Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/04078/2019**

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On the 19 January 2022	**On the 22 March 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SIMONE NICOLE JACKSON
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Shaw instructed by Direct Access
For the Respondent: Mr Tan, a Home Office Senior Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of Jamaica born on 13 December 1978 who appealed a decision of the Secretary of State refusing a claim pursuant to article 8 ECHR, dated 22 January 2019, relied upon by the appellant to prove an exception to the obligation upon the Secretary of State to deport her from the United Kingdom.

Background

2. The appellant arrived in the United Kingdom on 16 August 1997. Her immigration history shows she was refused leave to enter but granted temporary admission to return to Gatwick airport on 20 August 1997 for voluntary return to Jamaica but that she failed to return and was therefore listed as an absconder.

3. The appellant 'went to ground' but reappeared when she made an application for discretionary leave to remain on the basis of her family and private life on 14 December 2011, which was refused on 27th July 2012.

4. The appellant made further representations pursuant to article 8 on 20 February 2013 which were refused and her appeal against the refusal dismissed under the Immigration Rules but allowed under article 8 ECHR, on 10 September 2013. Leave to remain was granted by the Secretary of State on 28 November 2013 for a period of 30 months. Such leave was extended to 23 April 2020 but was revoked by the making of the deportation order.

5. On 27 September 2018 the appellant was convicted of conspiring to supply a Class A drugs and was sentenced to 2 years imprisonment on the 23 November 2018. The appellant was served with the decision to deport her on 18 December 2018.

6. The sentencing remarks of His Honour Judge Mansell QC sitting at the Crown Court at Manchester on 23 November 2018 clearly shows that the appellant was one of a number of defendants dealt with by the Court on that day. It is clear that the appellant was a small part of a far larger conspiracy described as "a well organised criminal network responsible for supplying large quantities of Class A and B drugs in the Manchester area and to a criminal group operating in Birmingham". In relation to this appellant the sentencing remarks were:

> "Simone Jackson I will deal with you next only because you were the third defendant to face trial in this case and you took the matter right through to requiring the verdict of the jury which was guilty.
>
> You acted as a courier for 1.2 kilograms of heroin on behalf of your then boyfriend Dwaine Thomas. He contacted you at your place of work - a nursing home near to where you lived, where you had worked for several years and were highly regarded. Arrangements were then made for Terrain Lee to deliver a bag containing the drugs to you at the end of the street and your role was to store it temporarily in your car until the end of your shift when you would take it back to the house where you were living with Mr Thomas and you would hand it to him.
>
> You were clearly uncomfortable with what you were tasked to do. When the undercover police officer approached you on the forecourt of the nursing home you panicked and dumped the bag of drugs in a wheelie bin.
>
> Given the quantity of heroin involved here and the level of harm it falls into Category 2, but your role was undoubtedly a lesser role. You performed a very limited role under direction. You became involved through either naivety or exploitation. You were unlikely to receive any financial reward for your actions and you clearly had no awareness of the scale of the Manchester operation for whom your boyfriend was then working.
>
> You are 39. You have no previous convictions. You are of positive good character as the character reference read to the jury in the course of the trial

and from my own observations having seen you give evidence and having read today the letter that you have written to me.

This is your first and will almost certainly be your last court appearance and custodial sentence and whilst I must apply the relevant sentencing guidelines for the supply of drugs, I also remind myself of the guideline for the imposition of custodial sentences and the principle that where a sentence of imprisonment cannot be avoided, and I am afraid it cannot in your case, then it should be a sentence no longer than is necessary both to punish you and deter others and so I am allowing substantial reduction in this case for your good character and your very limited role that you would have performed and I fix the starting point for sentence at two years imprisonment.

You unwisely contested this matter before a jury. Had you pleaded guilty at the earliest opportunity, you would have served that sentence by now so the sentence in your case must be two years imprisonment.

7. This tribunal shall not go behind the appellant's conviction and sentence in relation to which there is no evidence of a successful appeal by the appellant to the Court of Appeal (Criminal Division).

8. Having been convicted and sentenced to a period of imprisonment between one and four years the appellant is therefore a "medium" offender for the purposes of considering the applicable provisions in this appeal.

9. Section 19 of the Immigration Act 2014 brought Part 5A of the Nationality, Immigration Asylum Act 2002 into force with effect from 28 July 2014. As found in Binaku (s. 11 TCEA; s. 117C NIAA; para 399D) [2021] UKUT 34 (IAC) (27 January 2021) the only framework needed is Part 5A.

10. Part 5 A is headed "Article 8 of the ECHR: Public Interest Considerations and reads:

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D Interpretation of this Part

(1) In this Part—

- "Article 8" means Article 8 of the European Convention on Human Rights;
- "qualifying child" means a person who is under the age of 18 and who—

  (a) is a British citizen, or

  (b) has lived in the United Kingdom for a continuous period of seven years or more;

- "qualifying partner" means a partner who—

  (a) is a British citizen, or

  (b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).

(2) In this Part, "foreign criminal" means a person—

(a) who is not a British citizen,

(b) who has been convicted in the United Kingdom of an offence, and

(c) who—

(i) has been sentenced to a period of imprisonment of at least 12 months,

(ii) has been convicted of an offence that has caused serious harm, or

(iii) is a persistent offender.

(3) For the purposes of subsection (2)(b), a person subject to an order under—

(a) section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc),

(b) section 57 of the Criminal Procedure (Scotland) Act 1995 (insanity etc), or

(c) Article 50A of the Mental Health (Northern Ireland) Order 1986 (insanity etc),

has not been convicted of an offence.

(4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time—

(a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);

(b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time;

(c) include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for that length of time; and

(d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.

(5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it.

11. The appellant's case is that she meets the exception in section 33(2)(a) of the UK Borders Act 2007 as her removal will breach her Convention rights, that there are exceptional/very compelling circumstances in this matter which outweigh the public interest in her deportation, that deportation would be in violation of her Article 8

ECHR rights, and that the public interest does not require her deportation because she will contribute to the UK economy and industry which is suffering a huge job shortage and because she is not a prolific offender and only offended due to exploitation, and will not reoffend.

12. The appellant has never married or had children and resides in the UK with her mother, Norma Grant a British citizen who was born on 19 September 1961, and her British half-brother Vashaun Miller who was born on 1 June 2000.

The evidence

13. The appellant has provided three witness statements which stood as her evidence in chief and attended for the purposes of cross-examination by Mr Tan.

14. In her second witness statement dated 1 March 2020 the appellant refers to being released from prison on 13 March 2019, being on licence until 7 March 2020, and release from immigration detention on 19 June 2019.

15. The appellant refers to her mother not being in good health as she has a heart condition and suffers with anxiety and pain in various parts of her body as set out at [3] of that statement. The appellant claims her mother is not able to do much for herself and requires the appellant's help with shopping, cooking, cleaning, lifting and managing bills, sorting out her medication, and dressing.

16. The appellant states she has not been back to Jamaica since she left 1997 claiming she could never go back because when she was there, she was sexually abused by her step grandfather and her uncle and was not protected by her grandmother when she told her what was happening. The appellant claims her abusers are still living in Jamaica. The appellant claims to have no financial resources or savings, to be her mother's carer, and have no family or friends to help her understand how the country runs and expresses a fear for what her abusers might do to her especially in light of country conditions.

17. The appellant claims the only family she had in Jamaica were her grandmother and her uncle but has now provided a death certificate which she states records her grandmother's death in Jamaica on 5 September 2021, aged 80, although it is noticed the same certificate records that the deceased was buried in a family plot in Rose Hill in the parish of St Mary on 4 September 2021.

18. In her more recent witness statement dated 14 January 2022 the appellant claims that in December 2019 her mother had a heart attack which she survived with medical assistance. Five months later her mother fell and broke her ankle which required insertion of a metal plate which the appellant claims limit her mobility. The appellant also claims a few days after being discharged from hospital her mother was readmitted for another week with suspected COVID-19 infection. The appellant claims her mother is unable to work and has become depressed, more confused, lost her independence, and is reliant upon the appellant for assistance with everyday tasks.

19. The appellant claims her half-brother is unable to care for their mother as he is an essential worker who has been constantly working and attending college one day a week throughout the pandemic. The appellant's brother is a mechanical engineer with Voith Paper. The appellant claims her half-brother's mood is low as a result of their mother's difficulties.

20. The appellant states she had been receiving counselling with a therapist at the Manchester Rape Crisis Centre about her childhood sexual abuse since October 2020 which has now been completed, although she claims to have made a referral with another counselling organisation for further treatment.

21. At [11] of this statement the appellant states she would say that she is not vulnerable but has learned through counselling that she is vulnerable and naïve as a result of her traumatic past and the lack of self-love and low self esteem. The appellant claims that when she met her former boyfriend, she trusted to believe everything he told her.

22. At [12 – 14] of the statements the appellant writes:

> 12. Since being released from prison I've been working for a charity organisation up until the pandemic and my mum's health issues. This charity organisation I used to work for is willing to have me back as an employee. As a qualified carer I would love to continue being a carer again as the UK is acknowledging the shortage in carers, which was one of the reasons I went in that field of work a few years back.
>
> 13. If I am allowed to stay in the UK then I will return to my work as a carer, which was my job for three years before I went to prison. Looking after people is what I love doing, I am a qualified carer and would love to work in that field again.
>
> 14. I know that what I did was wrong and I will for ever live with this and pay for my role, but I asked this court to consider that it is my sole offence and I will never ever do anything wrong again. Also, it doesn't seem right that my mother and brother are also paying for my wrongdoing. I will never forgive myself for the pain I have brought down. They say that people make mistakes and I know that I have made the biggest mistake of my life, but I promise that I have learnt from it and I will never do anything wrong again. I only want to be with my mother and brother and to give something to UK society by working.

23. Questions put to the appellant by way of cross-examination which discussed, inter alia, the family situation and ask who provided care for her mother and brother whilst the appellant was in prison to which she stated it was her mother and brother. The appellant was also asked about family in Jamaica and her claim to only have a grandmother and uncle in Jamaica was shown to be false as her mother's own witness statement indicated she had one sister and two brothers in Jamaica to which the appellant had made no reference. Although the appellant claimed her uncle passed away in 2007 the appellant's mother's witness statement is far more recent.

24. The appellant stated her mother went to Jamaica for her grandmother's funeral where she stayed at her grandmother's property. She claims her mother was met at the airport by friends of her grandmother.

25. The appellant also stated that her grandmother did pass on 5 September and the reference to being buried on 4 September is a mistake.

26. The appellant's half-brother has also filed three witness statements and attended for the purposes of cross-examination. A letter purporting to serve as the second statement of the appellant's brother, but which must be that referred to as the third statement in the index, is dated 11 January 2022. In that letter Vashaun Miller states his sister was working for a charity organisation and that her life resolved around that and home.

27. Mr Miller describes it as "disturbing" when discovering that his sister would have to attend court again because "immigration" believe she had no reason to be in the United Kingdom with which he disagrees. In his opinion trying to break up the family is a heartless act which has caused anxiety, loneliness, and depression to his mother, sister, and even he himself. He describes his mother feeling "attacked from evil people who tried to separate her from my sister". Mr Miller complains that he had had to undertake long-distance drives to visit his sister when she was in a detention centre and to the fact he has had to pay the fees for representing her which is paid from his earnings.

28. Mr Miller refers to the events of 23rd December when his mother was taken to hospital as she had chest pains and the events when his mother suffered a heart attack whilst in hospital. Mr Miller claims that whilst his mother was receiving treatment, he realised his sister was the only person he had in his life and that he couldn't imagine her in a different country and his mother dying.

29. Mr Miller's mother survived and he claims that since, his sister has been his mother's carer. He claims his sister is the only person who, day in and day out, cooks the right meals, monitors his mother, keeps on top of his mother's medication, and make sure she takes her medication. He also claims his sister manages the bills and jobs around the house and, in particular, checked their mother when she was ill in spring.

30. At [10] of his letter Mr Miller writes:

> 10. My sister doesn't need to have a child or to be married to have reason to stay here. Her family needs her to be here and she deserves the opportunity to be free finally. She doesn't deserve to be sent back to a place that she no longer knows, a place that she can never call home because of what happened to her there is a child, a place she rarely knows about any more. Her life has been built in this country and here is all she knows. I beg the court to see that Simone belongs with us. We are all she has and she is all we have. Together we can keep each other safe.

31. Mr Miller was cross-examined by Mr Tan asking similar questions to those asked of his sister. He claimed not to know of any other relatives in Jamaica but when asked about who he met them at the airport when he and his mother travelled to the grandmother's funeral, he stated there were met by three friends. Mr Millar claimed his mother did not have contact with her siblings claiming that they were not on good relationship. Mr Miller was asked in re-examination about his mother's statement that she had one sister and two brothers but

claimed he did not know whether they were in Jamaica. Mr Miller also claimed he would not be able to assist if his sister if she was deported as he works, will not be around personally, and would not be able to provide the support his mother requires.

32. The appellant's mother did not attend to give oral evidence as she was unwell but has provided a witness statement, the first of which is dated 9 April 2019, in which she claims the only relative she is in contact with is her mother, the appellant's grandmother, although in relation to her siblings in Jamaica she writes:

> 7. I do not want to give the impression that I just have my mother living in Jamaica. I do have siblings (one sister and three brothers) also resident in Jamaica but I have not had contact with any of them since I came back from last visiting Jamaica. On that trip which was made purely to be with my mother while she was in hospital I did see two of my brothers. However I have never been close to either of them and they wrongly believed that just because I am living in this country and had my own business (a hairdressing salon which I have now closed down) that I should have the financial wherewithal to buy a more spacious place for my mother and be the one who primarily looks after her financially. When I did not help my mother in the way expected because I could not afford to do so my brothers blamed me and that has been a lingering source of dispute between us. This is why I have kept away from all of them including my sister who also feels the same way. I mention this because I know that none of my brothers or sister would be prepared to help my daughter re-establish herself in Jamaica. She will be genuinely on her own except for my mother.

33. The appellant's mother claimed the appellant would have no option other than to go to St Mary's where her mother lives, which is stated to be a crime ridden area of Jamaica with little or no job opportunities.

34. The appellant has also provided a letter from her Offender Manager dated 19 February 2020 in the following terms:

> To whom it may concern
>
> I am the current Case Manager for Simone Jackson whilst she is subject to her current licence period. She is subject to this license until 06/03/2020.
>
> Ms Jackson was released from the detention centre on 21/06/20 where she has reported to all her appointments without any issues.
>
> Initially work was done around her mental health through past trauma via a referral MO:DEL (Manchester Offenders, Division Engagement and Liaison Team). An onward referral was sent to St Mary's where she was placed on a waiting list.
>
> Ms Jackson was a very proactive in obtaining work in the community as this was important to be able to support herself and her family, financially. She secured a job as a hairdresser undertaking her level 2 training following what she had learnt whilst in custody. She has been able to access support from the counselling service via her employer. This is something this has been beneficially to Ms Jackson as she is still currently on the waiting list via St Mary's and therefore has been able to address her mental health.
>
> Employment has been a support for Ms Jackson as this has given her the structure she needs to rebuild on from her time in custody and enable her to engage with positive peers and be supported financially.
>
> During supervision sessions attitudes, thinking and behaviour has been addresses to prevent further offending and manage her risk. She is assessed as low risk of reoffending and low risk to the public.

Ms Jackson has been motivated throughout her licence and her engagement with Dallas Court where she has had to present on a weekly basis.

Ms Jackson will complete this license successfully without any enforcement action being taken.

35. A letter dated 3 February 2020 from The Message Trust confirms the appellant's employment as a hairdresser, the work of that organisation with ex-offenders, and the appellant's counselling with a partner agency. The letter refers to the appellant's mother being in poor health, suffering a heart attack just before Christmas, and the appellant providing for her as her primary carer. The letter concludes "*We have found Simone to be reliable and hard-working, we are keen that she is able to remain in this country in order for her mother and continue her employment. We have seen absolutely no evidence that there is a risk of reoffending*".

36. Other letters of reference also written by members of this organisation, two of which are undated, have been taken into account.

37. A letter dated 15 April 2021 has been provided by a counsellor from the Greater Manchester Rape Crisis Centre confirming the appellant has been engaged with the organisation since mid October 2020, has attended weekly sessions, is addressing the negative impact of prolonged exposure to childhood sexual abuse, and determining the appellant requires extensional re-engagement for ongoing therapy when circumstances permit and "offer a more positive environment for Simone to heal from the complexity such trauma leaves on its victims".

38. A letter from Pastor Linton of the Beulah Apostolic Pentecostal Church (UK) dated 23 February 2020 confirms he has known the appellant for the past three years as a member of the congregation of which he has been the Pastor for the past 25 years. The letter states that in the opinion of the writer the appellant has always shown herself to be a person of good conduct, well mannered and respectable, and was acquitted herself as a lady of good character.

39. A letter from the appellant's GP, dated 24 February 2020, confirms a diagnosis of depression and anxiety with symptoms considerably worsening as the appellant is under stress and any addition as a carer for her mother. The letter confirms the appellant has been prescribed antidepressant Citalopram.

40. Other evidence in the bundle, including country information, has been considered even though not specifically referred to in this decision.

Discussion

41. The appellant asserts the starting point in this appeal is a previous determination of the First-tier Tribunal, dated on 26 September 2013 in which her appeal against the refusal of an application for leave to remain on the basis of her private life established with her partner, her mother and half brother was dismissed under the Immigration Rules but allowed pursuant to article 8 ECHR.

42. At that time the appellant's brother was a young teenager. The specific findings of that judge are set out from [6] in which at [9] it was found:

> 9. I do not underestimate the appalling immigration history of this Appellant. Aided and abetted by her mother, the Appellant quite deliberately lived clandestinely in the UK for 14 years in the hope that she would then achieve leave to remain on long residency. There is no doubt that this was unlawful, dishonest and wholesale disobedience of the law. However what is different about this Appellant's history is that during that time a child was born who has a special bond with her.

43. The child referred to by the judge was the appellant's half-brother Vashaun. Having analysed the circumstances of the family unit involving this child the Judge concluded that it was not in the best interests of Vashaun to be separated from the appellant which led to a finding that that this rendered the respondent's decision disproportionate. This is clearly illustrated by the finding at [18] *"I find that the decision is neither proportionate nor necessary to further those legitimate aims. The Appellant has a bad immigration history but this family unit includes a young boy who was grown accustomed to the close attention of his sister and I must treat the best interests of that child is a primary consideration. He and his mother are both British citizens and Vashaun is accustomed only to life in Britain. Removal of the Appellant from the family is not in the child's best interests".* The situation now is substantially different in that at the date of this appeal the public interest is considerably strengthened by the appellant's offending and the deportation order and the fact that Vashaun is no longer a child but is now an independent young man who has continued with his studies and employment and no longer has the degree of dependency or potential reaction to the appellant's removal as he did back in 2013 when this appeal was heard.

44. The other issues referred to under the "Devaseelan" principles set out at [16] of the appellant's representative skeleton argument, such as the relationship between the appellant and Vashaun and the appellant being a polite woman equally apply today, but most of the points made are specific to the facts that existed in 2013. The Court of Appeal have recently confirmed in Secretary of State for the Home Department v Patel [2022] EWCA Civ 36 that a judge is required to consider all the evidence they have before them and that they are not confined by an earlier decision pursuant to Devaseelan, even if this sets out the starting point. In relation to this appeal there have been a number of material substantial changes requiring the matter to be considered fresh and warranting a departure from the findings made in 2013.

45. It is also submitted that the appellant is not a prolific offender, has a low risk of reoffending, and has not reoffended. The appellant also whilst claiming she is not seeking to "limit" her offending, refers to the circumstances of the offence namely claiming she was vulnerable and exploited by a partner in whom she trusted and that she no longer associates with past friends and acquaintances, spending all her time with her mother and half-brother.

46. Those matters the appellant seeks to rely on now were properly taken into account by the Sentencing Judge. The appellant refused to accept responsibility before the Crown Court but was convicted following a jury trial. The Sentencing Judge clearly records that the appellant's decision to contest the matter was "unwise" and even having taken all the mitigation relied upon by the appellant into account, and even giving the appellant a sentence that was considered no longer than was necessary to punish her and deter others and even allowing a substantial reduction for good character and her limited role, the appellant still received two years imprisonment for a first offence. It cannot be disputed that the fact the appellant was convicted mean she is a foreign criminal who the Secretary of State must deport from the United Kingdom unless an exception is made out or her removal is disproportionate.

47. In relation to Exception 1, this applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

48. The point of the lawful residence test is to remind decision makers that little weight should be given to a private life developed when an individual had no
right to be here – the act provides that little weight should be given to a private life formed when an individual's status in the United Kingdom is precarious. In this appeal the judge back in 2013 made specific findings at [9] of that decision that the appellant had remained in the United Kingdom from 1997, deliberately failing to regularise her status or leave the country and return to Jamaica. Leave to remain in the United Kingdom was eventually obtained following her successful appeal on 28 November 2013 for a period of 30 months outside the Rules, followed by further grant of 30 months until 23 April 2020. The phrase "most of his/her life" implies a person residing lawfully in the United Kingdom for more than 50% of their life. The appellant was born in Jamaica on 13 December 1978 and entered the United Kingdom in 1997 when she was 18 years of age. The appellant has remained in the United Kingdom and at the date of the appeal hearing is 44 years of age. The appellant has therefore remained in the United Kingdom for approximately 26 years which, whilst exceeding the period of time the appellant lived outside the United Kingdom, only nine years of which have been with lawful leave, substantially less than the minimum the appellant will be required to demonstrate which would be more than 13 years.

49. The appellant cannot therefore satisfy the requirements of section 117C(4)(a) of the 2002 Act. The appellant cannot therefore rely upon Exception 1.

50. In relation to Exception 2, that reads:

> Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

51. As noted above, the appellant has no children and therefore has not established a genuine subsisting parental relationship with a qualifying child. The appellant is not in a relationship and therefore cannot not established a genuine subsisting relationship with a qualifying partner. The question of whether the effect of deportation upon the partner or child will be unduly harsh therefore does not arise. The appellant has not established that she can meet the requirements of Exception 2 of the 2002 Act either.

52. The appellant is not able to succeed on the basis of the specific provisions included in statute enable her to remain. It is therefore necessary to consider whether there are in this case very compelling circumstances sufficient to outweigh the public interest in the appellant's deportation.

53. When adopting a structured approach to the assessment on human rights grounds it is important to note section 117B of the 2002 Act which is set out above.

54. The maintenance of effective immigration controls being in the public interest includes maintenance of effective proceedings to deport foreign criminals.

55. The evidence is that the appellant has worked in the past and has stated an intention to continue working as a carer, a job for which she has necessary experience and qualifications, and so if she is permitted to work it is likely that she will not be a burden on the public purse. The appellant also speaks fluent English and has integrated into the UK since her arrival.

56. The appellant's private life includes, inter alia, a home life, work friends, friendships she has formed outside the working environment, the church, and members of her family.

57. In relation to the family connections, although the appellant was clearly found to have family life with her brother in 2013 it is not made out on the evidence that family life recognised by article 8 continues to exist between these two adult half siblings. I do accept, however, that the private life that exists between them is a strong element of the dynamics of this family.

58. So far as the relationship between the appellant and her mother is concerned, during the appellant's minority she clearly had family life with her mother. The appellant grew up, led an independent life including work, having a partner, and demonstrating a life away from her previous life as a child, indicating that family life recognised by article 8 ECHR ended. Their relationship continued, however, and formed a strong part of the appellant's private life.

59. The evidence is that since the appellant's mothers heart attack and other illnesses she has become more dependent upon the appellant for her care. I accept the appellant provides such care as she is at home and able to do so and provides emotional support for her mother. Whether family life recognised by article 8 exists as a

question of fact and is not outside the range of findings reasonably available to me on the evidence to find that the relationship of dependency by the appellant's mother on the appellant can be found to be sufficient to engage article 8 ECHR on the basis of family as well as private life.

60. Section 117B(4) provides that little weight should be given to a private life established by a person at a time when the person is in the United Kingdom unlawfully. The appellant's immigration history has set out above showing some of the matters that she seeks to rely upon to relate to the time when she was here illegally. Section 117B(5) also provides that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. The appellant's immigration status has always been precarious. She has only had two periods of limited leave, has never had settled status, and has always been subject to immigration control. Although it is accepted that little weight does not mean no weight, I find that this is the case when the weight that can be attached to the private life relied upon by the appellant outside that with members of the family warrants little weight being attached to it.

61. Section 117B(6) of the 2002 Act does not apply as the appellant is liable to deportation.

62. As the appellant is liable to deportation it is also important to consider the provisions of section 117C of the 2002 Act. As noted above, the appellant cannot satisfy either of the Exceptions.

63. The deportation of foreign criminals is also in the public interest and the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

64. The appellant has been convicted of a drug-related offence. The damage caused to society by drugs, both upon users and society in general, need not be set out in detail here, but it is well known that the manufacture and trade of illegal drugs is a key driver of organised crime, that there is a strong relationship between substance misuse, shop theft and the use of violence and aggression by drug-affected offenders. The total drugs offences recorded by the police across the UK in 2020/21 was 253,875. There is therefore a strong deterrent element in deporting those convicted of drug-related offences to send a clear message that such behaviour will not be tolerated and that there are serious consequences for such offending. Drug misuse and addiction in the UK also has a serious impact on public health and wider society. In 2020/21 there were 6,091 drug related deaths in the UK. NHS England recorded 100,000 admissions for drug-related mental and behavioural disorders in 2019/20. The appellant committed a serious offence which is relevant to the very compelling circumstances assessment.

65. I note the appellant's reference to the fact her sentence was at the bottom of the range of those which the Crown Court could have imposed upon her.

66. Rehabilitation relied upon by the appellant cannot in itself constitute a very compelling circumstance and the cases in which it could make a

significant contribution are likely to be rare -see Velasquez Taylor v Secretary of State for the Home Department [2015] EWCA Civ 845 [§21] although I also note that in CI (Nigeria) the Court of Appeal did treat it as a relevant factor capable of attracting some weight, an approach approved in HA (Iraq) at [132-142], KB (Nigeria) [33] and AA (Nigeria) [40]. I have factored it into the balancing assessment.

67. The appellant's contribution to the community is also noted but this adds nothing to the existing (limited) weight to be attached to rehabilitation - see Jallow v Secretary of State for the Home Department [2021] EWCA Civ 788.

68. I note the appellant's claim that she is frightened of returning to Jamaica as a result of what occurred within the past but it is not made out she would have to return to the area where her grandmother lived or anywhere near any individual who has caused harm to her as a child. Whilst it is accepted the appellant has received counselling to help deal with issues arising from the abuse she suffered as a child it is not made out that appropriate facilities are not available or accessible in Jamaica or that the individual who did hurt her as a child will be able to do so in adulthood, or that she would not be able to approach the authorities and seek assistance from the police if required.

69. The appellant's mother's evidence was that the relationship with her own siblings were strained as those in Jamaica did not feel that the appellant's mother was doing enough to help their own mother. This demonstrates concern for the family in Jamaica for the appellant's grandmother who has since passed away. The appellant's own mother and half-brother went to Jamaica for the funeral and although they were asked about who they met at the funeral and who collected them from the airport and return them to the airport I gained the impression that they were not as open as they could have been regarding the family circumstances in Jamaica. The death of the appellant's grandmother is clearly not down to anything her mother did or did not do and there is insufficient evidence from the family Jamaica that if the appellant was returned she would be effectively ostracised and not assisted in any way by the family there.

70. When the appellant's mother and half-brother went to Jamaica for the funeral they stayed at the mother's property. It is not clear whether the property is still available.

71. I find that the lack of consistency or clarity and the evidence means the appellant has not established that there are no family members in Jamaica who she could turn to, who would not cause harm similar to that she suffered, to assist with her reintegration if required.

72. Even if no such assistance was available, the appellant was educated in Jamaica, has employment skills as a carer which have not been shown to be a barrier to her obtaining employment in Jamaica, and it has not been made out the appellant would not be able, over time, to re-establish herself as an independent person within Jamaica.

73. Whilst I accept the parts of Jamaica have very high rates of crime the appellant would not be without family support, even if limited from the

UK, and it was not shown that she would not be able to seek the protection of the authorities, such as the police, if required. I do not find it credible the appellant would be effectively abandoned by her UK-based family who are professing the existence of a very close tight loving family relationship. Whilst assistance may have to reflect available finances those resources have maintained the appellant in the UK while she has been unable to work and as she shall no longer require access to the same if deported it was not shown the same would not be sufficient to meet her basic costs in Jamaica.

74. The appellant fails to make out that if deported to Jamaica she will become destitute.

75. I accept that having been in the United Kingdom for the period of time she has, re-establish herself in Jamaica will be difficult for the appellant but it was not made out on the evidence that there are insurmountable obstacles that prevent her re-establishing herself. The appellant's evidence is that she has confined her life to primarily her home environment in the UK and I find that living within Jamaica or the Jamaican community will not be alien to her. I do not find the appellant has established that she will be such an outsider that it will be disproportionate to expect her to reintegrate following deportation from the United Kingdom.

76. The appellant argues that it will be disproportionate to remove her as a result of the effect on her family. Although it is claimed the appellant's mother is dependent upon her for providing care there is little focused medical evidence regarding the mother's position to establish a claim of total dependency. It is also relevant to note, as Mr Tan submitted, that the appellant's mother was able to fly to Jamaica for her own mother's funeral without the appellant with no evidence she could not meet her own care needs whilst in Jamaica and returned without clear evidence of material difficulties.

77. If the appellant's mother requires care within the home environment that could not be provided by others as a British citizen, she is entitled to receive home help or other in-house care to meet her needs through social services. Insufficient evidence has been provided to show the appellant's mother would not be able to obtain such assistance or that it would not be sufficient to meet her basic needs. Whilst I appreciate the appellant's mother would rather the appellant stayed to provide such care that element of personal choice is not the determinative factor. It is not made out that this is the determinative issue. It is one part of the balancing exercise required in establishing the proportionality of the decision.

78. The language expressed by the appellant's half-brother in his witness statement is misguided, although demonstrates the strength of his feeling and opposition to the fact his half-sister may be deported. The simple answer to his question and points raised is that this situation is not as a result of nasty or evil people taking particular actions but as a result of the fact the appellant committed a serious criminal offence of which he was convicted after a jury trial and sentenced to 2 years imprisonment. It is the appellant who is responsible for the situation in

which she and other family members now find themselves. The law requires the Secretary of State to deport the appellant unless it can be established that such action is disproportionate to a protected right.

79. Although Vashaun claims he would not be able to assist his mother if the appellant was deported the evidence indicates this will be a matter of choice rather due to his inability to do so. I appreciate that if his mother has a need for intimate care this will be provided by a female care assistant through the local authority, but in all other respects it was not made out Vashaun could not meet his mother's needs.

80. There was an element of misleading in some aspects of the evidence including the claim by the appellant that at one point she lived at home with her mother and Vashaun whereas his evidence was that by that date he had left home and lived elsewhere. I accept that the date of this hearing, however, that all the family members live in the same property.

81. I accept that Vashaun as a young man in his early 20s who would rather not have caring responsibilities and who would rather work and go to college, but it was not made out that any impact upon him as an individual with caring responsibilities is sufficient to make the decision disproportionate. It may require him to rearrange his schedule and activities to fit in with his mother's needs, but this was not shown to be unreasonable in all the circumstances. Many young men become primary carers for their mothers and fathers.

82. I note the submission made on the appellant's behalf regarding her vulnerability in light of her past experiences which has been taken into account, but there is insufficient evidence to show that this is a case where the impact of returning the appellant could lead to consequences sufficient to engage article 3 on the basis of AM (Zimbabwe) on physical or mental health grounds. It has not been shown that if the appellant required further medical assistance in Jamaica, it would not be available or accessible to her, as noted above.

83. The fact the appellant worked continuously when she was granted permission to work, paid her taxes on such earned income and so contributed to the UK economy is noted, but one would expect a person who worked and was liable to tax to pay such tax. The appellant was able to benefit from her net income.

84. Weighing these elements in the round I find that the appellant has not made out that she can meet any of the exceptions in section 33(2)(a) of the UK Borders Act 2007. She has failed to establish that her removal from the United Kingdom will violate any protected Convention Right. The appellant has failed to establish an entitlement to remain on either of the Exceptions for the reasons set out above.

85. When assessing exceptional/very compelling circumstances it is necessary to factor into the balancing exercise the public interest. Whilst I take into account the evidence that has been given and the submissions made on the appellant's behalf, including of her experiences in Jamaica, length of time in the United Kingdom, family

circumstances, to name but a few, I find that whilst weight can be given to the appellant's arguments I find that it is insufficient to outweigh the strong public interest when conducting the necessary balancing exercise. Article 8 ECHR does not give a person the right to choose where they wish to live.

86. I reject the appellant's argument that the public interest did not require her deportation because she will contribute to the United Kingdom with specific reference to the fact there is a job shortage of carers in the UK, the fact she is not a prolific offender, will not reoffend, and offended due to exploitation. The Sentencing Judge's comments indicate the appellant was aware that what she was doing was wrong as was found by the jury. She may have done what she did out of love for her boyfriend at the time but that does not indicate she was a victim of exploitation who had no real choice. She could have refused to have taken the package but did not. She was found to be culpable. It is noted the appellant has been assessed as a low risk of reoffending, but this does not mean no risk. I have noted the appellant's assurances she will not reoffend and that she has not reoffended since the index offence, and all such factors have been weighed into the balancing exercise.

87. When putting all the matters the appellant relies upon on one side of the scales and on the other side putting the Secretary of State's arguments relating to the strong public interest in this case, and specifically noting that it relates to a drug offence, I find the Secretary of State has established that the balance of the scales tip in her favour.

88. I find any interference in the appellant's protected family or private life in the UK proportionate.

Decision

89. **I dismiss the appeal.**

Anonymity.

90. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 17 February 2022