Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04482/2019 (P)**

THE IMMIGRATION ACTS

Decided Under Rule 34 (P)	**Decision & Reasons Promulgated**
On 2 September 2020	**On 7 September 2020**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

RM (JAMAICA)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. This appeal was to be heard on 5 March 2020, at the Civil Justice Centre in Cardiff. For reasons I need not explain, it could not be heard on that date. The appeal was adjourned and transferred to Field House in London.

2. The global pandemic then set in and, on 23 March 2020, the Principal Resident Judge issued directions to the parties by email. By those directions, he sought to ascertain whether the appeal might properly be determined on the papers and whether the parties wished to make further submissions on the merits of the appeal. Those directions were sent to the parties by post and email.

3. Written submissions were duly filed by counsel, Mr Jones, who has represented the appellant on a Direct Access basis from the inception of this case. In compliance with the PRJ's directions, Mr Jones copied his

submissions to the Home Office email address which has been used throughout the pandemic for service of such documents.

4. The papers were passed to me in July. On 29 July 2020, I asked the administrative staff at Field House to ascertain whether there had been any response from the respondent, whether to the PRJ's initial directions or to the written submissions which were filed and served by Mr Jones in April. I was informed later than day that there had been nothing received from the respondent.

5. By rule 34(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Upper Tribunal may make any decision without a hearing. By rule 34(2), it is obliged, in deciding how to proceed, to take into account the views of the parties. I have done so. The PRJ expressed the provisional view that the appeal might fairly and justly be determined on the papers. On behalf of the appellant, Mr Jones urged the Upper Tribunal to proceed in that way. The respondent voiced no objection to that course of action.

6. The views of the parties are not determinative. I have also considered the over-riding objective of dealing with cases fairly and justly, alongside all that was said by the Supreme Court in Osborn v Parole Board [2014] 1 AC 1115. There are no disputed issues of fact in this case. The credibility of a party or witness is not in issue before me. My focus, at this stage, is on the decision of the FtT and whether it should be set aside as containing an error or error of law. The parties have had a full opportunity to make submissions on that question. The appellant has taken that opportunity, the respondent has chosen not to do so. I consider that I am able to determine the appeal fairly and justly without a hearing and that it is appropriate, in the exercise of my discretion under rule 34(1), to proceed in that way.

Background

7. The appellant is a Jamaican national who was born on 22 January 1995. He last entered the UK in 2002 and was granted Indefinite Leave to Remain ("ILR") as the dependent of his father, NM, on 9 February 2002.

8. The appellant received a caution for drugs possession in 2014. On 3 November 2015, he was convicted by a jury in the Crown Court at Bristol of causing grievous bodily harm with intent. He had previously pleaded guilty to possession of an offensive weapon (a hammer) on the same occasion. These offences were committed by the appellant alongside his father, who had returned with his son to the scene of an argument in pub. His father was armed with a wrench, the appellant with the hammer. The appellant's father used the wrench so extensively in attacking the two victims that the sentencing judge described the video footage as 'chilling'. For his part, the appellant did not use the hammer. He held it whilst he attacked the victims and stamped on them. He was sentenced by HHJ Picton to a term of seven years' detention in a Young Offenders Institution.

On 3 November 2016, that sentence was reduced by order of the Court of Appeal, Criminal Division, to one of six years' detention.

9. The respondent initiated deportation proceedings. The appellant appealed to the First-tier Tribunal ("FtT"). His appeal was heard by Judge Lever on 14 June 2018. It is apparent that the case was presented on Article 8 ECHR grounds only. The judge heard evidence from the appellant and his partner, CA, and his aunt. In his reserved decision of 4 July 2018, he concluded that the appellant was unable to demonstrate that there were very compelling circumstances over and above those in the statutory exceptions to deportation which sufficed to outweigh the public interest in deportation. In reaching that decision, he made the following findings of fact. He accepted that the appellant and his partner had a genuine and subsisting relationship but he did not accept that the relationship could not continue in Jamaica: [18]-[20]. He accepted that the appellant had been lawfully resident in the UK for most of his life and that he is socially and culturally integrated but not that there would be very significant obstacles to his integration to Jamaica: [25]-[26]. Considering all relevant matters holistically, Judge Lever did not accept that there were very compelling circumstances over and above those statutory exceptions, although he accepted that the appellant would encounter a degree of hardship on return to Jamaica [24] and that the appellant presented only a low risk to society in the future. Judge Lever then said this, at [27]:

> "However, taking all matters in the round and applying the Rules as I must do, I do not find that there are very compelling circumstances over and above the factors that I am entitled to consider and have considered that demonstrate that it overturns the finding that the deportation of the Appellant is conducive to the public good and in the public interest."

10. Permission to appeal against Judge Lever's decision was refused by the FtT (Judge Haria) and the Upper Tribunal (Judge Frances). The latter decision was served on 1 August 2018.

11. In early 2019 – whilst the appellant was still detained – Mr Jones was instructed for the first time. He made detailed further submissions on 3 February 2019. Those submissions included a protection claim which was based, in summary, on events which had taken place in Jamaica before the appellant and his father came to the UK. It was said that his father had been a police officer in Jamaica and that he had lawfully killed a notorious criminal named known as 'Biga Prince' and that the family had been in danger from associates of this man ever since. Further submissions were also made in reliance on Article 8 ECHR, detailing additional matters which had not been explored fully or at all in the earlier appeal. It was explained that a complaint was to be made about the failure of the appellant's previous representatives to pursue the protection claim previously or to develop various aspects of the Article 8 ECHR case before Judge Lever.

12. The appellant was interviewed by the respondent in connection with his asylum claim. Further evidence was submitted by his family and by an

expert witness, Luke de Noronha. Further submissions were made by Mr Jones. On 25 April 2019, however, the respondent refused the protection and human rights claims. In essential outline, the respondent concluded that the appellant had failed to rebut the statutory presumptions in section 72 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") [11]-[24]; failed in any event to establish that he was at risk on return to Jamaica [25]-[81]; and failed to establish that his deportation would be contrary to Article 8 ECHR [82]-[178].

The Appeal to the FtT

13. The appellant appealed to the FtT for a second time. His appeal was heard by Judge Roblin on 21 October 2019. The appellant was represented by Mr Jones, the respondent by a Presenting Officer. There was extensive documentary evidence before the judge, including expert evidence from Dr de Noronha and an Independent Social Worker named Peter Horrocks. Unusually, there was also an 'Investigation Report' from a Jamaican firm of attorneys, Danielle S Archer and Associates, dealing with the killing of Biga Prince by the appellant's father and the current circumstances of people relevant to the appellant's fear of reprisals. There was also extensive oral evidence from the appellant and five family witnesses. Oral submissions were made by the respondent in amplification of the decision letter. Mr Jones made detailed oral submissions in amplification of the written submissions he had filed and served in advance of the hearing.

14. The judge's reserved decision of 15 November is carefully and methodically structured. She set out the appellant's immigration and criminal history at [2]-[14]. She summarised the issues at [15]-[16]. She summarised the thrust of the respondent's decision at [17] and listed the documentary evidence which was before her at [19]. She then provided a summary of the evidence she had received from the appellant and the witnesses, at [20]-[39]. The representatives submissions appear at [40]-[63] and there is a summary of the relevant law at [64]-[81]. At [81]-[126], the judge set out the reasons why she had decided to dismiss the appeal on protection and human rights grounds.

15. The judge recorded at [86] that the starting point for her decision was that of Judge Lever. She recalled the principles of Devaseelan [2003] Imm AR 1 in that regard. At [87], she considered the submission that the appellant had been disadvantaged by his previous representatives and concluded as follows:

> "It is suggested on behalf of the appellant that his previous solicitors failed to put forward an application for asylum. I have in the bundle a letter of complaint of February 2019, but I have not seen any response from the Appellant's previous solicitors nor further documentation indicating whether or not that complaint was upheld. It is now eight months since the letter was written in February. Without that clarification I am not persuaded that they were at fault or in that

> regard that I can safely depart from the findings of FTTJ Lever as suggested."

16. The judge then turned to consider s72 of the 2002 Act, under the sub-heading 'Rebuttable presumption of 'dangerousness'. She made reference to the index offence. She noted that Mr Jones had (unsurprisingly) made no submission in relation to the first limb of s72 (namely, whether the offence was a particularly serious one) and that the focus had been on whether he had rebutted the statutory presumption that he was a danger to the community of the United Kingdom. She considered the relevant section of HHJ Picton's sentencing remarks. She made reference to Peter Horrocks' report. She noted what had been said on the appellant's behalf but she considered that he had 'supported his father in a vicious and lengthy and savage attack' and that 'the offence is such a serious one that it would leave the public vulnerable to the appellant reoffending'. The judge noted the evidence which had been adduced of the appellant's conduct post-conviction but she observed that much of it would have been available when Judge Lever made his decision in 2018. She had considered the decision of Judge Lever and noted what he had said at [27] of his decision, which I have reproduced above. She also turned to evidence of the appellant's conduct following his release from immigration detention, including the supporting letters from a number of friends and family members. Drawing these threads together, at [98], the judge found:

> "While I accept the appellant has not committed further offences since his release on bail in April 2019, having considered all the evidence in the round, I find on balance that the appellant has failed to rebut the presumption that his continued presence in the United Kingdom would constitute 'danger to the community'. He committed an offence which had serious consequences for his victims. I find that the appellant has not been rehabilitated and has not rebutted the presumption of dangerousness under section 72."

17. At [99], the next sub-heading in the judge's decision is 'Asylum' although, as she noted, she had upheld the certificate under s72 and the appellant could not therefore succeed on asylum grounds. She proceeded to consider the appellant's entitlement to Humanitarian Protection. She made reference to the gravamen of the protection claim. She noted that the respondent had submitted that the appellant could obtain a sufficiency of protection in Jamaica, and had relied on AB (Jamaica) CG [2007] UKAIT 18 and the CPIN of August 2019 on criminal gangs. She set out the two paragraphs of the headnote to AB (Jamaica). She made reference to the reports of Dr de Noronha and Danielle[1] Archer before stating as follows:

> "[108] I have had the opportunity to read both reports in detail. The appellant was not born when the incident in 1993 took place. The appellant left Jamaica in 2000 but a year later the appellant returned. I do not find it credible that the appellant's family would allow him to return to Jamaica one year after leaving if he was in danger. The

[1] Ms Archer's first name was misspelled in the judge's decision. It is clear from p121 of the appellant's bundle that this is the correct spelling.

> appellant's family members who gave evidence gave no indication that they were unaware as to why the appellant's father left Jamaica. Further the incident took place 26 years ago. There is no evidence of any ongoing interest or contact in Jamaica given the length of time that has passed I find that the likelihood is that there would be no interest. The reports from the experts talk in generalised terms but did not address specific concerns. There is only a possibility of being killed by gang culture.
>
> [109] It appears incredible that after 26 years a man the appellant had never met and had nothing to with the killing of a brother would look to the appellant as he was not even born when the incident took place. I am not persuaded if the appellant were returned to Jamaica he would face treatment contrary to Articles 2 and 3 of the Human Rights Act. The appellant's claim that a man named Corporal Stuart the brother of the criminal shot by his father would kil him I find is not objectively well founded. The appellant speaks English which is the official language of Jamaica. I do not accept that the appellant has demonstrated that a family member of the man his father shot has the influence to locate the appellant."

18. At [110], the judge turned to her assessment of the appeal under the Immigration Rules and Article 8 ECHR. She stated that she had been assisted by the decision of the Court of Appeal in Mwesezi [2018] EWCA Civ 1104 and that she had taken account of Maslov v Austria [2009] INLR 47 'as guidance and nothing higher'. She recalled the relevant statutory provisions in s117C of the 2002 Act, the UK Borders Act 2007 and the relevant paragraphs of the Immigration Rules. At [115], she reminded herself again that she was to take the decision of Judge Lever as her starting point and concluded that 'there were insufficient reasons to depart from the findings of Judge Lever.' She set out various aspects of Judge Lever's findings and the evidence she had heard from the appellant and his partner which bore on his conclusion that she could settle in Jamaica without undue hardship. Having considered that evidence, she did not accept that it would be unduly harsh for her to relocate: 'the severance to family life would not be profound and is not sufficient to cause compelling circumstances'.

19. The judge stated that she had taken into account the evidence of the appellant and his family members concerning the impact on the appellant's partner and other members of the family if the appellant were to be deported. She had also considered what had been said by Peter Horrocks in that connection. She found that the appellant had significant ties to the UK and that his relationship with his brothers was his strongest argument. Even if their behaviour was to worsen as a result of his deportation, however, she did not accept that 'this would be sufficient to amount to unduly harsh'. Her final two substantive paragraphs were in the following terms:

> "[124] Looking cumulatively at the difficulties of relocating the impact on the appellants partner and the families they are not compelling circumstances and above the factors that I am entitled to consider and have considered that demonstrate it overturns the finding the

> deportation of the appellant is conducive to the public good and in the public interest.
>
> [125] Pursuant to the judgement in Hesham Ali [2016] UKSC 16 I have conducted the above structured approach to proportionality on the basis of the facts as I have found them to be on the evidence in this particular appeal, the law is established by statute, and case law. Ultimately, I have to decide whether deportation is proportionate in this particular appeal. I have balanced the strength of the public interest in the deportation of the appellant against the impact upon the private and family life not only of the appellant but of his partner and members of his immediate family. I have given appropriate weight to Parliament's and the Secretary of State's assessments of the strength of the general public interest in deportation of foreign offenders. Having given due weight to the strength of the public interest and the deportation of the appellant in this appeal I find that the Article 8 appeal is not so sufficiently strong to outweigh the public interest in his deportation."

20. Mr Jones advanced four grounds of appeal to the Upper Tribunal. The complaints may be distilled as follows

    (i) The judge had erred in her application of Devaseelan, failing in particular to acknowledge the impact of further evidence and new issues on the continued application of Judge Lever's findings;

    (ii) The judge had erred in her consideration of dangerousness under s72 of the 2002 Act, focusing on the severity of the index offence and failing to appraise rationally or at all the more up-to-date evidence;

    (iii) The judge's assessment of risk was flawed in that she had failed to deal at all with one aspect of the protection claim and had failed, when assessing the risk from associates of Bigga Prince, to consider material matters; and

    (iv) The judge assessment of s117C(7) was flawed due misdirections in law and a failure to take material matters into account.

21. Permission to appeal was granted by Judge Fisher on each of these grounds.

22. Judge Fisher was also critical of the length of the grounds, noting that 'experienced counsel ought to be able to crystallise grounds far more concisely.' I agree with that sentiment, echoing as it does what was said by Hickinbottom LJ in Harverye [2018] EWCA Civ 2848. I do not agree with the criticism, however. The judge's decision is lengthy and closely reasoned. The grounds themselves are formulated tightly but the particulars of each ground are set out in rather greater detail. I do not consider the extent of that particularisation to be excessive on the facts of this case; it was plainly necessary to put flesh on the bones of these particular complaints and the Upper Tribunal, unlike the Court of Appeal, does not require a skeleton argument in amplification of the grounds of appeal. I have been assisted by the grounds, and by the concise written

submissions which were filed by Mr Jones in compliance with the Upper Tribunal's directions.

Discussion

23. Despite the care which the judge evidently invested in the decision under appeal, I find that each of the grounds I have summarised above is made out. In certain respects, the judge failed to give any consideration to arguments advanced by the appellant. In others, she failed to consider evidence which bore on arguments made by the appellant, or she failed to give any or any adequate reasons for rejecting those arguments.

24. The clearest error is to be found in the judge's analysis of the risk posed by the appellant to the community of the United Kingdom, with reference to s72 of the 2002 Act and Article 33(2) of the Refugee Convention. In undertaking that analysis, the judge took the wrong part of Judge Lever's 2018 decision as her starting point. At [95], having set out the details of the index offence and the relevant parts of the Crown Court judge's sentencing remarks, she recalled that Judge Lever had found that deportation was conducive to the public good. (I have set out the entirety of the relevant part of Judge Lever's decision above.) She then set out, at [96], a list of the evidence which was said to support the submission that the appellant presented no risk to the community of the United Kingdom, before finding at [97]-[98] that the appellant had failed to rebut the statutory presumption that he presented such a risk.

25. As contended in Mr Jones's grounds of appeal, however, the relevant finding made by Judge Lever was that the appellant presented a low risk of reoffending. That was the view of the Probation Service at the time of Judge Lever's decision and it was a view that Judge Lever adopted, at [26]. It was that conclusion which was relevant to Judge Roblin's subsequent assessment of whether the appellant presented a risk to the community of the United Kingdom. Judge Lever's subsequent conclusion that the appellant's deportation was conducive to the public good was a wider finding, expressed in terms of the statutory language which was relevant to the holistic assessment which he was undertaking at that time. In considering the altogether narrower question of whether the appellant presented a risk to the United Kingdom, the relevant section of the earlier analysis was the part which confronted that specific question. The judge erred in failing to have any regard to that earlier conclusion on the part of Judge Lever and she erred in failing to have any regard to the conclusion in the OASys report that he represented a low risk of reoffending. Because she took the wrong starting point in her analysis of s72 and because she failed to analyse the evidence most relevant to that analysis, this aspect of her decision cannot stand.

26. An equally clear error is apparent in the judge's analysis of the substance of the appellant's protection claim. At [99]-[109], she analysed the appellant's fear of return to Jamaica on account of his fear of harm at the hands of Bigga Prince's associates. That was doubtlessly the principal

focus of Mr Jones's submissions but it was by no means the only limb of the protection claim. It is clear from his written submissions that he also submitted that the appellant would be positively at risk on return to Jamaica as a deportee from the United Kingdom. That submission was founded in large part on Dr de Noronha's report. The judge failed to consider that submission, or the evidence which bore upon it, at all.

27. A third clear omission is to be found in the judge's assessment of the Article 8 ECHR claim. That assessment was to be undertaken in the structured manner explained in NA (Pakistan) and subsequent authorities. Although the appellant falls into the serious offender category, what the judge was required to do was to consider the statutory exceptions to deportation in s117C(4) and s117C(5) before moving on to consider whether there were very compelling circumstances over and above those exceptions which outweighed the strong public interest in deportation.

28. The judge certainly considered the second statutory exception. She understood that it was Mr Jones's submission that the effect on the appellant's family would not only be unduly harsh but that it would be so harsh or compelling as to outweigh the public interest in deportation. But that was to focus on only half of the appellant's argument under section 117C(6). The other half, based again in large part on Judge Lever's analysis, was as follows.

29. Judge Lever had accepted that the appellant had resided lawfully in the UK for most of his life. He had also accepted that the appellant was socially and culturally integrated to the United Kingdom. He had not accepted that the appellant met the third limb of s117C(4); very significant obstacles to his re-integration to Jamaica. It was Mr Jones' submission, made clearly in writing, that the further evidence adduced by the appellant sufficed to justify the opposite conclusion. Mr Jones sought to support that submission in a number of ways. It was said, for example, that the appellant was particularly vulnerable and that he had suffered from particular mental health problems in detention when it was thought that he was at risk of removal. There was a degree of evidential support for each of those submissions in the appellant's medical records and in the report of Mr Horrocks. Those personal characteristics were said to be relevant to the appellant's re-integration, as was the background situation into which he would be expected to re-integrate. The background situation for deportees was described, as I have already stated, in Dr de Noronha's report. The judge failed to grapple with this submission at all. She failed to consider, or to express any conclusion upon, the submission that there would be very significant obstacles to the appellant's integration into Jamaica. That failure tainted the judge's subsequent assessment under s117C(6) because, as explained in cases such as JZ (Zambia) [2016] EWCA Civ 116 and NA (Pakistan), the assessment of whether there are very compelling circumstances must take account of all relevant circumstances, including those set out in the statutory exceptions to deportation.

30. The errors particularised above reflect the judge's failure to consider aspects of the case advanced by the appellant. I also accept other criticisms made in Mr Jones's grounds of appeal, concerning the adequacy of the judge's evaluation of those submissions to which she did turn her mind.

31. I am particularly concerned by the adequacy of the judge's reasons in respect of the risk to the appellant from associates of Biga Prince. As I have noted above, this was a somewhat unusual case, in which there was not only evidence from an expert in the UK (Dr de Noronha) speaking to the likely risk to the appellant. Dr de Noronha concluded that the appellant would be at 'profound risk' of murderous reprisals' on return to Jamaica. There was also evidence from Danielle Archer, a Jamaican attorney, who had carried out an investigative report into the actual *dramatis personae* in this case. Her report featured profiles of Biga Prince and set out his connections to organised crime, the police and politicians. There were also profiles of his relatives, an account of their current situation, and an evaluation of the level of risk to the appellant's father based on the investigations conducted around Spanish Town, which was Biga Prince's local area. It was said that Biga Prince's brothers (Anthony and Kevin Stuart) had both stated at the time of the killing that they were 'willing to stand up for the death of their brother, no matter the cost'. Ms Archer's opinion was that the appellant's father would be 'wiped out' shortly after arriving in Jamaica and she noted that 'men of questionable aura' were said to have called at NM's house on a number of occasions after he had left the country. This report – and the report of Dr de Noronha - was put forward by Mr Jones as shedding light on the risk to the appellant on return to Jamaica *notwithstanding the passage of time.*

32. The judge summarised the contents of these reports in five sentences, at [106]-[107]. At [108]-[109], she set out why she did not consider the appellant to be at risk from Biga Prince's associates. The gravamen of the reasoning was that the appellant was not born at the time of the killing and that it 'appears incredible' that anyone associated with Biga Prince would seek to harm the appellant 26 years after he was shot. In reaching that conclusion, however, the judge failed to engage with the reasoned conclusions reached in the Archer and de Noronha reports. The judge stated that the experts 'talk in general terms but did not address specific concerns'. With respect, I do not understand that observation. The de Noronha report was indeed focused on the general risk of reprisals but the Archer report was very specific. Neither considered that the risk would have evaporated over time. The judge also noted that the appellant had returned to Jamaica in 2001 and that nothing had happened upon his return at that point. But that was not to compare like with like. The appellant was six years old when he returned to Jamaica with family members in 2001. Were he to return now, he would be a man seeking to make his own way in Jamaica which is, as noted by Dr de Noronha, a small island. It is evidently more likely that his connection to his father would come to light now, compared to the situation which would have obtained

when he returned with family members as a young child who would not have been required to give any account of himself.

33. A judge is obviously not required to accept expert evidence adduced before her, even where (as here) the written opinion of the expert is unchallenged by the opposing representative. It is for the judge to reach conclusions on matters such as risk, and her decision on such matters will not be erroneous in law in the event that she has engaged with the expert evidence and provided legally sustainable reasons for reaching a contrary conclusion to the expert: SI (Iraq) CG [2008] UKAIT 94, at [56], and Detamu [2006] EWCA Civ 604, at [27]-[28].

34. I do not consider the judge to have engaged adequately with the expert evidence and I do not consider her to have provided legally sustainable reasons for reaching a contrary conclusion to the experts. The appellant's return to Jamaica as a child did not necessarily militate against a finding that he was at risk on return to Jamaica as a man and both experts concluded that the risk which had existed in the wake of Biga Prince's death continued to exist at the present time notwithstanding the passage of time. It did not suffice, in those circumstances, for the judge simply to conclude (echoing the conclusions in the refusal letter) that it 'appears incredible' that the appellant would still be at risk 26 years later. That was to reach a conclusion at odds with the expert evidence for a reason which was grounded in nothing more than speculation. It was also to fail to consider the plausibility of the appellant's fear through the spectacles provided by the country information before her, as Keene LJ put it in Y v SSHD [2006] EWCA Civ 1223.

35. There are further errors in the judge's assessment of the Article 8 ECHR claim, in addition to her failure to consider whether there would be very significant obstacles to the appellant's re-integration to Jamaica. I do not understand, with respect, the way in which the judge approached the decision of the Grand Chamber in Maslov v Austria. At [110], she stated that the decision of the Court of Appeal in Mwesezi required her to treat Maslov v Austria as 'guidance and nothing higher'. She then made no further reference to Maslov or to the fact that the appellant had been granted ILR at the age of seven and had therefore been lawfully present in the UK for most of his life. I do not think that Mwesezi or the other authorities considered at [18] of Sales LJ's judgment in that case warranted such an approach.

36. The judge did not have the benefit of Leggatt LJ's comprehensive analysis at [103]-[114] of CI (Nigeria) [2019] EWCA Civ 2027; [2020] Imm AR 503. That decision was handed down a few days after the judge issued her reserved decision in this case. Had it been available to the judge, she would no doubt have seen that the appellant fell within the category of individuals to whom Maslov applies and that, although the decision of the Grand Chamber 'is not to be read as laying down a new rule of law' it does indicate the way in which the balancing exercise is to be conducted in such a case. In this case, in considering whether there were very

compelling reasons under s117C(6), the judge gave no demonstrable consideration to the fact that the appellant had lived lawfully in the UK for most of his life. That was necessarily a relevant part of the assessment, as were the difficulties which the appellant would encounter on return to Jamaica. As in CI (Nigeria), the judge failed to consider either adequately or at all.

37. Finally, I consider that the judge fell into error when she came to assess the possibility of the appellant's partner relocating to Jamaica. Judge Lever had obviously found that this was a proportionate course but Mr Jones made a number of submissions which were said to justify or necessitate a departure from that starting point. Amongst other points, he relied on the report of Dr de Noronha, which suggested that the appellant's partner would be unlikely to receive appropriate mental health support in Jamaica and that she would potentially be at risk as the British partner of a Jamaican deportee. Whilst the judge bore various strands of Mr Jones' argument in mind in the assessment which she undertook at [115]-[122], she did not consider or reach any clear conclusions on these important submissions.

38. It follows that the decision as a whole cannot stand. Each section of the decision is vitiated by legal error. The judge erred in law in her assessment of dangerousness, risk and Article 8 ECHR. Mr Jones submits in writing that the appropriate course is remission to the First-tier Tribunal for hearing afresh. Given the scope of the fact-finding which is necessary, I also consider that to be the proper course and will so order.

39. I add two concluding remarks. Firstly, the parties may wish to consider whether the analysis of Dr de Noronha's report in AXB (Jamaica) [2019] UKUT 397 (IAC) is of any relevance. Secondly, this is a complex case, with a number of witnesses and a number of issues. It has not been necessary for me to consider the issue raised at [45]-[46] of Mr Jones' grounds of appeal, which concern the appellant's (asserted) entitlement to British citizenship at material points in his history. That submission is made with reference to what was said by the Court of Appeal in Akinyemi [2019] EWCA Civ 2098; [2020] 1 WLR 1843. It was not considered by the judge (although it was relied upon) and it clearly adds a further level of complexity to this case. It is obviously a matter for the Resident Judge at Newport but it might legitimately be thought that a full day's listing before an experienced judge is appropriate.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law. The decision of the FtT is set aside in its entirety. The appeal is remitted to the FtT to be heard afresh by a judge other than Judge Roblin.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 September 2020