Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00697/2015**

THE IMMIGRATION ACTS

Heard at: Field House **Decision & Reasons Promulgated**
On : 17 November 2017 **On : 28 November 2017**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

PB
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Chapman, instructed by Wilson Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica, born on 31 May 1963. She has been given permission to appeal against the decision of First-tier Tribunal Judge Blake dismissing her appeal against the respondent's decision of 24 July 2015 to refuse her protection and human rights claim and to maintain an earlier deportation order signed on 16 December 1996.

2. The appellant first entered the United Kingdom on 27 September 1994 as a visitor with six months leave to enter. In December 1994 she was arrested by police for drugs offences. On 8 January 1996 she was convicted of four counts of supplying a controlled Class A drug and was sentenced to four years' imprisonment. She did not oppose deportation and on 16 December 1996 a

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deportation order was signed against her and she was deported to Jamaica on 26 March 1997.

3. The appellant then returned to the UK, she claims in June 1997, in a different identity, as DS. On 2 November 2001 she claimed asylum. Her claim was refused and her appeal against that decision was dismissed on 30 October 2003. She became appeal rights exhausted on 13 November 2003.

4. On 3 May 2005 the appellant was convicted of conspiracy to supply a controlled drug and was sentenced to 42 months' imprisonment and recommended for deportation. Arrangements were made for her removal from the UK on 15 September 2006, but the removal was deferred on receipt of further representations which were subsequently refused on 25 September 2006. On 3 October 2006 the appellant made further submissions in which she claimed to fear return to Jamaica. On 16 February 2009 she was issued with a notice of liability for deportation.

5. On 24 July 2012 the appellant was convicted of supplying Class A controlled drug and was sentenced to 5 years' imprisonment, subsequently varied on 5 November 2013 to 40 months' imprisonment. On 15 April 2013 the appellant was issued with a notice of liability for deportation which contained a section 72 warning, inviting her to make representations in response to the presumption under section 72(2) of the Nationality, Immigration Act 2002 that she constituted a danger to the community of the UK. A further notice of liability for deportation was issued on 26 November 2013. The appellant was interviewed about her protection claim and on 24 July 2015 a decision was made to refuse her protection and human rights claim and to maintain the deportation order.

6. The appellant appealed against that decision and her appeal was heard in the First-tier Tribunal on 6 July 2017 and was dismissed in a decision promulgated on 30 August 2017.

7. Permission to appeal that decision was granted in the First-tier Tribunal on limited grounds and in the Upper Tribunal on further, but also limited, grounds.

The Appellant's Protection and Human Rights Claim

8. The appellant's claim, as set out in the decision letter of 24 July 2015, can be summarised as follows. She has four children in the UK: M, born in Jamaica on 6 May 1987, who has lived in the UK since 1997; N, born in Jamaica on 5 October 1993 who entered the UK in 2002; K, born in the UK on 13 April 1998, a British citizen; and O, born in the UK on 26 October 1999, who has ILR. A fifth son, KN, born on 23 December 1981, died in September 2002. Her daughter lives in USA. She has five grandchildren in the UK. Her son O has special needs and requires additional care. Her partner KG, a Jamaican national, is the father of O and has refugee status in the UK.

9. The appellant claims that she left Jamaica because of the political conflict there. She lived in a PNP area and voted PNP although she was not actively involved. She was attacked by Labour supporters at a party in 1995. She left

Jamaica as she feared for her life and came to the UK in September 1994. After being deported from the UK in March 1997 she left Jamaica and returned to the UK in June 1997 as the situation in Jamaica had not changed.

10. In 2000 or 2002 her son KN's father, MN, was killed in Jamaica by a gangster named KM, because he was a PNP supporter. On 19 September 2002 her son KN was killed in the UK. He was kidnapped at gunpoint and shot. The people involved were arrested and received lengthy prison sentences but were later released due to problems with the witnesses' testimony. The appellant was not sure if the same people killed KN as well as his father MN. In 2000/2002 the appellant's friend SP's boyfriend J was killed at a nightclub by a man named D. She and SP contacted the police and showed them a video from the club. D was arrested but escaped to Jamaica after being granted bail. J's mother had problems in Jamaica when she took J's body back there and she was granted asylum on return to the UK. D knows that the appellant and SP informed on him.

11. The appellant's partner, KG, was shot in 2004 in a car park in Hackney by three gunmen when he was in a car with two children. He was shot in the face and one child was shot in the leg. He was subject to attempts to make him drop the charges and people came to their house. He spoke to the police about it and had to have a panic button installed in the house due to the risk. The three gunmen were arrested and imprisoned. One now lives in Jamaica and the other two will be returning there once completing their sentences.

12. The appellant claims to fear the people who shot her son and his father, as well as the people who shot her partner. She had already received threats from them and they would come after her if she returned to Jamaica. She could not live safely in any part of Jamaica. She also feared ill treatment as an informer to the London Metropolitan Police due to her perceived political opinion and her friendship with other informants.

13. In addition the appellant claimed to have had a sexual relationship with MB who provided information to the police in 2006 about a high profile individual who was sentenced to 40 years' imprisonment. She was seen by this person at MB's house several times and would be at risk of revenge attacks in Jamaica. She would also be at risk in Jamaica as a single woman.

14. The respondent, in refusing the appellant's protection and human rights claim, concluded that she had failed to rebut the presumption in section 72(2) of the 2002 Act and, in accordance with section 72(9)(b), certified that the presumption therefore applied to her. With regard to the appellant's protection claim the respondent noted that the appellant had not been personally involved with the PNP and that the attack by Labour supporters was random. It was not considered that she was of any interest to the Labour Party or to anyone else in Jamaica. There was no evidence to show that the appellant's son's father MN was killed as a result of any political affiliation and no reason to conclude that she was at risk because of her association with MN. As for the appellant's fear of reprisals from gang members due to her association with KG who gave evidence to the police, the respondent did not accept that she received a sustained pattern of threats and considered her evidence to be

unclear as to where the threats had come from and if the individuals were actually in Jamaica. It was therefore not accepted that she was at risk in Jamaica on that basis. As to the claimed risk of reprisal for assisting the police together with SP after the killing of her partner J, the respondent had regard to the adverse credibility findings made by the Tribunal in the appellant's previous appeal in 2003 in that regard and concluded that she would be at no risk on return to Jamaica. With regard to the claimed risk from the men who killed her son KN, the respondent accepted that KN was killed in 2002 in the UK, but considered that the appellant's claim to be at risk herself was speculative and concluded that she was not at risk on that basis. As to the appellant's claim to be at risk due to her association with MB, a police informer, with whom she had a sexual relationship, the respondent considered that she had failed to show that there was any adverse interest in her and did not consider her to be at risk on that basis. The respondent noted that the appellant had not claimed to be at risk as a result of her relationship with MB and did not accept that she was gay or would be perceived as gay in Jamaica. The respondent accordingly concluded that the appellant would not be at risk on return to Jamaica. It was noted that she was excluded from humanitarian protection. It was not considered that her medical issues gave rise to an Article 3 claim.

15. With regard to Article 8, the respondent relied on the appellant's previous four year sentence in concluding that she could not benefit from the provisions in paragraph 399 and 399A of the immigration rules. The respondent considered the appellant's two children who were under the age of 18 years, K and O. It was accepted that she had a genuine and subsisting relationship with K, a British citizen, but it was not accepted that it would be unduly harsh for K to live with her in Jamaica or to remain in the UK without her. It was also accepted that the appellant had a genuine and subsisting relationship with O but it was not accepted that it would be unduly harsh for O to live with the appellant in Jamaica or to remain in the UK without her. The respondent accepted that the appellant was in a genuine and subsisting relationship with her partner KG but did not accept that it would be unduly harsh for him to live in Jamaica or to remain in the UK without her. As for paragraph 399A, the respondent did not accept that the appellant had been lawfully resident in the UK for most of her life and did not accept that she was socially and culturally integrated in the UK or that there would be very significant obstacles to her integration in Jamaica. The respondent did not accept that there were very compelling circumstances outweighing the public interest in the appellant's deportation for the purposes of paragraph 398 and concluded that her deportation would not breach Article 8.

16. The appellant's appeal was heard by First-tier Tribunal Judge Blake on 6 July 2017. The judge addressed the section 72 certification first of all. He noted the appellant's reliance upon the OASys assessment and a forensic psychologist's report concluding that she presented a low risk of re-offending, but considered that she had nevertheless failed to rebut the presumption against her and upheld the certificate. The judge went on to consider risk on return. He did not find the appellant to be a credible witness. He did not accept that the appellant would be at risk in Jamaica in relation to her connection to MN or KN and he relied on the adverse findings

made in the appellant's previous appeal in regard to her connection to SP and the murder of SP's boyfriend J. With regard to the appellant's connection to MB, the judge did not accept that she was involved in a sexual relationship with MB and noted various inconsistencies between the evidence of the appellant and that of MB. He did not accept that the appellant would be at risk due to her relationship to MB. The judge referred to an expert report produced before him, from Anthony Harriott PhD Professor of Political Sociology, but accorded it little weight as it did not take account of the credibility issues arising in the appellant's claim. The judge did not accept that the appellant's deportation would breach Article 3 owing to her medical condition. As for Article 8, the judge noted that paragraphs 399 and 399A did not apply, owing to the four year sentence of imprisonment in 1996. He did not find that it would be unduly harsh for the appellant's partner or family to be separated from her if she were removed from the UK and found no very compelling circumstances over and above those in paragraphs 399 and 399A. He dismissed the appeal on all grounds.

17. The appellant then sought permission to appeal the judge's decision on six grounds: ground one was that the judge had erred in his approach to the expert evidence and had not engaged with the expert report; ground two was that the judge had erred in his assessment of risk on return, failing to give sufficient weight to the OASys report and the forensic psychologist's report; ground three was that the judge had failed to give adequate reasons for his adverse credibility findings; ground four was that the judge erred by failing to take into account material considerations when assessing risk on return; ground five was that the judge had failed to apply the correct test under the immigration rules and that the reliance on the four year sentence which preceded the appellant's deportation was an abuse of process; and ground six was that the judge failed to give adequate reasons for concluding that there no very compelling circumstances outside the immigration rules.

18. Permission was granted in the First-tier Tribunal in relation to grounds 2 and 3 only. The Upper Tribunal subsequently granted permission on grounds 1, 4 and 6, given that they were all tied into the judge's findings on credibility, which was the subject of the grant of permission by the First-tier Tribunal. Permission was refused by both Tribunals on the fifth ground.

Appeal Hearing

19. At the hearing both parties made submissions before me.

20. Ms Chapman submitted, with regard to the first ground, that the author of the expert report was well-qualified to provide such a report given his connections with Operation Trident in the UK and Operation Kingfisher in Jamaica. The expert noted that all the elements of the appellant's claim and the threats she received came back to the same organisation, the British Link Up Crew (BLUC), to which he referred at paragraph 6 of his report. Ms Chapman submitted that the judge failed to give weight to the expert report and erred by failing to accept the expert's conclusions as to the risks to the

appellant, rejecting the report solely because the expert said that he was unable to assist with the inconsistencies in the appellant's account relating to SP's boyfriend. With regard to the second ground, it was not open to the judge to reach a different conclusion to the forensic psychologist's report and to the OASys report in regard to the risk of re-offending, when those reports looked to the future whilst the judge wrongly relied on the appellant's past offending. Ms Chapman relied on the case of Mugwagwa (s.72 – applying statutory presumptions) Zimbabwe [2011] UKUT 00338 in submitting that the presumption in section 72(2) was rebutted by the OASys report and said that the judge had failed to deal with that decision. As to the third ground, the judge, in making his adverse credibility findings, had failed to particularise how the appellant was vague and inconsistent, had erred by placing too much weight on the appellant's conduct and had failed to recognise that the evidence was mostly based upon established facts. With regard to the fourth ground, Ms Chapman submitted that the judge had failed to take account of material considerations, as he had dealt inadequately with the expert report of Professor Harriett, he had made a mistake of fact by stating that the appellant was not known to KG's attackers when her evidence was that she was, and he had failed to consider the risk to the appellant as a result of her association with MB. As to the sixth ground the judge had failed to consider the best interests of the appellant's youngest son who was a minor at the time, he failed to consider the appellant's relationship with her son K and he had failed adequately to deal with the social worker's report.

21. Mr Melvin, in response, submitted that the judge had dealt adequately with the expert report, that the judge had been entitled to conclude as he did with regard to the risk of reoffending, that there had been a full credibility assessment by the judge, that the judge had considered all material matters and that the judge had reached sustainable conclusions on Article 8.

Consideration and findings

22. Having carefully considered the submissions of both parties it seems to me that the grounds fail to establish that there were any errors of law in the judge's decision.

23. Permission was granted on essentially two main bases, firstly in regard to the section 72 certification and secondly in regard to the judge's credibility findings. Upper Tribunal Judge Kekic made it clear in her decision that she was granting permission on the further grounds, other than ground 5, on the basis that they were all tied in with the findings on credibility.

24. I turn first of all to the judge's findings on the section 72 certification which the grounds challenge as having given inadequate weight to the OASys report and forensic psychologist's report. Whilst the appellant relied on the case of Mugwagwa in so far as it was said that the OASys report rebutted the presumption in section 72(2) that she was a danger to the community, I agree with Mr Melvin's submission that that finding, as found at [36] of the decision, was quite clearly specific on its facts and would otherwise imply that an OASys report would always have to be accepted at face value. Indeed Ms Chapman accepted that there was force in such an argument. I note further that the

Upper Tribunal in Vasconcelos (risk- rehabilitation) [2013] UKUT 00378 made it clear, albeit in an EEA case, that it was for the Tribunal to consider such reports but was not bound by them and had to make its own assessment. It was Ms Chapman's submission that the judge nevertheless failed to give cogent reasons for reaching a view contrary to that in the OASys report and the forensic psychologist's report. However I do not consider that to be the case and note that the judge provided detailed and cogent reasons, at [177] to [201], for according the limited weight that he did to those reports. The judge was entitled to have regard to the fact that the appellant had re-offended despite a previous OASys report assessing her as presenting a low-risk of re-offending and he was also entitled to take account of the various other factors which he set out from [182] to [199]. Accordingly I find no error of law in the judge's conclusion on the section 72 certification.

25. With regard to the grounds challenging the judge's approach to the expert report, it is clear that the reason the judge accorded the limited weight that he did to the expert report was that the report was based upon an assumption that the appellant's account was reliable, whereas the judge found that it was not. It was Ms Chapman's submission that most of the issues in the appellant's claim were fact based and proven by the news reports which had been produced and that the expert properly assessed risk on return in the light of those unchallenged facts and incidents. However the assessment by the expert of the risks to the appellant in Jamaica was plainly based upon her account of the threats she had received following the various incidents, the links that she had to the various incidents and her assessment of the risk she faced, as can be seen in particular at [4.10], [4.12], [4.14] and [4.18] of the expert report and in particular upon her claim to have cooperated with law enforcement and the cooperation of her close associates with law enforcement, as made clear at [8.01]. It was on that basis, and on the basis that the judge did not accept the appellant's account in regard to those matters, that he found himself unable to place weight upon the expert report. It seems to me that there was no error of law in such an approach, provided of course that the adverse credibility findings reached were themselves not the subject of any errors of law.

26. I turn, therefore, to the challenge to the judge's adverse credibility findings. I do not agree with the assertion in the grounds that the judge failed to give adequate reasons for his findings. Neither do I accept that the judge's adverse findings were mostly based upon the appellant's conduct at the hearing, although it is plain that that was a matter which he took into account when assessing credibility. The judge was entitled to consider that the appellant's failure to take a serious approach to the proceedings was relevant to his assessment of her reliability as a witness, but it is clear that that was in any event only one of various reasons identified by the judge as adversely affecting her credibility. The appellant's conduct in returning to the UK in breach of her deportation order was plainly a matter that the judge took into account, as he was entitled to do, when assessing her reliability. In addition the judge identified various inconsistencies and discrepancies in the appellant's evidence.

27. At [214] to [216] the judge referred to inconsistencies in the appellant's account of the murder of her former partner MN and concluded that she had

failed to show that she was at risk on that basis. At [217] to [222], when considering the appellant's claim in regard to the murder of her son, the judge noted her evidence that she had not received any direct threats and that she was speculating as to who had killed her son and his father and concluded that she would not be at risk on that basis. It is perhaps relevant to note, as an aside, that the appellant made no claim to be at risk as a result of the killing of her son and his father when she presented her previous asylum appeal despite the fact that the events pre-dated the appeal. In any event it seems to me that the judge was entitled to conclude that there was no credible basis for the appellant's claim to be at risk as a result of the murder of her former partner and son and that adequate reasons were provided for concluding as such.

28. The judge then went on to refer to the adverse findings made by the Tribunal in the appellant's previous appeal in regard to her claim to be at risk as a police informer in relation to the murder of SP's boyfriend. He considered the fact that SP's appeal had been successful but gave proper reasons for concluding that that did not undermine the adverse findings made about the appellant in her own appeal. Indeed, the decision in SP's appeal made no mention of the appellant and, on the contrary, suggested that it was a different friend, not the appellant, who provided information to the police together with SP. Accordingly the judge was entitled to make adverse credibility findings against the appellant arising from that part of her claim and provided full and proper reasons for so doing.

29. At [233] and [234] the judge provided reasons why he concluded that there was no credible evidence of the appellant being at risk in relation to the incident in which her partner KG was shot. The original grounds assert at [8(ii)], ground 4, that the judge materially erred in fact at [233] of his decision when he found there to be no evidence that the appellant had met her partner's attackers, given that the appellant's evidence and that of her partner was that she knew his attackers. However the judge, at [56], was merely recording the appellant's claim to have known the identity of her partner's attackers. In his findings at [233] and [234] the judge provided reasons why he did not accept that the appellant had met her partner's attackers or that she was known to them so as to give rise to any risk to her. In so doing her took account of her evidence at her interview about the nature of the threats she claimed to have received, as referred to at paragraphs 47 and 48 of the refusal letter, and clearly did not accept from that evidence that she had received any direct threats or had any reason to believe that she was at risk on that basis. It is relevant to note, referring back to the expert report of Professor Harriott, that the assessment of risk in relation to that matter, at [4.10], was on the basis that the appellant's claim of threats was accepted.

30. At [236] to [248] the judge considered the appellant's account of her relationship with MB and provided various reasons why he did not accept that he had been provided with a credible account of the relationship, noting inconsistencies in the evidence as to when the relationship had begun, who knew of the relationship and where they had met. At ground 4, [8(iii)] of the original grounds, it is asserted that the judge failed to consider whether the appellant's association with MB, which he found to be non-sexual, would put her at risk, and he merely considered the risk to her as a result of the sexual

relationship. However plainly that is not the case. The judge rejected the appellant's account of there being a sexual relationship with MB and found she would be at no risk in Jamaica on that basis, but he also found at [249] that the appellant would be at no risk on the basis of a mere association with MB. Clearly the judge did not accept that the appellant and MB were as close as claimed and it was on that basis that he found that she would not be at risk from those people from whom MB required protection. That was plainly a conclusion which was entirely open to him on the evidence before him.

31. For all of these reasons I find no merit in the challenge in the grounds to the judge's adverse credibility findings. Contrary to the assertion in the grounds the judge provided cogent reasons for making the adverse findings that he did, based upon the appellant's immigration history, her criminal history and history of reoffending, her lack of engagement in the seriousness of her position in respect of her appeal, and the various inconsistencies identified in her evidence. He plainly had full regard to the appellant's background and her own claimed links to drug dealers and took all of those matters into account. For the reasons fully and properly given the judge was entitled to conclude that the appellant had not provided a credible account of being at risk on return to Jamaica and was entitled to accord the expert report the weight that he did. I find no merit in the grounds asserting otherwise.

32. I turn finally to the last ground of appeal upon which permission was granted, namely ground 6, which asserts that the judge failed to give adequate reasons for finding there to be no very compelling circumstances over and above those set out in paragraphs 399 and 399A of the immigration rules. It is relevant to note that permission was granted on this ground only in so far as it was linked to the challenge to the judge's credibility findings. Given my conclusion on the credibility challenges, I concur entirely with Judge Kelly's reasons for refusing permission in the First-tier Tribunal, namely that none of the matters mentioned in the grounds constitute compelling circumstances. In any event the judge clearly addressed all relevant matters. He had regard to the circumstances of the youngest child and provided cogent reasons as to why it was not unduly harsh for him to remain in the UK with his father in the event of the appellant's removal. The grounds assert that the judge failed to consider the evidence of how the appellant's son K would cope in Jamaica, but K was an adult and there was no question of him moving to Jamaica with the appellant. The judge had regard to the independent social worker's report in considering the position of the appellant's youngest child and her grandchildren. For the reasons given the judge was perfectly entitled, given the appellant's immigration and criminal history, to conclude that there were no very compelling circumstances and to reject her Article 8 claim.

33. For all of these reasons I find no merit in the grounds. On the evidence available, and for the reasons fully and properly given, the judge was unarguably entitled to reach the conclusions that he did and to dismiss the appeal on the basis that he did.

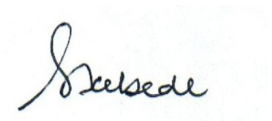
34. I find no errors of law in the judge's decision. I uphold the decision.

DECISION

35. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The First-tier Tribunal made an order for anonymity. I continue the order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed 
Upper Tribunal Judge Kebede Dated: 27 November 2017