IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002334
First-tier Tribunal No: PA/00530/2021
HU/50821/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5 April 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AR
(Anonymity Order made)

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Ms A Seehra, instructed by Cale Solicitors

Heard at Field House on 20 February 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing AR's appeal against the respondent's decision to refuse his protection and human rights claim following the making of a deportation order against him.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and AR as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a national of Jamaica born on 20 January 1993. He claims to have entered the UK in 2000 at the age of seven years. He was granted indefinite leave to remain on 26 January 2010 following a previous unsuccessful application.

4. On 9 July 2012, the appellant was convicted of manslaughter, possessing a forearm with intent and possession of a prohibited weapon, for which he was sentenced to 20 years' imprisonment. The circumstances of the conviction, as set out

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in the OASys report, are that he was 18 at the time of the offence and was part of a five man group that attacked and shot the victim on 6 August 2011 following a confrontation outside a nightclub. One of the group of five shot the victim and it was found that the appellant knew that that person was in possession of a gun and that it was likely to be used to inflict serious injury. He was found not guilty of murder, but guilty of manslaughter. The appellant was also found to have fired the same gun at a group of men outside the nightclub after the shooting of the victim.

5. As a result of his conviction, the appellant was served with a decision to deport him in accordance with section 32(5) of the 2007 Act, dated 15 June 2019, and he was invited to provide reasons why he should not be deported. He made written representations in response, on 12, 17, 26 and 30 July 2019, in which it was claimed that he would be in danger if returned to Jamaica and that he had established a private life in the UK such that his deportation would breach his human rights. On 31 July 2019 the respondent informed the appellant that section 72 of the Nationality, Immigration and Asylum Act 2002 applied to him and he was invited to seek to rebut the presumption under section 72 that he had been convicted of a particularly serious crime and constituted a danger to the community. He was interviewed about his asylum claim on 14 August 2019 and he made further representations on 17 December 2019.

6. On 3 November 2020 the respondent signed a Deportation Order against the appellant and made a decision to refuse his protection and human rights claim. In that decision the respondent considered that the appellant was a danger to society and certified that the presumption in section 72(2) of the NIAA 2002 applied to him and that Article 33(2) of the Refugee Convention applied such that the Convention did not prevent his removal from the UK. The respondent also considered the appellant's claim for humanitarian protection, noting that he claimed to be at risk from the same person who had shot and killed his father in Jamaica on 2011 and had shot and killed his cousin a year later, and that he would be homeless and destitute if he returned to Jamaica. The respondent considered that the appellant's fear of persecution was based upon speculation and subjective fears and that he would not be at risk on return to Jamaica. It was considered that there was a sufficiency of protection available to him and that he could also relocate to another part of the country. The respondent did not accept that the appellant would be destitute if he returned to Jamaica and concluded that he was not at risk on return and that his deportation to Jamaica would not breach his human rights. The respondent noted the appellant's claim that he suffered from ADHD but considered that he could access treatment in Jamaica. The respondent found that the appellant did not qualify for humanitarian protection and that he was excluded from a grant of humanitarian protection in any event, under paragraph 339D of the immigration rules, as a result of his conviction and sentence. As for Article 8, the respondent noted that the appellant did not have a partner or children in the UK and concluded that there were no very compelling circumstances outweighing the public interest in his deportation.

7. The appellant appealed against that decision on asylum, humanitarian protection and human rights. His appeal was heard on 28 January 2022 in the First-tier Tribunal by Judge Manyarara, at which time the appellant's representative confirmed that he was no longer pursuing a claim under the Refugee Convention and that the live issues were Article 3 and 8. The appellant and his aunt gave oral evidence before the judge. The appellant had been released on licence at that time and was granted immigration bail on 18 November 2021, since when he had been living with his aunt. The judge recorded the appellant's evidence, that he had lived in the UK since the age of seven and had been looked after by his maternal aunt since birth, joining her in the UK after

she came here in 1999. He had no contact with his mother and did not know where she was and he had no family in Jamaica. He had been educated in the UK and had attended a specialist secondary school after being diagnosed with ADHD and had attended college prior to his conviction. He had completed various courses in prison and had been an enhanced prisoner prior to leaving custody. His father had been shot and killed in Jamaica in 2011 and he feared the people who had killed him. He also feared being homeless. He did not know the names of the family members who had murdered his father, how they were related to him, whether the police had arrested them or whether the police had taken any action to apprehend them. His aunt had travelled to Jamaica in 2011 to identify his father's body but his family had not travelled to Jamaica since then.

8. The judge recorded the appellant's aunt's evidence, in which she named the person who had killed the appellant's father, her brother, and said that that person had also killed another family member, a cousin, who had returned to Jamaica from another country, about a year later. She had found that out when attending the funeral of her brother in 2011 and she heard that the reason for the murder was jealousy. She had not heard any more about him since then. No family members had returned to Jamaica since 2012. At that time they went there to attend a wedding but did not go to their home area. The appellant's aunt had also explained in a letter that the appellant's father had migrated to the UK in 1995 and had decided that the appellant should join him in the UK in 1997 but had been arrested when the appellant arrived and had been deported to Jamaica. The family member who had killed the appellant's father was still at large and seemed to be targeting family members returning to Jamaica from the diaspora.

9. The judge found the appellant's aunt to be a credible witness. She had before her a country expert report which addressed the issue of the vulnerability of deportees from Jamaica and considered that the conclusions in the report sat well with the fears described by the appellant's aunt. She accepted that the appellant had established a real risk of serious harm on return to Jamaica, that there was not a sufficiency of protection available to him and that it would be unduly harsh to expect him to relocate to another part of the country. The judge considered the appellant's claim that he would be destitute in Jamaica and found there to be no substantial grounds for believing that he would be subjected to treatment contrary to Article 3 in that respect. The judge found further that there were very compelling circumstances in the appellant's case and she allowed the appeal on Article 3 and 8 human rights grounds.

10. The respondent sought, and was granted, permission to appeal against that decision to the Upper Tribunal. The appellant served a rule 24 response opposing the grounds.

Hearing and Submissions

11. The matter then came before me. Both parties made submissions.

12. Mr Melvin submitted that the judge's decision on both Article 3 and Article 8 was challenged. With regard to Article 3, the judge failed to give adequate reasons for her findings. She simply accepted the oral evidence without giving consideration to other contentious matters such as the police investigation, the passage of time since the appellant's father's death (10 years) and the passage of time between his deportation in 2005 and his murder in 2011 (6 years). The judge also simply accepted the expert report without engaging with the country guidance and other country evidence including the Home Office Country Policy and Information Note (CPIN). The judge made contradictory findings in regard to the risk of destitution and material deprivation. The

judge's findings on Article 3 were vitiated by numerous errors of law and her decision should be set aside. Mr Melvin submitted that the judge's findings on Article 8 were also deficient. She had failed to make any findings on the section 72 point as part of her proportionality assessment, she made her findings on cultural and social integration in the UK on the basis of flawed findings about the appellant's leave, and she hardly referred to the public interest in deporting foreign national offenders.

13. Ms Seehra submitted that the judge's decision was very detailed and that the respondent's grounds were simply further submissions and disagreements, with nitpicking from the decision. With regard to her findings on Article 3, the judge clearly considered all of the evidence and reached a conclusion based on the evidence. The judge found the appellant's aunt's evidence to be consistent with the expert report. The issue of the six year gap between the appellant's father's deportation and his murder had not been raised before the judge and was only being argued now. Contrary to the assertions made in the grounds, the judge had considered the country guidance in AB (Protection, criminal gangs, internal relocation) Jamaica CG [2007] UKAIT 00018 when assessing whether there was a sufficiency of protection available to the appellant and had not made findings inconsistent with the guidance. The judge had not contradicted herself when making on her findings on destitution but had clearly just made a typing error when saying at [82] there were no substantial grounds for believing that the appellant would be subjected to treatment contrary to Article 3 in that respect. The judge gave various reasons for concluding that the appellant would be at risk on return to Jamaica and did not make any errors of law. As for her decision on Article 8, the judge clearly considered the nature and seriousness of the appellant's offence and had regard to the risk of reoffending, noting his remorse and the steps he had taken towards rehabilitation. The judge was aware of the nature and period of the appellant's leave to remain in the UK and was entitled to find that he had established a strong private life in the UK. She had taken into account various factors and it was clear why the appeal had succeeded.

Discussion

14. It is the appellant's case that the Secretary of State's challenge to the judge's decision is simply a disagreement with the findings and conclusions made, and Ms Seehra asked me to find that Mr Melvin was simply making further submissions rather identifying any error of law on the judge's part. However I have to disagree. Although the decision is a lengthy one, I agree with Mr Melvin that it is lacking in properly reasoned findings. The judge simply accepted the vague assertion of the appellant's aunt that the appellant's father and cousin were targeted because they had returned to Jamaica after a long absence and that the appellant would be at risk on the same basis. There was no evidence to support that assertion, despite the reference to recent enquiries made with the police about the perpetrator, and no evidence to suggest that the perpetrator still lived in Jamaica. No consideration was given by the judge to the substantial passage of time since the appellant's father's death, nor to the fact that his father had been killed several years after being deported to Jamaica. Neither did the judge consider how the killer would know the appellant or associate him with his father when he had lived with his aunt since the age of two and had been living in the UK since the age of seven. The only independent evidence referred to by the judge was the report of Luke de Noronha, but that was simply a general observation by the country expert, at [20] of his report, that deported people were vulnerable to crime in Jamaica.

15. The judge's finding on the lack of protection available to the appellant from the Jamaican authorities was equally lacking in proper reasoning. She departed from the

finding in the headnote to AB that the authorities in Jamaica were "in general willing and able to provide effective protection" in light of the conclusions in the expert report from Luke de Noronha. However she failed to have any regard to the other country information relied upon, in particular the Jamaica country information and guidance for August 2019 quoted extensively in the refusal decision which referred to more recent initiatives taken in regard to law enforcement in Jamaica, and therefore failed to engage with all the evidence.

16. The same applies to the judge's findings on material deprivation, which in any event are infected by the errors discussed above. The Secretary of State's grounds seek to challenge the judge's findings in that regard on the basis that they are contradictory. The grounds assert that it is not clear from [82] whether the judge, in finding that there were no substantial grounds for believing that the appellant would be subjected to treatment contrary to Article 3, rejected the Article 3 submissions, given her finding at [73] that the appellant would be destitute on return to Jamaica. I am inclined to accept Ms Seehra's submission that the judge had simply made a typing error by including the word "no" at [82]. Having said that, the judge's findings on material deprivation are not particularly clear and it is difficult to see how she made the leap from the findings at [80] and [81] to her conclusion at [82] (if the conclusion was as Ms Seehra suggested), bearing in mind the high threshold she set out at [77], and considering the limited and inadequate analysis of the appellant's circumstances.

17. In the circumstances it seems to me that the judge's decision on Article 3 lacks a proper engagement with all the evidence and is inadequately reasoned. I find merit in the Secretary of State's grounds and consider that they disclose errors of law in the judge's decision which go beyond simple disagreement.

18. The judge's findings on Article 8, likewise, show a failure properly to engage with the evidence and a failure to take account of material matters. It is also rather difficult to follow the process by which the judge undertook her Article 8 assessment. She commenced by considering the seriousness of the appellant's offence and his behaviour and rehabilitation before considering the private life exception to deportation, but then did not appear to factor in the seriousness of his offence when making her conclusions on "very compelling circumstances". She erred at [120] by finding that the appellant had lawfully spent a significant portion of his childhood and life in the UK when in fact he had only spent one year lawfully in the UK as a child, having first obtained leave to remain ten years after his arrival, a year before he turned 18, and had been remanded in prison the year after the grant of leave. She made a mistake at [125] when observing that the appellant had spent 28 years in the UK when in fact he had spent 21 years in the UK. In addition she failed to make any mention of the public interest when assessing "very compelling circumstances" and, whilst she referred at [88] to the significantly enhanced public interest in deportation for those sentenced to terms of imprisonment of four years or more, she did not seem to factor that into her final assessment. Neither did the judge make any findings on the risk the appellant posed to the community. Having mentioned at [32] that she would consider the section 72 certification later in the context of the appellant's criminal offending, she did not refer to it subsequently, other than by reference at [90] to the appellant's crime being a serious one. Whilst she referred to the probation and OASys reports, she did so only in the context of making a finding on the appellant's behaviour and rehabilitation but without making any specific or properly reasoned findings on the ongoing risk he posed to the community. In the circumstances, the judge's Article 8 assessment was significantly flawed and cannot stand.

19. For all of these reasons I consider that Judge Manyarara's decision contains material errors of law and that it therefore has to be set aside. It seems to me that given the extent of the errors and the fact-finding that would be necessary on a re-making of the decision, the appropriate course is for the case to be remitted to the First-tier Tribunal to be heard *de novo* before a different judge with no findings preserved.

Notice of Decision

20. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed and the decision is set aside.

21. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Manyarara.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 February 2023