Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02091/2018

THE IMMIGRATION ACTS

Heard at Field House Face to Face
On 14th October 2021

Decision & Reasons Promulgated
On 09th December 2021

Before

UPPER TRIBUNAL JUDGE RIMINGTON
UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MS BERNITA DELORES BONNER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Fisher, instructed by Migrant Legal Action
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, the decision of Judge Rae-Reeves of the First-tier Tribunal ("the FtT") who dismissed the appellant's appeal on 18th March 2021 against the decision of the Secretary of State dated 1st February 2018 refusing her claim for asylum and humanitarian protection and protection under the European Convention on Human Rights.

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2. The background history was that the appellant's appeal first came before FtT Judge Abebrese on 14th March 2018 and in a decision promulgated on 29th March 2018 the judge allowed the appeal. The Secretary of State challenged that decision on the grounds of perversity and because of the findings on family life. Deputy Upper Tribunal Judge Juss found there was an error of law and remitted the appeal to the FtT. He found the concept of integration had not been properly evaluated, which in turn fed into the Article 8 assessment. The finding that there were very significant obstacles under paragraph 276ADE was flawed in the light of the judgment in **SSHD v Kamara [2016] EWCA Civ 813**.

3. The matter came before First-tier Tribunal Judge Rae-Reeves who dismissed the appeal. Before Judge Rae-Reeves was a bundle of documentation which included a medical report by Dr Satinder Sahota dated 24th August 2020 and also a country expert report from Mr Hilaire Sobers dated 23rd October 2020.

4. The grounds of appeal explain that the applicant was a national of Jamaica born on 22nd September 1960 who came to the UK on a visit visa on 30th June 2003 valid for six months. She overstayed. The appellant lived with her daughter when she first arrived until January 2019 but subsequently left her daughter's home and was then supported by the Southall Black Sisters. Her health deteriorated in 2017 when she developed type 2 diabetes and high blood pressure. She secured emergency accommodation with Migrant Help on 7th January 2019. She continued to visit her grandchildren.

Grounds for Permission to Appeal.

Ground (i) Failure to consider the expert report properly

5. According to **Mibanga [2005] EWCA Civ 367** there was a requirement to make clear why an expert's evidence was rejected and the judge's findings on the expert reports were undermined by the assessment of the First-tier Tribunal focusing solely on credibility. The expert Hilaire Sobers demonstrated there were significant obstacles in returning to Jamaica, and that those that did so found themselves in desperate conditions. The report acknowledged that there was limited support and help on arrival, but it was inadequate. Although there were shelters, these served persons transitioning out of prison or those who were homeless. The appellant would need to make her own arrangements on return to Jamaica. The report stated that she would face discrimination and ostracism and there was very little support from the government with integration into society. The appellant would only be able to obtain subsidised medication after she had received a TRN ("Tax Registration Number"), a fixed address and an NHF number. The expert opined she risked violence and gang culture. Violence against women was noted at paragraphs 76 to 90 and the appellant was vulnerable. These problems were significantly worse if like the appellant a deportee had no real social ties in Jamaica. (90).

6. The expert concluded at paragraph 111

> *"BDB has no effective family relationships or support in Jamaica. Relocation to within Jamaica does require the independent means to do so, some access to private, social or economic support. In practical terms, it is difficult if not impossible to relocate unless one already has employment, lodging and some social network to help. BDB would have no such assistance if returned to Jamaica".*

It was asserted that the judge had failed to consider any of the above findings in relation to the appellant, other than to say that the expert report was predicated on the appellant not having any support and the judge found otherwise. The expert made it clear that the appellant would not have effective support on her return. It was not evident that the appellant's family was willing or able to give her effective support and the evidence was that they were marginalised and in poverty. It was not addressed by the judge that it takes six weeks for a TRN to come through and as such she would be unable to access employment, lodgings or social welfare payments or medical care.

7. The judge failed to consider the expert's findings. Medical care was only available once she had secured her TRN, a fixed address and an NHF membership. As the expert noted, to obtain PATH, (social welfare) a person must satisfy the eligibility requirements and it was not available for adults who could work, and she needed to show she had disability.

8. Overall the judge failed to consider the report and focused on credibility instead.

Ground (ii) Flawed approach to credibility and inadequate reasoning.

9. The judge made a number of credibility findings in relation to the appellant's family in Jamaica. He found that she was evasive and vague, she could not give a timeline of exactly when she spoke to her siblings, and it was not credible that she had lost contact with relatives over time. That was irrational. The evidence always was that she had siblings and it was not vague or evasive. Similarly, the evidence was not inconsistent over who told her about the death of her ex-partner. Credibility "is not in itself the valid end to the function of an Adjudicator". Reliance was placed on **HK and the Secretary of State for the Home Department [2006] EWCA Civ 1037**. Even if the appellant's story may seem inherently unlikely, that did not make it untrue.

10. Additionally, the judge failed to give reasons. Further to **MK (duty to give reasons) Pakistan [2013] UKUT 00641** if a Tribunal found evidence to be implausible, incredible or unreliable it is necessary to say so in the determination and to support that by reasons.

Ground (iii) Flawed approach to "insurmountable obstacles"

11. The judge stated there were no insurmountable obstacles to integration as she had previously worked but the appellant was a 61 year old woman with various health issues, including anxiety and depressive disorder. The judge contradicted himself by saying that the appellant may find difficulties in finding employment and furthermore the expert set out the real difficulties. The judge did not accept there

was no support available but there was no consideration of the evidence that family members were living in dire poverty.

12. The judge accepted Dr Sahota's diagnosis that she would find the return overwhelming and it was incumbent upon the judge to consider the totality of the evidence given her age, physical health needs and prospect of little or no family support on return.

13. The judge failed to consider the totality of the evidence and fell into error in discussing at length the difficult circumstances encountered by many people in Jamaica but were not enough to amount to significant obstacles to integration or in relation to other countries that was not the test. The test was that set out in **Kamara** which calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider to understand how life in that other country is carried on in a capacity to participate. Was the appellant realistically going to have a reasonable opportunity to operate on a day-to-day basis in Jamaica to build within a reasonable time a variety of human relationships?

Ground (iv) Flawed approach to family life

14. The judge found there to be no family life in the United Kingdom. The test was **Kugathas v SSHD [2003] EWCA Civ 31; [2003] INLR 31** and it was accepted that in **Ghising**, **Kugathas** had been too restrictively interpreted in the past. The judge erred in finding there was no family life and further fell into error in his assessment of the best interests of J, [the teenage granddaughter] and the test of unduly harsh. The judge placed too high a threshold on unduly harsh and reliance was placed on **HA (Iraq) v SSHD [2020] EWCA Civ 1176** where it was asserted that it was important to look at the best interests of an individual child and emotional harm was no less intrinsically significant than physical harm.

15. The judge fell into error by minimising the emotional impact on the children overall.

Submissions

16. Ms Fisher submitted that the focus of the decision was on credibility and that was unjustified. She confirmed that she was not attempting to expand the grounds to include asylum and there was no challenge to the decision in that regard. Ms Fisher submitted that it was always the appellant's case that she had family in Jamaica and that she did have contact with them. The judge's approach to the expert report, however, was flawed and the judge failed to engage with the evidence overall. The appellant had confirmed that she spoke to the family from time to time, but Ms Fisher did confirm that there were no witness statements from the family. The judge found against the appellant on credibility grounds and used that, impermissibly, as an overarching theme. The expert found there was no effective support, but the judge did not take that into account. The expert pointed out that the PATH scheme in Jamaica supported those well below the poverty line.

17. The judge was not entitled to find that the appellant could work and looking at all the elements together she would have difficulties in finding employment and the appellant would be living in poverty. The judge's approach was not in accordance with **Kamara**.

18. Ms Isherwood submitted that the arguments were merely a disagreement with the findings, and it was for the judge to give weight to the evidence. She pointed out that the expert report was clearly based on the fact that the appellant had no family in Jamaica and that could be seen from the opening paragraphs of the expert report. Looking through the expert report itself the judge noted elements of the appellant being able to get free medical assistance and that the TRN could be obtained from abroad. To be registered for PATH it was possible to use an agent and that too was cited in the expert report. In the response to Ms Fisher's submission on living below the poverty line it was accepted by the judge that the appellant could obtain work. Overall the judge made comprehensive findings and it was open to the judge to find the appellant was not credible regarding contact with her family.

19. Ms Fisher reiterated that albeit that the appellant had family contact she would face severe difficulties in reintegration.

Analysis

20. In addressing ground (i) we refer to the guidance given by Underhill LJ in **MN v SSHD** [2020] EWCA Civ 1746 at paragraph 121 in respect of expert evidence

…

5) The weight to be given to any such expression of opinion will depend on the circumstances of the particular case. It can never be determinative, and the decision-maker will have to decide in each case to what extent its value has to be discounted…'

21. This conclusion was with regards to medical evidence and it was noted in **MN** that non-medical evidence was of a different character, but the essential point is the same; the judge, although he must take the evidence into account, is not bound to accept what is in the report or unable to depart from its conclusions. In this instance the judge gave sound reasoning for his findings. Nothing in the treatment of the expert's report suggested that the judge contravened the guidance in **MN** or **Mibanga** or failed to take the report into account. From a reading overall of the decision, it was not apparent that the judge merely came to a negative assessment of credibility and then discounted the report.

22. It was submitted that the judge's focus was solely on credibility when resisting the report, but it is clear, for example from paragraph 117, that the judge did engage with the expert report overall and indeed stated "the appellant's health condition, her status as a deportee, the difficulties in finding work and dealing with gang culture are all very clear hardships and obstacles but not 'very significant obstacles' as set out in the Rules". The judge identified the correct test when identifying that very significant obstacles was an "elevated threshold such that mere hardship, mere

difficulty, mere hurdles and mere upheaval or inconvenience even where multiplied will generally be insufficient in this context". The judge simply did not accept that the difficulties as he found met the relevant test.

23. Although Ms Fisher submitted that there was no effective family support the judge found the appellant could work and when making that finding, the judge took into account both the country expert and medical reports. The findings in relation to work were made in the context of the appellant's mental health. The judge not only found that the appellant was in a position to obtain medication in Jamaica but whilst accepting, at paragraph 111, the employment position in Jamaica was poor nevertheless, "there is no reason to believe that she would not find work". That was within the context that the appellant had previously worked in Jamaica even though she had mental health problems, had undertaken a variety of roles, was 43 when she left the country and also continued presently to undertake voluntary work in the UK. Those findings were open to the judge and did not rest substantially on the credibility findings but on the objective evidence.

24. At paragraph 112, the judge identified the findings of Dr Sahota, the medical expert, and accepted that the appellant suffered from a mixed anxiety and depressive disorder and noted that the appellant had poor mental health before leaving Jamaica but had received counselling and medication at that time. The judge also noted at paragraph 113 that the appellant suffered from further medical conditions, such as diabetes and hypertension but found that they were not enough to present a significant obstacle for work or her integration into her home country and indeed identified that once she had got her TRN form she would be able to obtain subsidised medication and access medical facilities.

25. The judge had neither rejected wholesale nor ignored the reports of Mr Sobers or Dr Sahota but was not persuaded that albeit the appellant's return would be "overwhelming and detrimental" that it would be "sufficient to amount to a significant obstacle to her integration". At this point the judge entails a lesser hurdle to the appellant's advantage (he omits "very" from "significant obstacles"). Mere disagreement about the weight to be accorded to the evidence, which is a matter for the judge, should not be characterised as an error of law, **Herrera v SSHD** [2018] EWCA Civ 412.

26. At paragraph 116 the judge goes on to find that "many of his [the country expert's] observations are predicated on the appellant having no support (such as the picture he paints of deportees waiting at the police station) which I have found not to be the case".

27. The assertion that the judge simply undermined the Sobers' report because the expert had proceeded on a misapprehension that the appellant had no family is not sustainable. That said, as Ms Isherwood pointed out, Mr Sobers, at the very outset of his report, clearly stated that the appellant had no family in Jamaica. That was the basis on which Mr Sobers composed his report and that was the expert's error and a theme which ran throughout the report. Even so the judge took on board the

concerns of the expert and dealt with them head on. It is not the case that the judge merely considered the report having already made his findings. The judge evidently noted the observations of Mr Sobers in relation to violence against women but as acknowledged in the grounds, the country expert (at paragraph 90 of his report) proceeded on the basis that these problems would be significantly worse if like the appellant the deportee had no real social ties in Jamaica. That was clearly not the position for the appellant as the judge found. Further, as recorded and confirmed by Ms Fisher the appellant did not pursue her asylum claim at the hearing.

28. Although the grounds complain that the judge ignored the fact that it would take six weeks for the TRN to come through, Mr Sobers' report itself is clear that this can be requested from abroad. Thus even if the family were in poverty, as the judge recorded, the appellant could work having undertaken a number of different jobs whilst in Jamaica previously and she continued to undertake voluntary work in the UK. The family poverty does not preclude them from offering emotional/social support.

29. Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge, **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (IAC).

30. Turning to ground (ii) in relation to credibility, Ms Fisher submitted that it had always been the appellant's case that she had family in Jamaica and the judge failed to appreciate this when making his findings. That misunderstood the point being made by the judge, who gave ample reasons for finding the lack of credibility regarding extent of contact with the family in Jamaica. It is not stated by the judge that the appellant denied she had siblings, and it was open to the judge to find as he did on the inconsistencies and thus to find her evidence was undermined overall. The challenge at paragraph 30 of the grounds attempts to re-characterise the evidence. It was not that the appellant had never claimed family herself, (although it would appear that the expert misread her witness statement) but that *extent and nature* of her contact with the family was inconsistent. It was quite clear from the findings that the judge did not accept the evidence that the appellant gave with regards to her relatives overall and the support they could offer, even if they were poor, because she was evasive and vague; his reasoning on those points was cogent. The findings on inconsistency and vagueness were clearly open to him.

31. At the outset of the appellant's oral evidence, as the judge recorded at paragraph 86, when she was asked, what contact she currently had with her siblings, the appellant replied, "not at the moment". She then contradicted this, as the judge recorded. When she was asked about her sister Nadine and when she last spoke to her, she stated that she was "living there, somewhere". When asked again she said that her sister was 'not working and has a lot of children. She asked for money just cuts me off'. As the judge stated at paragraph 87 the appellant would not state when she had last spoken to two of her siblings, apart from the time of the death of her father,

"*having already denied such contact*". As noted, in her written statement of 13th January 2020 she confirmed that she was in communication with her sister in December 2019.

32. The judge also pointed out at paragraph 89 that the appellant failed to mention her sister Karen, although referred to her in her consultation with Dr Sahota that Karen was still in Jamaica as recently as August 2020.

33. It is not necessarily the fact that she could not remember when she was last in contact with them but that her credibility was undermined as the judge found by her "inconsistency in that she denied contact with her siblings but then said she had been in contact with Steve as recently as two weeks ago".

34. At paragraphs 92 to 95 the judge made clear the reasons for his findings stating:

'92. *Even if living relatives have died, I would have expected a credible witness to be able to give evidence about such relatives.*

93. *When asked about Mr Douglas' funeral and specifically who told her about the funeral she specifically stated 'my daughter called me to tell me'. Mr Archie then asked whether it was Sonja who told the Appellant. She responded 'Jada was the one who told me, grandfather has died'. These two answers are clearly inconsistent as it was either her granddaughter who called her or her daughter, as she first expressed in her answer.*

94. *When asked whether she could try to re-establish links with Sonja she stated that she doesn't know where she is and that her only relationship is with her daughter in the UK, Tashanna. I do not find it credible that the Appellant doesn't know the whereabouts of her daughter Sonja even though Sonja is in touch with her daughter Tashanna with whom the Appellant lived with for many years (and is in touch with her granddaughter Jada).*

95. *Her evidence is that she has been in touch with her sister Nadine in Dec 19, her brother Steve in the last few weeks, and her brother in law recently. I find that the Appellant is in touch with her close family and her evasive and inconsistent answers undermine her credibility in respect of her contact with her daughter, her other sister and her wider family. I find it more likely than not that she still has such contact. Whilst having family members in an Appellant's home state does not automatically mean that they can relocate, the presence of friends and family does have a bearing on this factor as it makes it more feasible and less harsh'.*

35. Although the grounds attempted to argue that there was no inconsistency in who the appellant claimed had told her about the death of her father, paragraph 93 in the decision cogently and rationally sets out why the judge found the appellant's responses "clearly inconsistent". On the one hand she stated it was her daughter who told her about the death of her father and on the other hand it was the granddaughter. The ex-post facto explanation in the grounds of appeal does not undermine the judge's reasoning. Further, it was also the appellant's contention that she did not know the whereabouts of her daughter Sonja even though both she and Sonja were in touch with Tashanna, her other daughter in the UK. It was clearly

open to the judge to find it was not credible that the appellant did not know the whereabouts of her daughter.

36. The judge, for unarguably sound reasons, did not find the appellant a credible witness in relation to her relatives in Jamaica. It was the inconsistencies in that evidence which the judge found undermined her overall evidence and undermined the point that she would have no effective social support. Overall, it was open to the judge to find that the appellant did not provide a full picture of her ties with her close and extended family in Jamaica. Consequently the judge also, reasonably, found that it was open to the appellant to apply for official paperwork as found necessary in the expert report.

37. The judge noted at paragraph 110

> *"Ms Fisher states in closing that her daughter and siblings have their own problems so help would be limited. I have found that the Appellant is in contact with close family members and therefore do not accept that no support is available or that this lack of support as submitted would be a significant obstacle to her integration in a society in which she was a member for many years".*

38. As confirmed at the hearing before us there were no statements from the family in Jamaica to confirm that there would be no transitory accommodation. It is for the judge to assess the evidence and as set out in **Secretary of State v R (Kaur)** [2018] EWCA Civ 1423 para [57], a bare assertion that the appellant is unable to turn to her family for even temporary support in the form of accommodation is insufficient. The expert report goes no way to alleviating the difficulty with the appellant's appeal on this issue.

39. The adverse credibility findings were entirely open to the judge. The threshold for irrationality as claimed is a high threshold. The judge rightly accepted some elements of the appellant's evidence and the judge made clear where he rejected other elements. For example the judge accepted that the appellant's family might live in straightened circumstances, but critically at paragraph 111, having considered all the evidence, found "whilst I accept that the employment position in Jamaica is poor there is no reason to believe that she would not find work".

40. We remind ourselves that **UT (Sri Lanka) v SSHD** [2019] EWCA Civ 1095 exhorts judicial restraint when considering the adequacy of reasoning in the First-tier Tribunal.

41. Ground (iii) is not arguable on a careful reading of the decision as a whole. From the variety of findings made by the judge, many of which are highlighted above, in terms of her family, her length of time previously in Jamaica, her contact with that family and her ability to find work even in the light of her age, it is not arguable that the judge failed to give inadequate reasoning. Nor is it evident the judge failed to engage with a broad evaluative assessment of whether the appellant would be "enough of an insider in terms of understanding how life in the society in that country is carried on and a capacity to participate in it" as per **Kamara**.

42. We repeat our observations above. The judge factored in at paragraph 112 that the appellant had poor mental health before leaving Jamaica and had received treatment and found that she continued to suffer from that condition, as well as other medical conditions, including hypertension but noted that she would be able to obtain a TRN (quite rightly) and that she was able to obtain subsidised medication. The judge noted that she was 43 years old when she left the country, rejected the aspect of the expert report that she had no support which the judge found not to be the case but even so at paragraph 117 stated the following "the appellant's health condition, her status as a deportee, the difficulties in finding work and dealing with gang cultures are all very clear hardships and obstacles but not 'very significant obstacles' as set out in the Rules". That was open to the judge.

43. The judge took on board Ms Fisher's submissions but noted that the appellant had lived in Jamaica, had worked there doing a number of different jobs, including security guard, fruit seller, washing clothes and doing sewing (107), but that she had also whilst in the UK had "done numerous volunteer activities which would assist in finding work in Jamaica". The evidence clearly showed that that assessment was of the appellant's current activities.

44. Thus being fully aware of the appellant's health issues the judge cogently found that the appellant could access the working community. It was clear that the judge had factored in the expert report but for adequate reasons found that there were no very significant obstacles to her return.

45. The above demonstrates overall the decision does not display a failure to give adequate reasoning, nor reveal contradictions. The reference to other countries is superfluous but not a material error in the light of the findings as a whole or one which undermines the decision overall.

46. In terms of ground (iv), it is not arguable that the judge erred by applying **Kugathas** too restrictively in connection with the family life between the appellant and her grandchildren. This is simply a disagreement with the wholly sustainable assessment of the judge. It as was acknowledged by the appellant and found by the judge that the appellant no longer lives with her grandchildren nor her daughter in the UK. As the judge found at paragraph 118 "whilst she has limited contact with her grandchildren once a fortnight, she no longer lives with them and does not have an Article 8 family life".

47. It is not arguable that the judge applied too restrictive an approach to **Kugathas** because the test demands, "something more exists than normal emotional ties". These are children who have a separate household from the appellant and cared for by their own mother. The judge clearly directed himself appropriately in terms of **Kugathas**, at paragraph 101, noted the close relationship the appellant previously had with her daughter and grandchildren, but that she now had "a more estranged relationship with both, yet still maintains warm ties with her grandchildren". It was entirely open to the judge to find that "this contact does not amount to family life but reflects the more remote but warm relationship between a grandparent and her

grandchildren". That was clearly a reference to *Article 8 protected* family life and not a denial of any family relationship itself. The judge noted the best interests of the children nonetheless, but also that they lived with their mother and father and that they would no doubt be cared for and "thrive in a family unit". It was entirely appropriate for the judge to make the findings that he did in terms of the family life.

48. The evidence which was accepted in terms of the grandchildren goes no way to showing that the test of unduly harsh could be reached, let alone unjustifiably harsh circumstances and which is the correct test to be applied as per **R (Agyarko)** [2017] UKSC 11.

49. That the previous Tribunal found that on the evidence there was family life is not material because that decision apparently predated their separation, the decision was set aside and thirdly, the appellant has not lived with her daughter and grandchildren since 2019 and sees them infrequently. On those facts the finding by the judge on family life is unassailable.

50. The decision here as a whole makes sense having regard to the material properly accepted by the judge. The reasoning was rational and cogent and far from perverse.

51. There was no material error of law in the First-tier Tribunal decision and the decision will stand.

No anonymity direction is made.

Signed Helen Rimington Date 30th November 2021

Upper Tribunal Judge Rimington