant's partner kept him informed about his son and is therefore evidence of the relationship in the family.

24. Mr Moksud submitted that the judge failed to consider the best interests of the appellant's son, what would happen to the son without the appellant, how he would cope without the appellant and how the family would cope financially. The judge's finding in the first sentence of para 45, that the evidence of the parental relationship between the appellant and DA was "*not so strong as to suggest that [DA's] best interests require his presence*" was drawn too narrowly and inadequately reasoned, in Mr Moksud's submission.

25. In considering ground 3, I have carefully considered the evidence to which I was referred. The relevant parts of the witness statement of MT dated 12 January 2022 (AB/11-13) read:

> "8. Damian is a good partner to me and good father to my son. Respondent wants to deport my partner from the UK and this deportation will have a drastic impact on me and my family in every aspect.
>
> 9. Apart from our biological son [DA], I have a son of 20 years of age from my previous relationship. Damian helps my sons with their day-to-day activities. I cannot imagine the difficulties my sons will go through if Damian is to be removed to Jamaica.
>
> 10. I depend on Damian as he financially helps running our family home and he helps my sons financially.
>
> 11. … He continues to be a good father for [DA].
>
> 12. The love we have for Damian and he has for us is precious. The bond that we have as a family should not be broken.
>
> 13. I can confirm that Damian has genuine and subsisting relationship with his son [DA]. …
>
> 14. Regarding our son [DA], the Respondent has asserted that he could move to Jamaica to be with his father. In this regard, I would state that both my children were born here and are British citizen *[sic].* There are insurmountable obstacles to continue that relationship outside UK.
>
> 15. …
>
> 16. … If Damian is removed, his son would be deprived of fatherly love and affection.

17. …

18. Our son [DA] has not done anything wrong to deprive him of his father's love and affection. Damian means a lot to his child."

26. I have also noted that the appellant's mother said at para 13 of her witness statement dated 11 January 2022 (AB/15-17) that *"… [the appellant's] son [DA] loves and adores his father to bits"*.

27. In my view, MT did not explain in her witness statement precisely how the appellant's deportation would impact upon DA if he remained in the United Kingdom without the appellant, nor did the appellant's mother in her witness statement. For example, para 16 of MT's witness statement states that DA would be deprived of fatherly love and affection and para 13 of the mother's witness statement states that DA loves and adores his father to bits but neither explain precisely these issues would impact DA if the appellant is deported.

28. The letter from MT to the appellant at page E21 of the Home Office bundle written whilst the appellant was in prison does show that MT mentioned their son DA in the letter and, to that extent, Mr Moksud correctly submits that the letter shows that MT kept the appellant informed about his son and this therefore is relevant in assessing the relationship between the appellant and DA and, I would accept, between the appellant and MT. However, as in the case of her witness statement, this letter does not provide any detail about the impact upon DA of the appellant's deportation.

29. Bearing in mind what I have said about MT's witness statement and her letter at page E21, I do not accept that the judge erred in law as contended in ground 3. His decision could only deal with the evidence that was before him. The mere fact that the judge did not mention, in terms, the contents of the specific paragraphs of MT's witness statement quoted above and/or her letter at page E21 of the Home Office bundle does not mean that he did not take it into account in his assessment of DA's best interests.

30. As there was nothing before the judge that detailed the impact that the appellant's deportation would have on DA, he did not err in law by failing to explain how the appellant's deportation would impact upon DA. Indeed, he would have been speculating precisely on the basis of generalised notions of how a parent's deportation may impact upon a child, whereas the main point made by Mr Moksud against the judge's decision was that the judge's findings were generalised.

31. There was no report from a social worker explaining the impact of deportation on DA. There was no evidence before the judge how DA would cope without the appellant and no evidence of how the family would cope financially. The judge could not therefore have dealt with these issues, contrary to Mr Moksud's submission.

32. The judge reminded himself at para 5 of the duty under s.55 of the Borders, Citizenship and Immigration Act 2009. He found at para 40 that the appellant's absences from DA's life suggest that the contact he has had with DA is not as committed as circumstances would permit. At para 45 he found that the evidence of the parental relationship was not so strong as to suggest that DA's best interests required the appellant's presence in the United Kingdom, that DA would continue living with his mother and that, whilst he will miss the appellant as will MT, the

evidence did not show that the effect on their arrangements could be said to be unduly harsh.

33. In all of the circumstances, and given the evidence that was before the judge, I have concluded that the judge did not err in law as contended in grounds 3. I do not accept that he failed to consider DA's best interests. I do not accept that he did not give adequate reasons for his finding at para 45 that the evidence of the parental relationship between the appellant and DA was *"not so strong as to suggest that [DA's] best interests require his presence*". Given the evidence that was before him, I am satisfied that he gave adequate reasons for his finding that DA's best interests did not require the appellant's presence.

34. Ground 3 is not established.

Ground 1

35. Mr Moksud submitted that the judge's finding that it would not be unduly harsh for MT and DA to move to Jamaica or remain in the United Kingdom was too generalised. In addition, he failed to explain how MT and DA could move to Jamaica having had no experience of living there. The judge should have considered the impact on MT and DA of leaving the United Kingdom and starting a new life in Jamaica. They are both British citizens. DA is only 11 years old.

36. Mr Moksud referred me to para 46 of the judge's decision where the judge accepted that the appellant's sister DC would miss him and harbours fears for the future but states that she has access to support from her family and medical professionals. Mr Moksud submitted that this conclusion was drawn by the judge too quickly.

37. Mr Moksud accepted that the grounds did not challenge the judge's assessment of the evidence in relation to the DC. He therefore did not have permission to argue this point. Accordingly, it is not necessary for me to deal with this submission. In any event, the judge did consider the evidence in relation to DC, see para 46. The submission that the judge's conclusion was "*drawn too quickly*" simply does not establish any error of law.

38. I shall therefore turn to ground 1 as advanced in the written grounds and the remainder of Mr Moksud's submissions in relation to ground 1.

39. In reaching his finding that it would not be unduly harsh for the appellant's partner MT and his son DA to relocate to Jamaica, the judge expressly referred to the fact that MT and DA had not lived in Jamaica – see the first sentence of para 41. However, he said, at para 41, that *"[c]hildren move around globally in large numbers on a daily basis etc …".* I accept therefore that, in making his finding that it would not be unduly harsh for DA to live in Jamaica, the reasons given by the judge were based on generalised notions of the mobility of children around the world as opposed to focusing on the evidence that was before him.

40. However, even if this amounted to an error of law, I am satisfied that it is not material to the outcome. This is because the fact is that the judge also found that it would not be unduly harsh for both MT and DA to remain in the United Kingdom without the appellant. In reaching *these findings*, the judge plainly took into account

and considered all relevant evidence, including his assessment of the evidence concerning how close the appellant was to MT and DA and how close they were to him in reaching his finding that the relationships were not as strong or as committed as they could be, particularly from the appellant's point of view (para 40).

41. It is simply not the case that the judge failed to consider the best interests of DA, as I have already said in the context of ground 3.

42. Ground 1 therefore does not establish that the judge materially erred in law.

Ground 2

43. Mr Moksud submitted that the relevance of para 27 of the judge's decision to whether there were very significant obstacles to the appellant's reintegration in Jamaica was not clear. He submitted that the judge's finding at para 43 that he did not accept that there were very significant obstacles to the appellant's reintegration in Jamaica was drawn too narrowly and not adequately reasoned. The appellant has nothing to return to in Jamaica.

44. I pointed out to Mr Moksud that the grounds contended that the judge had failed to consider para 276ADE(1)(vi) of the Immigration Rules but did not contend that the judge failed to give adequate reasons for his finding that there were no very significant obstacles to the appellant's reintegration in Jamaica. Mr Moksud responded by stating that the judge did not mention para 276ADE(1)(vi) at all. He submitted that the fact that the judge had referred to s.117C(4) of the Nationality, Immigration and Asylum Act 2002 was insufficient.

45. There is no substance in ground 2, for the following reasons:

46. Mr Moksud's submission that the judge erred in law by failing to mention or consider para 276ADE(1)(vi) of the Immigration Rules notwithstanding that he considered s.117C(4) is not only misconceived but devoid of merit. Paragraph 276ADE(1)(vi) does not apply in deportation cases. The relevant legislative provision in deportation cases is s.117C(4) which the judge therefore correctly applied, the equivalent Immigration Rule being para 399A.

47. The submission that the judge failed to consider whether there were very significant obstacles to the appellant's reintegration in Jamaica is also devoid of merit. He plainly did consider the issue – see paras 28 and 42-43 of the judge's decision.

48. Ground 2 as advanced did not include a ground that the judge did not give adequate reasons for his finding that there would not to be very significant obstacles to the appellant's reintegration in Jamaica. Accordingly, Mr Moksud does not have permission to argue this ground. In any event, the judge did give adequate reasons for his finding – see paras 28, and 42-43.

49. I have therefore concluded that ground 2 is not established.

Ground 4

50. Mr Moksud submitted that the judge failed to consider the impact of deportation on the appellant's mother.

51. I have considered the witness statement of the appellant's mother, paras 17 and 19-21 of which are the most relevant. These read:

> "17. If Damian is removed from the UK it will have a major impact on me, all my children and his family. I have severe arthritis which effects my mobility. Damian supports me with shopping and other things that I need. If Damian is sent back to Jamaica, I will never be able to see my son again because due to my health issues I am unable to fly. If Damian is deported it would have a major detrimental impact on the whole family. He is a fantastic role model to my grandchildren and helps my daughters [DC] and [N] to look after their girls whilst they are at work. I am unable to do this due to health conditions and not being in the right mind to be able to do it due to being under stress with what is happening to Damian.
>
> 18. …
>
> 19. My daughter [DC] suffers with mental health issues and has been diagnosed with Bipolar. Damian and I are the only family members who have the time and capability to support my daughter [DC].
>
> 20. I am 61 years old and struggle to help my daughter, if Damian is sent back to Jamaica, we will have no one to help us. [DC] has been admitted in on out of hospital with mental health issues. If Damian was not here [DC's] daughter would have gone into social services because there was no one to look after her daughter because I am incapable of doing so.
>
> 21. Damian supports [DC] mentally now she is out of hospital by keeping her mind positive and is always there to help her with her daughter [A] when she is dealing with very low times and cannot get out of bed due to severe depression. [DC] has told me if Damian is sent back to Jamaica, she will end her life because without him she can't survive or manage. I am scared and concerned of what would happen to Damian. We need him, without his support I know it will be detrimental to all of us."

52. The judge referred to and considered the evidence relating to DC at paras 36-37 and 46. His assessment of the evidence relating to DC is not challenged in the grounds. He was aware that the appellant's mother provides care for DC along with other family members including the appellant, all of whom take turns to do so. At para 46, the judge found that it was not the case that the appellant provided a significant or regular level of support and that there is a large body of individuals available to do so. He also found that DC would miss the appellant and harbours fears for her future but she has access to support from her family and medical professionals. In view of these findings, the judge did not err in law in failing to engage with the content of paras 19-21 of the witness statement of the appellant's mother to the extent that she described the difficulties that the appellant's deportation would present for her in terms of providing care for DC and the impact upon DC's mental state of the appellant's deportation.

53. That leaves para 17 of the mother's witness statement. Judges are not obliged to refer in terms to every single aspect of the evidence before them. In the instant case, the judge said, in the first two sentences of para 46:

> "46. The effect on others is a relevant consideration. In this aspect of the case it is the position of [DC] which is the strongest…."

54. By stating that DC's position was the strongest, the judge was plainly aware of and took into account the evidence and circumstances relating to the remaining members of the appellant's family, including his mother. He would not otherwise have been able to say that DC's position was strongest. The fact that he said that DC's position was the strongest shows that he must have compared the evidence relating to her position with the evidence before him that related to the position of the appellant's other family members. I therefore do not accept that the judge failed to take into account the impact of deportation on the appellant's mother.

55. Ground 4 is therefore not established.

Ground 5

56. Mr Moksud confirmed that ground 5 relates to the last sentence of para 47 of the judge's decision. He submitted that this was a very short conclusion about the appellant's Article 8 claim. There was a lot of evidence before the judge which the judge did not consider notwithstanding the words at the beginning of para 47 where the judge said: *"Taking all of the above into consideration…".* There were a lot of witness statements before the judge, i.e. a witness statement from his mother, his three sisters, partner and other individuals. There was evidence of his certificates and education, evidence that he had worked in the United Kingdom and had had a car hire business. He had lived in the United Kingdom since 1998 and had not returned to Jamaica since then.

57. There is no substance at all in ground 5. In the first place, it ignores para 64 of the judgment of the Court of Appeal in Singh and Khalid v SSHD [2015] EWCA Civ 74 where Underhill LJ said:

> "64. … there is no need to conduct a full separate examination of article 8 outside the Rules where, in the circumstances of a particular case, all the issues have been addressed in the consideration under the Rules."

58. I have already dealt with the witness statement of the appellant's mother and his partner MT. The judge considered other supporting letters from a number of individuals at para 39. He specifically took into account the evidence that the appellant had had a car hire business in the United Kingdom (see paras 27-28). He was plainly aware that the appellant has been living in the United Kingdom since 1998, given that he specifically mentioned at para 16 that the evidence appeared to be that the appellant first arrived in March 1998, he was removed in July 1998 and re-entered in September 1998. The evidence of the appellant's certificates and education in the United Kingdom, whilst not mentioned in terms by the judge, go to *support* the judge's finding that there would not be very significant obstacles to the appellant's reintegration in Jamaica, as opposed to detracting from it, and thus does not assist the appellant's in his Article 8 claim.

59. For all of the reasons given above in relation to all the grounds, it has not been shown that all of the issues had not been adequately addressed by the judge in his consideration of the appellant's case under the Immigration Rules. It follows that the final sentence of para 47, even without the opening words of para 47, amounted to an adequate disposal of the appellant's Article 8 claim.

60. Further, and in any event, ground 5 ignores the judge's entire reasoning in the preceding paragraphs, all of which was incorporated into the judge's assessment of the Article 8 claim by the words "*Taking all of the above into consideration…"* at the beginning of para 47.

61. I have therefore concluded that ground 5 is not established.

62. In conclusion, the judge did not materially erred in law. The appellant's appeal to the Upper Tribunal is therefore dismissed.

## Decision

The making of the decision of the First-tier Tribunal did not involve the making of any error of law sufficient to require it to be set aside.

Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed
Upper Tribunal Judge Gill Date: 3 February 2023

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**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**