IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: HU/01352/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 September 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MYM
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Ferguson, Counsel instructed by Freemans Solicitors
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer (via Microsoft Teams)

Heard at Field House on Wednesday 2 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

FACTUAL BACKGROUND

1. Many of the facts of this case remain at issue so I set out below only those facts provided by the Appellant's evidence which are unchallenged or facts which are corroborated by other evidence.

2. The Appellant is a national of Jamaica born in Salt Springs in 1967. She is currently aged 56 years. She had a disturbed childhood. Her mother died when she was aged nine years. Her father was reputed locally to have killed her mother. The Appellant was not allowed to go to her mother's funeral. As a result, the Appellant is estranged from her father.

3. The Appellant became pregnant when she was aged only fourteen years. Her son remained in Jamaica when she came to the UK. He left there about six or seven years ago and now lives in the USA where he works. The Appellant remains in contact with him. He provides her with some financial support when she asks for it. She mentioned in her oral evidence that he might give her US$250 which she said equates to £100 (although in fact at current rates, it would be more).

4. The Appellant's son has a former partner who continues to live in Jamaica. They have two children who live with their mother in Jamaica. The Appellant's son visits them although "not every year". He had been back twice since he left Jamaica. That is likely to be the case given that the Covid-19 pandemic would probably have precluded some if not all travel during 2020 and 2021. The Appellant thought that he had stayed on the last occasion in a hotel but before that "maybe at a friend's house".

5. On her case, the Appellant came to the UK in July 2001, but the documents show that it was in fact 1 July 2002. She was refused entry as a visitor. However, she was given temporary admission for three weeks. The Appellant stayed with her sister who lives in the UK but "ran away" because she decided that she did not want to return to Jamaica and wanted to complete her education in this country. The Appellant says that she has remained continuously in the UK since then. The Respondent disputes this.

6. The details of the Appellant's medical history are not straightforward and therefore I deal with those below. Of note, however, is that when she became seriously ill in 2018 and was admitted to hospital, following discharge, the Appellant decided that she was "ready to go home" (to Jamaica) and her sister bought her a ticket to do so. The Appellant said that this was because she "could not get help from the hospital" (in the UK) and was planning to go home to die. She thought that "it would be better to die in Jamaica".

7. The Appellant has asserted that she has no family in Jamaica. Her oral evidence, however, painted a different picture. It also emerged in her oral evidence that she had her own property in Jamaica albeit she says that it is

now dilapidated. The Appellant worked in Jamaica before coming to the UK but there is a minor factual dispute as to the nature and extent of her business. I will deal with those issues below.

8. The Appellant made an application for leave to remain based on her private life on 25 June 2019 which was refused by the Respondent on 4 November 2019. That is the decision under appeal. The Appellant appeals it on the grounds that removal to Jamaica would breach her human rights under Article 3 ECHR and/or Article 8 ECHR.

PROCEDURAL BACKGROUND

9. By a decision promulgated on 24 February 2021, First-tier Tribunal Judge Seifert allowed the Appellant's appeal on Article 8 ECHR grounds, finding that her removal to Jamaica would be unjustifiably harsh. However, he (impliedly) dismissed her appeal on Article 3 ECHR grounds based on her medical condition. He found that the Appellant's case did not meet "the high threshold described in the case of N" (referring to N v Secretary of State for the Home Department [2005] UKHL 31).

10. The Respondent appealed the allowing of the appeal on Article 8 grounds. Permission to appeal was granted on 6 April 2021 by First-tier Tribunal Judge Loke. By a decision promulgated on 1 July 2021, Upper Tribunal Judge Jackson found an error of law in the decision of First-tier Tribunal Judge Seifert. She concluded that the Judge had erred "by failing to give any adequate reasons for allowing the appeal on human rights grounds". In particular, she found that "[i]n the context of the preceding findings and conclusions, particularly as to the availability and accessibility of medical treatment for the Appellant in Jamaica, there [was] no explanation or reasons at all for the bare conclusion that removal would have a serious and unjustifiably harsh effect on the Appellant".

11. In consequence of her conclusion, Judge Jackson set aside Judge Seifert's decision whilst preserving the findings at [44] to [48] of that decision. Those read as follows:

> "44. Having considered the evidence as a whole, including the various medical letters and reports, I found the appellant to be a credible witness. She came to the UK in 2001 and has lived here since then. She did not engage with the immigration authorities about her status. However, in about October 2018 she was admitted to St Thomas' hospital in a critical state with respiratory failure and has been unwell since then. The evidence was that she requires on-going medication and monitoring of her conditions. She also suffers from depression for which she receives medication.
> 45. The appellant is unable to work due to her poor health. Her father resides in Jamaica and is in his 70s. He has his own [care] needs and they are not on good terms. Her son lives in the USA and has two children in Jamaica who he has

visited. The appellant considered that it would not be practical for her to live with her son's partner.

46. In respect of paragraph 276ADE(1)(vi) and applicant [sic] must show that they are aged 18 [or] above and that there would be very significant obstacles to their integration with Jamaica if she was required to leave the UK. The appellant resided in Jamaica up to the age of 34 years, which included her childhood and formative years and a portion of her adult life. She speaks English which is widely spoken there and would have retained knowledge of life, language and culture there. Having considered the evidence I do not consider that she would face very significant obstacles to re-integrating into life in Jamaica.

47. In respect of Article 3, having taken into account the medical evidence, I do not consider that this case meets the high threshold described in the case of N. The requirements for truly exceptional were explained by Baroness Hale in that case and are set out in the respondent's refusal.

48. It was noted in the reasons for refusal and in the submissions of Ms Navarro that Jamaica has a functioning healthcare system, which it was considered was capable of assisting the appellant. It does not appear from the medical letters that she is in the final stages of a terminal illness and she had not shown that she would be unable to continue to access treatment in Jamaica. She had not shown that she is unable to travel or is currently receiving urgent treatment. Treatment may not be free at the point of delivery in Jamaica and it was acknowledged that she might not be able to pay for treatment there but those factors alone did not make her circumstances meet the requirements of Article 3."

12. The appeal next came before Upper Tribunal Judge Blum on 10 February 2022. He adjourned the substantive hearing on that date because the Appellant had not attended what was a remote hearing and had served a new bundle of evidence late. In his directions, Judge Blum observed that if the Appellant wished to challenge Judge Seifert's conclusions on her Article 3 claim, she needed to do so either by way of a permission to appeal application or in her Rule 24 Reply.

13. In the event, the Appellant did both. In so doing, she relied on the change in the law brought about by the ECtHR's judgment in Paposhvili v Belgium [2016] ECHR 1113 and the Supreme Court's judgment in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17. She submitted that, in light of that case-law, Judge Seifert had been wrong to rely on the case of N.

14. The resumed hearing was listed again for hearing on 26 September 2022 before Upper Tribunal Judge Kopieczek. The Appellant once again did not attend. The hearing was adjourned. By a decision dated 14 November 2022, sitting as a First-tier Tribunal Judge, Judge Kopieczek granted permission to appeal to the Appellant in relation to the Article 3 finding and dismissal of the appeal on that basis.

15. At a case management review hearing before me on 13 March 2023, the Respondent conceded that there was an error of law in relation to the Article 3

consideration and agreed that Judge Seifert's findings in that regard should be set aside. The effect of that concession is that [47] and [48] of Judge Seifert's decision is no longer preserved. In any event, I would need to consider the Appellant's current medical condition and treatment available in Jamaica on all evidence before me and as at date of hearing.

16. A further issue arose at that case management hearing as Ms Ferguson pointed out that, on her case, the Appellant had by this time resided continuously in the UK for over twenty years. Although the Appellant could not succeed within the Immigration Rules ("the Rules") as she had not been in the UK even on her own case for twenty years as at date of application, I accepted that this might be relevant if the Appellant's case on its facts were made out. The Respondent has made clear in her skeleton argument that she does not accept the Appellant's case that she has been continuously resident since January 2002. Again, I have to consider the case on all the evidence I do or do not have. For that reason, Judge Seifert's finding may need to be revisited. Similarly, the issue of the Appellant's credibility depends on the evidence before me and may need to be reconsidered.

17. Ms Nolan relied on Judge Seifert's finding that there are no very significant obstacles to the Appellant's integration in Jamaica which had been preserved at [46] of the decision. However, as I pointed out, I must consider this issue as at date of hearing. I had more evidence than was before either Judge Seifert or any of the previous Upper Tribunal Judges. I heard the Appellant give evidence and had updated witness statements from her.

18. In those circumstances, I determined that it was appropriate for me to make findings on all the evidence. Whilst I take into account what is said at [44] to [46] of Judge Seifert's decision, therefore, I do not consider myself bound to follow what is there said.

THE ISSUES AND LEGAL FRAMEWORK

19. As appears from the foregoing, I have to determine the following issues which I have put in the order in which it is appropriate to consider them.

Article 3 ECHR

20. This issue turns on the evidence about the Appellant's medical condition and the treatment which would be available and accessible to her in Jamaica.

21. The test is set out in this Tribunal's decision of AM (Art 3; health cases) Zimbabwe [2022] UKUT 131 ("AM (Zimbabwe)").

22. It is for the Appellant to make out a prima facie case that there are "substantial grounds …for believing that … she…would face a real risk, [i] on account of the absence of appropriate treatment in [Jamaica] or the lack of access to such

treatment, [ii] of being exposed [a] to a serious, rapid and irreversible decline in .. her state of health resulting in intense suffering or [b] to a significant reduction in life expectancy" ([21] citing from the Supreme Court's judgment in AM (Zimbabwe)).

23. A prima facie case "means a case which, if not challenged or countered, would establish the infringement" ([17(5)] citing from the Supreme Court's judgment). The threshold is a high one because Article 3 requires "a minimum level of severity" ([17(2)]). If the Appellant make out a prima facie case, it is then for the Respondent to dispel any doubts. Otherwise, the Appellant succeeds.

24. The Tribunal gave guidance in AM (Zimbabwe) about the sort of evidence which it would expect to see and the steps to be taken when assessing an Article 3 medical claim. I do not cite the headnote in full but observe that it is for the Appellant to show both that she is "a seriously ill person", that there are "substantial grounds" for believing that she "would face a real risk" of the severe level of impact implicit in the level of decline or reduction in life expectancy and that this is as a result of the absence of treatment in Jamaica or lack of access to it. It is only if she makes out a prima facie case that the burden switches to the Respondent to dispel serious doubts.

25. The Tribunal pointed out at [2] of the headnote that the first question regarding the level of illness of an appellant "will generally require clear and cogent medical evidence from treating physicians in the UK". It also observed at [3] of the headnote that it is not enough for an appellant to show that "her condition will worsen upon removal or that there would be serious and detrimental effects". The Appellant has to show that she would face "intense suffering" or "a significant reduction in life expectancy".

26. In relation to the availability and accessibility of treatment, that evidence is "more likely to be found in reports by reputable organisations and/or clinicians and/or country experts with contemporary knowledge of or expertise in medical treatment and related country conditions in the receiving state. Clinicians directly involved in providing relevant treatment and services in the country of return and with knowledge of treatment options in the public and private sectors, are likely to be particularly helpful" ([3] of the headnote).

27. In the context of the medical evidence, I also have regard to the Tribunal's decision in HA (expert evidence; mental health) Sri Lanka [2022] UKUT 111 (IAC) ("HA"). At [4] and [5] of the headnote, the Tribunal made the point that "the GP records concerning the individual detail a specific record of presentation and may paint a broader picture of his or her mental health than is available to the expert psychiatrist, particularly where the individual and the GP (and any associated health care professionals) have interacted over a

significant period of time, during some of which the individual may not have perceived themselves as being at risk of removal".

28. At [5] of the guidance, the Tribunal indicated that "[a]ccordingly, as a general matter, GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report. Where the expert's opinion differs from (or might appear, to a layperson, to differ from) the GP records, the expert will be expected to say so in the report, as part of their obligations as an expert witness. The Tribunal is unlikely to be satisfied by a report which merely attempts to brush aside the GP records".

Article 8 ECHR

29. The appropriate order of determination of the Article 8 ECHR issue is as follows.

Paragraph 276ADE(1)(vi) of the Rules ("Paragraph 276ADE(1)(vi)")

30. In order to succeed within the Rules, the Appellant has to show that there would be very significant obstacles to her integration in Jamaica. Although she also claims that, in principle, she would meet paragraph 276ADE(1)(iii) of the Rules were she to make an application now, as she claims to have lived in the UK for twenty years, the Appellant accepts that she cannot meet that rule as time counts only to date of application. That aspect of her case therefore falls to be considered in the assessment of Article 8 ECHR outside the Rules.

31. Returning to Paragraph 276ADE(1)(vi), what is meant by very significant obstacles to integration was explained by the Court of Appeal in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 ("Kamara") as follows:

> "14. In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

The threshold is a high one. The burden of demonstrating that very significant obstacles exist is on the Appellant.

Article 8 ECHR Outside the Rules

32. The Appellant's case outside the Rules is based on her private life, in particular her length of residence and her medical conditions and treatment in the UK. The Appellant's sister and her sister's family live in the UK but the Appellant does not claim to have a very close relationship with her sister amounting to family life.

33. It is for the Appellant to demonstrate the nature and extent of the interference with her private life which would be occasioned by removal to Jamaica. It is then for the Respondent to provide justification for that interference and to demonstrate that such interference is necessary and proportionate in the public interest.

34. When carrying out the balance sheet assessment outside the Rules between interference and public interest as advocated by the Supreme Court in Hesham Ali (Iraq) v Secretary of State for the Home Department [2016] UKSC 60, I am bound to have regard to the factors set out in Section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B").

THE EVIDENCE AND FINDINGS

35. I had before me a bundle of relevant documents submitted by the Appellant to which I refer hereafter as [AB/xx]. That bundle includes witness statements from the Appellant dated 24 February 2022 ([AB/134-137]), 30 May 2023 ([AB/4-7]) and 9 June 2023 (filed separately and which largely replicates the 30 May statement). I also received oral evidence from the Appellant. She joined the hearing remotely via Microsoft Teams. There were no technical difficulties experienced. The Appellant adopted her most recent statement as her evidence in chief.

36. I have read all the documents and have considered all the oral evidence. However, I refer below only to the evidence which is relevant to the issues I have to resolve.

The Appellant's Evidence

37. It is accepted that the Appellant has physical and mental health problems. I therefore agreed with Ms Ferguson that the Appellant should be treated as a vulnerable witness. The Appellant was informed that she could ask for breaks in her evidence. As it was, her oral evidence was short, and no breaks were necessary.

38. When assessing the Appellant's evidence, I have taken into account the Joint Presidential Guidance Note No 2 of 2010 entitled "Child, Vulnerable Adult and Sensitive Appellant Guidance" and the guidance provided by the Court of Appeal in AM (Afghanistan) v Secretary of State for the Home Department and Lord Chancellor [2017] EWCA Civ 1123.

39. I am particularly mindful when dealing with any inconsistencies in the Appellant's evidence that she is said to have some difficulties with her memory which might explain such inconsistencies. However, although I have taken into account the submission made by Ms Ferguson in this regard, I do not accept that lapses in memory are capable of explaining a number of inconsistencies in the Appellant's evidence for two reasons.

40. First, the Appellant claimed on several occasions not to have said things which are reported in documents in the bundle. As Ms Nolan pointed out, those are documents produced contemporaneously by authors who have interacted with the Appellant and who would have no reason to make up what is there said. The Appellant might say that she did not remember saying something but that is quite different to suggesting that she did not say it at all. I have to consider the inconsistencies between her oral evidence and the documents depending upon what is at issue.

41. Second, some of the inconsistencies at least date back some considerable time and long before the Appellant claimed to have any mental health difficulties. Those difficulties are not capable of impacting on what was said at those times.

42. Overall, I found the Appellant an unsatisfactory witness. Some evidence emerged orally which was not to be found in her witness statements. Some of the oral evidence contradicted what was said in the written witness statements. For example, as I note above, in the course of her oral evidence, the Appellant said that her son provides her with some financial support. However, in her witness statements she denied that he did so. Such discrepancies might be due to a failure by representatives but there has been ample time during these proceedings to ensure that the Tribunal has a full, truthful and accurate picture of the facts of the Appellant's case. On occasion, the Appellant also sought to backtrack on evidence where she realised that what she had said might not be helpful to her case. I did not for those reasons find the Appellant to be credible in relation to some issues.

43. I have set out at the start of this decision the facts which did not appear to me to be disputed. The main areas of dispute in relation to the Appellant's own evidence are her length of residence in the UK and her connections with Jamaica.

44. Dealing with the first issue, it is accepted that the Appellant came to the UK in July 2002. The issue is whether she has left since. As Ms Nolan pointed out, the burden of establishing that her residence has been continuous is on the Appellant. The only documents besides those generated when she first arrived in the UK (at [AB/12-27]) are her medical records which commence only in 2013 ([AB/410]).

45. There are two reasons why I find it difficult to accept that the Appellant has lived continuously in the UK since 2002.

46. First, the Appellant has provided little if any evidence about what she was doing between 2002 and 2013. She says in her latest statement that she has attended church and been baptised. There is no evidence of that, no evidence from the church or from any of those in the congregation. She also says that she lived with her sister. However, when I asked her to clarify when exactly she had lived with her sister, she said only that she had lived with her when she first arrived before she "ran away" and when she became ill which had been "a big mistake".

47. The Appellant says that she worked as a school cleaner and then as a care worker but provides no detail. Following her illnesses, she has more recently been supported by Croydon County Council but that is only since, at the earliest 2018. There is no explanation of where she lived between 2002 and 2018. The Appellant in her oral evidence said only that she had lived alone. When I asked if she had been working, the Appellant said that she was "doing things to pay the rent".

48. Whilst I accept Ms Ferguson's submission that it is often difficult for those resident in the UK unlawfully to document every moment of their residence, even if the Appellant was working and renting a property unlawfully, and even if that was in a different identity (as is suggested by the document from Croydon Council at [AB/112]), she ought to be able to provide some evidence about her life in the UK since 2002. There is none until 2013.

49. Second, I have already noted that the Appellant's sister bought the Appellant a ticket to return to Jamaica in 2018. Even if, as the Appellant says is the case, the Home Office have retained her passport, that had long since expired. Ms Nolan put to the Appellant that she must have applied to replace her passport in order to travel. The Appellant's first answer in this regard sought to evade the question. When pressed, she said that it had not occurred to her how she would get to Jamaica, just that she had wanted to go there as a better place to die. Whilst that might have been what was in the Appellant's mind at the time, I do not believe that the Appellant's sister would have invested money in buying an air ticket for the journey unless the Appellant had the means of boarding the plane. Unfortunately, the Appellant's sister could not be asked

about this. She makes no mention of this event in her statement at [AB/138-140] and did not attend the hearing to be asked about it.

50. It is perhaps open to question whether the Appellant would have been able to leave and return even if she had a passport. However, if she did so as a visitor there might have been no evidence of her exit and re-entry. I do not therefore believe that the Appellant is without a passport. That would enable her to travel or would have done so prior to her illnesses. I do not accept on the (lack of) evidence that the Appellant has discharged her burden of showing that, on balance, she has lived in the UK continuously since 2002. I do accept however that her last documented entry to the UK was in 2002 and that she has lived in the UK continuously since 2013.

51. It is worthy of note that at [AB/5] in her 30 May statement, the Appellant says that it is her "dream to meet her grandbabies" (ie her son's children). Whilst she there says that they live with her son in the USA, her oral evidence was to the contrary. She said that the children and her son's former partner had always lived in Jamaica. She might therefore have returned to Jamaica to see her grandchildren. She might also have returned to visit her son before he left Jamaica for the USA. I do not speculate but this brings me on to the Appellant's connections with Jamaica.

52. I accept that the Appellant is estranged from her father. I do not place weight on any inconsistencies regarding whether her father is dead or alive (although it is not entirely clear how she would know if she does not retain contact). As Ms Ferguson submitted and I accept, given the family history, the Appellant's father is to all intents and purposes dead to her.

53. Nor do I place weight on any discrepancies in the evidence regarding a former partner in Jamaica. Ms Nolan pointed out that when she came to the UK in July 2002, the Appellant claimed to have a fiancé remaining in Jamaica. She now says that she had a partner, but they had broken up several months earlier. The Appellant told Croydon Council when interviewed in December 2022 ([AB/111-119]) that she had a husband who "live[d] off [her]". When interviewed by the consultant forensic psychiatrist, Dr Galappathie for his report (at [AB/28-62]), she said she had never married. She mentioned her son's father who had proposed to her but had then married someone else.

54. Whether or not the Appellant was married to her former partner is not relevant. I also accept that the Appellant had probably broken off her relationship for whatever reason when she came to the UK. It appears from her evidence that it had always been the Appellant's intention to come to the UK and remain here. That would be consistent with no longer having a relationship in Jamaica. If that was her intention, the Appellant would have every reason to lie to the Immigration Officer on arrival about her ties in Jamaica. That she did so (at a time when she had no mental health problems)

does not assist her credibility but does provide an explanation for what I consider was a lie. I accept therefore that she does not have a partner in Jamaica.

55. It is accepted that the Appellant's son lives in the USA. I do not accept however the inference in the Appellant's statement that he does not return to Jamaica (as asserted at [21] of the 9 June statement). Her oral evidence was clear on this point. He has returned twice since he left. If what was meant is that he does not return to Salt Springs, then the written statement is a half-truth. However, as I have already pointed out, the evidence that the Appellant's grandchildren live with their father in the USA as asserted at [7] of the same statement is untrue. On the Appellant's oral evidence, they have always remained with their mother in Jamaica. That is of course an incentive for her son to return to visit.

56. It is also an incentive for the Appellant to retain contacts with Jamaica as I have already noted. Although the Appellant says that she does not have a good relationship with her son's former partner and that she would be unlikely to accommodate her, I do not accept that the former partner would not help if asked. There is no evidence to that effect. The Appellant's son's former partner lives in Hanover with the Appellant's two grandchildren.

57. I am prepared to accept that the Appellant's three uncles who were previously living in the UK and Jamaica might have died. She is nearly sixty and they are likely to have been much older. However, the Appellant when asked about her own siblings said for the first time that she had another sister besides the one living in the UK. That is not mentioned in her witness statements. She said that sister had died in 2021. However, she also said that her sister had two daughters. Those two nieces live in Kingston. Whilst the Appellant might not wish to live with her nieces in that area, the fact that she knows where they are and that she also said that she was "hoping they would leave" and that she "did not like going there" suggested to me that she retains contact with them. There is no evidence that they could not assist her. The Appellant also volunteered in her answer that she doesn't "really have much people there" reinforcing the suggestion that she does retain contact with some extended family and friends.

58. The Appellant's sister living in the UK has also visited Jamaica. Although her sister makes mention of having made enquiries about availability of medication in Jamaica in her statement ([AB/139]), she makes no mention of continuing to visit that country. It is not mentioned either in the Appellant's statements. Again, this emerged only in oral evidence. She admitted that her sister had gone to Jamaica to "bury her uncle" in 2019. That is consistent with the Appellant's evidence that one uncle living in Jamaica had died. However, there is no explanation for failure to mention such family visits.

59. Even more telling was the Appellant's answer about where her sister stayed when she visits. She said initially "her family house". When asked what family house she meant, she backtracked and claimed not to know and that maybe her sister had stayed in a hotel, that the Appellant had not asked, that she herself had just come out of hospital and was sick. Whilst accepting that last part of the answer, her health problems do not explain why the Appellant would first volunteer the information that her sister has a family home in Jamaica.

60. That brings me on to the Appellant's own home. Again, the Appellant makes no mention in her statement of having a property in Jamaica. It was only when asked by Ms Nolan where she had lived in Salt Springs before coming to the UK, that the Appellant volunteered that she had a house there which she had been building. She said that the property "didn't reach far" but then said that it had a living area, kitchen, bathroom and bedroom.

61. Ms Nolan then asked the Appellant about the state of the property now. Whilst I am prepared to accept that the property is unlikely to be in good condition if it has not been lived in for a long time, the Appellant knew that the door and windows had been taken and that there was water coming in. She volunteered that she had heard that "the other day". When asked who had told her, she first said that she had been speaking to people from Jamaica on the internet. She then said that she "had someone check what happened". When asked who had checked, she suggested that this had all just emerged from a Facebook post to which some strangers passing the house had responded. I do not accept that evidence. Even in these days of heavy social media use, there is no reason why complete strangers would bother to respond to a post about the property of an individual who they did not know. I find it more likely that the Appellant has retained some contacts, whether friends or extended family members who keep an eye on the property for her.

62. I accept that this does not necessarily mean that the Appellant could simply return to live in the house if it is dilapidated as she claims. As she said, this would mean having to start all over again in an area which the Appellant says is dangerous. This is however another example of the Appellant seeking to downplay the ties which she continues to have with Jamaica.

63. The Appellant has said in her statement that she used to work in Jamaica selling oranges in the street. As Ms Nolan pointed out, when interviewed on arrival in the UK, the Appellant claimed that she had a shop which was being looked after by her fiancé and son. I do not accept the Appellant's suggestion that the Immigration Officer had made this up. In the same vein, I do not accept the Appellant's suggestion that Croydon Council had made up what she is reported to have said about having had a husband. There would be no reason for those individuals to make up an account. However, I do not place weight on this inconsistency for the same reason as that relating to when the

Appellant's relationship in Jamaica broke down. The Appellant would have had every incentive to lie to the Immigration Officer on arrival, exaggerating the extent of her ties to Jamaica. I am therefore prepared to accept that the Appellant was working selling fruit on the street rather than owning a shop. In either event, the Appellant is not now fit to work due to her physical illnesses so little turns on this.

64. I do not place weight on the evidence from either the Appellant or her sister regarding the cost of the Appellant's medications in Jamaica. The Appellant could not say from where the evidence in her statement at [AB/135-136] comes. She thought that perhaps her solicitor had obtained it. Nor do I place any weight on the same evidence in the statement of the Appellant's sister ([AB/139]). She was not at the hearing to be asked about it. In any event, I now have more detailed evidence in the form of reports both as to the nature of the Appellant's illnesses and the healthcare system in Jamaica as well as background evidence and the Appellant's medical notes. I therefore turn to deal with that evidence.

Medical Evidence

Physical Ill-Health

65. Unfortunately, the Appellant's physical illnesses and treatment are not the subject of any composite report. The documentation in this regard appears at [AB/202-230] and [AB/294-477]. Some of the evidence is out of date. The most up-to-date and comprehensive summary appears at [AB/298-300]. That is a letter dated 21 October 2022 from Dr Judith Ibison who I assume from the content is a general practitioner although her qualifications are not given.

66. It is important for an assessment of the Appellant's Article 3 claim that her health conditions are fully set out. I therefore set out the relevant parts of Dr Ibison's letter in full:

> "…Firstly, she remains very psychologically traumatised about her severe life threatening illness which required a prolonged stay in ITU after developing heart failure and requiring an emergency heart valve replacement. At the time she suffered multiple complications of the heart operation and ITU admission, and was very sick, with thromboses affecting her bowel, brain (stroke) and legs (thrombosis). Obviously this was a major life event and has left her feeling very unwell, requiring multiple interventions afterwards such as reversal of her colostomy. She remains very traumatised from the admission and is on antidepressants and has been offered and engaged with talking therapies for that. Undoubtedly her personal poverty, homelessness, pressures from living in the social environment she is currently in, no recourse to public funds, her poor health, her struggles to do daily tasks and her immigration problems are ongoing major stressors. She has self-harmed in the past and it is unlikely her mood will be improved unless some of these stressors are relieved. Her mood is likely to be adversely affecting her ability to function in all respects.

> Secondly, one of the clots led to failure of blood supply to the bowel for which she needed a removal of some bowel and a colostomy. She recently had that reversed, and like many people who have had colonic bowel surgery, and a reversal of stoma, she now has urgency of defecation and frequent diarrhoea. This is treated with loperamide, but she still requires a toilet near by to attend the toilet multiple times per day.
>
> In 2019, she was seen by a neurologist who diagnosed a sensory impairment and nerve pain in her legs which was probably due to the illnesses around the ITU admission. The sensory loss means that [M] is unable to stand for long periods and so uses a wheelchair at home.
>
> She is able to attend the surgery without the wheelchair. Last week she was seen last week by a colleague who examined her back, legs and hips and has referred her back to the physiotherapist for further assessment. She has been tried with various neuropathic medications over the years, but none have helped the leg pains.
>
> In 2019 she was seen after an assault in Croydon and a head scan revealed a stroke, despite being on a blood thinning agent. This did not cause a paralysis at the time, and it is unclear what contribution this makes to her mobility problems or pain. The strokes were in the balance part of the brain and the frontal lobe of the brain.
>
> She continues to have high blood pressure and her medications are being adjusted to reduce this, as it will increase her risk of stroke in future.
>
> She reports difficulties with dressing and cooking in her social environment at the moment, possibly due to the nerve damage in her legs, or her low mood, or potentially the stroke in 2019. She reports being unable to bathe independently and is requesting help with this. She reports problems with her flat and its lack of suitability for a wheelchair given the size and also reports difficulty bathing alone and would be much better suited to accommodation with a flat…"

67. The summary in the letter confirms the heart problems beginning in November 2018, depression from June 2019 and reversal of the stoma in December 2021. It also confirms a deliberate overdose in August 2021 but there is no reference to any other suicide attempts or concerns. There is no reference to any psychological therapy.

68. The list of medications at that time is recorded as Ramipril and Bisopropol (used to treat high blood pressure), Loperamide (for diarrhoea), Lansoprazole (to treat acid reflux), Amitriptyline and Mirtazapine (for depression), Atorvastatin (for high cholesterol), Quinine sulfate (for cramps), and Clenil Modulite and Salbutamol (for asthma).

69. The Appellant's medical records are updated as at March 2023. Those show that on 10 March 2023, the Appellant was admitted to St George's Hospital feeling "generally unwell and drowsy" ([AB/317]). She was noted to have a kidney stone. Although there is no further documentary evidence in that regard, I accept that the Appellant had surgery to remove the kidney stone.

70. There is also evidence of further hospital and GP visits in connection with the Appellant's ongoing problems. Visits to the GP in particular are very frequent

in the period September 2018 onwards which coincides with the onset of her physical health problems. However, most of the documentation relating to the Appellant's physical health comes from primary care doctors. Although there are documents from the hospitals who have treated the Appellant at various times for her physical ailments ([AB/301-314], [AB/452-453] and [AB/471-474]), those are letters recording post-operative surgery appointments, and the operation to reverse the stoma. It is of note that, in October 2020 ([AB/453]), the consultant cardiologist described her heart condition as "normal" and that her "cardiac status is optimised in terms of her valvular heart disease and also biventricular function".

71. The lack of a report from any treating physician is inconsistent with the Appellant's case that she is monitored weekly at one of four major hospitals or that her condition is so rare that she was used as a case study for junior doctors ([13] to [15] of her statement dated 9 June 2023). I consider that the Appellant's own evidence is somewhat exaggerated. I do not doubt the severity of her physical illnesses in 2018 and more recently her admission for a kidney stone in March 2023. I cannot go behind the assessment by Social Services as to her ongoing disability (see below). However, I do not have evidence which shows what would be the impact of any withdrawal of or change in treatment or medication if the Appellant were to be removed to Jamaica.

72. The closest one comes to this is evidence from the Minet Green Health Practice (Doctors Godfrey and Sosinathan) dating back to 2020 ([AB/454-461]). The relevant extract in both letters is in similar vein as follows:

> "Medically I feel she is very much at risk due to the above social issues. She is very vulnerable, both mentally and physically. She requires warfarin, a drug that needs ongoing weekly monitoring with blood tests and dose adjustments, a service that she cannot have access to in Jamaica. Without warfarin, managed appropriately, she is at high risk of death as she has a mechanical heart valve. Her medical care is complicated and highly specialised, and I doubt she would be able to access the level of medical specialism she neds if moved to Jamaica with no money to access medical care. Specifically, this involves cardiac follow up, anticoagulation/haemotology follow up, lower GI surgery follow up, stoma care, provision of stoma supplies. Without on-going follow up from specialist care she would be very much at risk from deterioration. More subtle issues include poor nutrition and ability to self-care, and travel to appointments, due to poverty and homelessness, all of which impact on her overall health and ability to manage these illnesses. She is now extremely depressed, and I am concerned about a high risk of suicide. I have referred her urgently to the local mental health support services and we will continue to support her in general practice. I feel that her depression is largely due to the impossibly complicated social circumstances she finds herself in, and that without resolution of these circumstances she remains at high risk of suicide."

73. Although the foregoing provides some information about the impact of withdrawal or changes in treatment, I can give it little weight (save perhaps in relation to the withdrawal of warfarin, the impact of which is generally well-known). The letters are out of date by several years and the Appellant's physical condition has changed. For example, her stoma operation has been reversed and the letter from the hospital reports that the Appellant's cardiac function was normal even in October 2020. Further, there is no evidence that either doctor has any experience of or knowledge about treatment options in Jamaica. That is something I will need to return to when dealing with the report about availability of treatment in Jamaica which is relied upon. Finally, it is assumed by both doctors that the Appellant would be homeless and destitute in Jamaica whereas I have evidence that the Appellant has a property and some relatives in Jamaica as well as access to financial support from her son.

Mental Health Condition

74. The Appellant relies in this regard principally on the report of Dr Nuwan Galappathie, Consultant Forensic Psychiatrist, MBChB, FRCPsych, MMedSC LLM. Dr Galappathie's report dated 5 July 2023 is at [AB/28-62]. Although Dr Galappathie does not profess to have any particular expertise in relation to the Appellant's physical condition, I have noted the outline of both her physical and mental health conditions at [37] to [47] of the Medical Report. However, although Dr Galappathie apparently had the Appellant's medical notes, his focus in this regard is on evidence dating back to 2020 and the letter from Dr Ibison which I have set out above.

75. The Appellant's current medication is set out at [48] of the Medical Report. That is broadly consistent with Dr Ibison's letter although includes also the prescription of warfarin. That was missing from Dr Ibison's letter. That may because use of warfarin was stopped for a period at around the time when the Appellant had surgery to reverse the stoma and replaced with a low molecular dose of heparin (see letter at [AB/304]). According to the medical notes, the Appellant is now prescribed warfarin again.

76. In relation to the Appellant's mental health, Dr Galappathie diagnoses a single episode depressive disorder, severe, without psychotic symptoms. As appears at [66] of the Medical Report, that is based largely on the Appellant's own reporting. However, Dr Galappathie has formed the view that the Appellant is not malingering or exaggerating. He also diagnoses generalised anxiety disorder and post-traumatic stress disorder. His diagnosis was not challenged. I therefore place weight on his report in that regard.

77. As to causation, Dr Galappathie opines that the Appellant's PTSD is due to the trauma which the Appellant says she experienced during her life in Jamaica. There is nothing in the Appellant's medical records (which are extensive) until June 2019 reporting any mental health problems. That coincides with the

onset of her major physical health problems which might have been thought to be a more obvious trigger.

78. I am of course not an expert. However, the letters to which Dr Galappathie refers in his report do not point in the same direction as his opinion on causation. Dr Godfrey's letter of 22 January 2020 ([AB/458-459]) indicates that the Appellant "is very much at risk due to …social issues" which refers back to her physical health deterioration, and immigration status (risk of removal and that she is not entitled to NHS care). Dr Sothinathan's letter dated 16 October 2020 ([AB/454-457] repeats that opinion and attributes her depression "largely ….to the impossibly complicated social circumstances". I have not been able to identify the letter from Dr Gupta referred to at [45] of his Report. However, Dr Galappathie's own description of the content again indicates that "[the Appellant] had an adjustment disorder triggered by a rapid decline in her physical health". Although it is said that there is mention that the Appellant had "traumatic memories from her childhood", the letter is also said to record that "she previously coped well" with those "for most of her life".

79. Dr Galappathie has offered no explanation for the time lag between the trauma to which he attributes the Appellant's mental health problems and the onset of symptoms. He does not seek to explain the medical records which he says he has seen. He does not apparently take into account the opinions of the doctors who have been treating the Appellant as to the reason for her mental health problems. His opinion as to causation is therefore unexplained save by reference to what the Appellant may have told him is the cause. That is contrary to the guidance in HA. I can give little weight to his opinion in this regard.

80. Dr Galappathie was also not told as was I that the Appellant had seriously considered returning to Jamaica when she became very ill in 2018 which is inconsistent with return to Jamaica being the trigger for her mental health condition.

81. For those reasons, I do not give the report weight so far as it concerns the cause of the Appellant's mental health condition. I am however prepared to accept Dr Galappathie's opinion that the Appellant does suffer from mental health problems.

82. In terms of treatment (which is relevant to the Article 3 claim and what would happen on return to Jamaica), Dr Galappathie advocates continuation of the Appellant's current medication (Mirtazapine). He also suggests follow up by her GP "to ensure that her depression is effectively treated". He suggests that she would benefit from psychological therapy, particularly in relation to PTSD. I have limited evidence in the medical notes that the Appellant has received such therapy.

83. Dr Galappathie refers to a "substantial acute deterioration" in the Appellant's mental health and worsening of PTSD symptoms in the event of the Appellant's return to Jamaica. However, that is predicated on what is said to be the Appellant's "strong, subjective fear" of return. I can give Dr Galappathie's opinion no weight as it is based on an unexplained attribution of the cause of the PTSD to events in Jamaica over twenty years ago as opposed to medical events and the Appellant's social situation over the past five years as well as his ignorance of the Appellant's expressed wish to return to Jamaica in 2018.

84. For the same reasons, I can give little weight to his opinion that the Appellant would not seek out treatment on return to Jamaica. The Appellant has shown no reluctance to push for treatment in the UK even at a time when that was being denied to her (because of her immigration status).

85. As to suicide risk, I accept that there is reference in the medical notes to one event of a deliberate overdose. Since I do not accept Dr Galappathie's opinion about the cause of the Appellant's PTSD or that the Appellant has a "strong, subjective fear" of return, I reject his opinion that the Appellant would be at a high risk of suicide if removed to Jamaica. There is one lengthy reference to serious mental health concerns in April 2020 and that the Appellant "remains chronically suicidal" ([AB/380]). The problems are attributed to the Appellant's health and living situation. In October 2020, she is reported to be planning suicide ([AB/370]). She apparently attempted suicide in August 2021. The entries in relation to suicidal thoughts are however linked to her living conditions (see eg entries of 1 and 28 July 2022 at [AB/344] and [AB/342]). There are no concerns expressed in more recent entries and no indication of any further suicide attempt.

Evidence about treatment in Jamaica

86. The Appellant relies in this regard principally on a report of Joel Christian Reed, PhD dated 28 June 2023 ([AB/69-90]). Dr Reed describes himself as a medical anthropologist, public health epidemiologist, international development specialist, and Africanist scholar". As Ms Ferguson accepted, there is nothing in Dr Reed's CV to suggest that he is medically qualified to practice. As such, I give no weight to any opinion which he expresses about the Appellant's medical condition or treatment.

87. Although I accept that an individual with Dr Reed's background might well be an appropriate person to give evidence about the availability of treatment abroad, I can give this report little weight for the following reasons.

88. First, Dr Reed himself accepts that most of his work is in Africa although says that he "maintain[s] ties with Jamaica". He has some limited experience of working with "extremely physically handicapped and mentally ill nationals"

in Jamaica dating back to 2018. He is not in medical practice in that country and is not apparently involved in planning or carrying out medical treatment there. Most of his sources appear to be published literature and data sources. There is limited evidence of any "on the ground" knowledge of the Jamaican health system.

89. Second, Dr Reed was given the same documents in relation to the Appellant's physical and mental health as I have referred to above. Those do not include information about the treatment which the Appellant requires or the effects of withdrawal of or changes to treatment (save perhaps in relation to warfarin). Since I can give no weight to Dr Reed's own assessment of the Appellant's condition (he has never met her), the report can offer little evidence of substance about what treatment may or may not be available which would be suitable for her.

90. Third, and contrary to the findings I have made in relation to the Appellant's evidence, Dr Reed has assumed that the Appellant will be "homeless and impoverished" whereas the evidence I have is that she has a property albeit that may not presently be in a habitable state, that she has some relatives in Jamaica and that she will be able to access financial support from her son.

91. In any event, the tenor of Dr Reed's evidence is generally uncertain. He accepts that most of the Appellant's medications are "generally available" in Jamaica but says that she would be unable to access it (because of the factors I have set out above about which I have better evidence).

92. Even assuming that the Appellant would lack the resources to access private health treatment and would have to resort to public healthcare, I do not accept Ms Ferguson's submission that she would be unable to do so. At [13(f)] of the report, Dr Reed says that in order to reestablish residence and complete an application for National Health Fund Card Program (NHF), the Appellant would need an address (which Dr Reed says she does not have) and a doctor in Jamaica to sign the form.

93. What Dr Reed was not told is that the Appellant has an address in Jamaica albeit her house may not be habitable presently. Even if she could not use that as an address, she has nieces and her son's former partner in Jamaica. Even assuming they would not be willing to offer her day-to-day care, there is no sensible reason why they would reject a request to use their addresses and possibly their own doctors to source the necessary documents to obtain a NHF card. Despite her unlawful status in the UK, the Appellant has shown considerable determination in her obtaining of medical treatment (including non-emergency treatment) and also care support from Social Services. If she is able to obtain a NHF card, the report indicates that "low-cost public health care would be available" to the Appellant.

94. Although Dr Reed says that "weekly warfarin therapy is not offered at all clinics or hospitals making availability and access dependent on her living situation, location and transportation", that makes clear that such treatment is available in Jamaica. I reject Ms Ferguson's submission that this is talking about private medical care. The context of [14(c)] of the report where this appears is public healthcare.

95. I also place little weight on those parts of the report which are based on the Appellant's reporting (for example [14(a)] – should be (e)). I have found that the Appellant's reporting of her medical conditions is exaggerated.

96. I accept that whether the Appellant can source the sort of care which she receives in the UK in Jamaica is relevant. I need to consider that in the context of the relatives she has remaining in Jamaica. I note however that at [14(a)] of his report, Dr Reed appears to accept that the Appellant might be able to source medical care or social services support. He says only that "it would not be guaranteed … and would be difficult to obtain, especially immediately upon arrival". That stands in contrast with his assertion that the Appellant "would not have access to a caregiver in Jamaica" (at [14(a)] or more accurately [14(e)].

97. Although Dr Reed says that the Appellant would be unable to access a care home because of her age (she is under 60 years), he provides evidence that there are private nursing homes albeit most are unregulated. He says that the Appellant would be unable to afford these at US$500 but did not have evidence about what financial support the Appellant's son may be able to give her (the Appellant herself referred to her son giving her US$250 which is half the amount that she would require according to Dr Reed).

98. I am prepared to accept Dr Reed's opinion about the position for someone with a physical disability in Jamaica at [13 (p)] of the report. I accept that this paragraph read in context contains the omission of the word "not" indicating that "Jamaica is not handicap friendly for, e.g., public transportation, building access and sidewalks". I accept that the Appellant has mobility issues.

99. In addition to Dr Reed's report, I also had the Respondent's Country Policy and Information Note entitled "Jamaica: Medical and healthcare issues" dated March 2020 ([AB/141-180]) ("the CPIN"). Although the CPIN is now somewhat dated, it confirms that treatment for heart disease is available in Jamaica and that warfarin is also available ([4.1-4.2]). Similarly, treatment is available for mental health although the CPIN records some stigmatisation of the mentally ill. Mirtazapine is available. Although the CPIN suggests that some medication may be available only at private pharmacies, that appears to stand in contrast to what is said about the NHF at [1.1.7]. In any event, I repeat that the Appellant would be able to obtain financial support from her

son if necessary. It is of course the case that the Appellant would be liable to pay prescription charges in the UK unless she were exempt.

100. I was not assisted by the other background evidence at [AB/181-201]. Some is outdated. Most is designed to provide advice to expatriates and not Jamaican citizens. As Ms Nolan pointed out, the article at [AB/181-5] confirms that "[h]ealthcare is free at the point of delivery to citizens and residents using the public system, via government-run clinics" albeit makes the point that there may be long waiting times, and some difficulties in obtaining medication.

Other Documents

101. At [AB/98-104] appears a letter from Bromley & Croydon Women's Aid dated 8 June 2023, advocating on the Appellant's behalf. I have read that carefully, but I am unable to place weight on it. The letter does not say who referred the Appellant to this organisation. It records some information about her medical conditions which are more appropriately addressed via the medical evidence (see above). Some of what is said about the Appellant's past bears no relation to her evidence in this appeal. She says for example that she was in a relationship with an abusive partner whilst in the UK. She has never mentioned this in her statements or indeed in her oral evidence. She told me that other than when she lived with her sister and in a hostel, she had always lived alone. That is inconsistent with what is said in this letter. There is nothing in this letter to indicate what court or other documents the organisation had seen. I have already expressed concerns about the Appellant's credibility. Based as this letter appears to be entirely on her reporting, I give it no weight.

102. In similar vein, at [AB/108-109] is a letter from The Care Rights Project dated 6 May 2023. The Appellant was referred to that organisation by Bromley & Women's Aid. I am however prepared to place weight on this letter as providing evidence of the Appellant's care needs. Although those needs are also based on the Appellant's reporting, her need for care has been accepted by the local authority and provided from January 2023 (as is confirmed by the report from Croydon County Council dated 15 December 2022 at [AB/111-119]). Consistently with the Appellant's own evidence in this regard, I accept that the Appellant is accommodated by the local authority. She is also provided with subsistence payments and has carers who attend twice daily. The Appellant's care needs extend to assistance with shopping, cooking, washing, dressing, walking and cleaning. She experiences incontinence following the reversal of her stoma operation. I am somewhat puzzled by the frequent references to the Appellant's sister as the letter suggests that she is living with the Appellant whereas the Appellant's oral evidence was very firmly that she was not living with her sister. That does not however impact on the tenor of the report as to the Appellant's care needs.

DISCUSSION AND CONCLUSIONS

103. I turn then to assess the legal issues with reference to the findings I have made on the evidence.

Article 3 ECHR

104. The Appellant has not established a prima facie case to the threshold which applies for the reasons which follow.

105. I accept that there is medical evidence which shows that the Appellant suffered a very serious illness in 2018. There is less evidence about the continuing effects of that illness. Nonetheless, given the Appellant's disability which is shown by the provision of Social Services care, coupled with the Appellant's mental illness and vulnerability, I am prepared to accept that she has shown that she is a seriously ill person.

106. However, the evidence provided on behalf of the Appellant comes nowhere near to demonstrating that there are substantial grounds for believing that, on account of the lack of treatment or lack of access thereto, there is a real risk that the Appellant would suffer on return to Jamaica to the level of intensity required or would face a shortened life expectancy such that Article 3 ECHR would be breached.

107. There is very limited evidence about the impact of withdrawal of or changes to medication or treatment following removal. I am (just) able to accept based on common knowledge that warfarin treatment must be continued for life and is to treat blood clotting so that a lack of availability of that treatment might lead to a stroke. However, although the medical evidence suggests that the Appellant has suffered strokes in the past and therefore might again were she unable to access warfarin, there is limited evidence about what impact strokes have had on her in the past. There is insufficient evidence to show that a further stroke would lead to very severe suffering or would be likely to be fatal.

108. I accept that the Appellant also needs medication and treatment for her high blood pressure although I have very limited evidence about what would be the level of impact if such medication and treatment were not available.

109. In any event, the evidence is that warfarin and medication/treatment for high blood pressure is available in Jamaica. Indeed, Dr Reed has confirmed that the Appellant's medication more generally is available in Jamaica. That includes mirtazapine to treat the Appellant's depression.

110. I have rejected Dr Galappathie's evidence in relation to the causes of the Appellant's depression. In short, I have accepted the balance of all the evidence as showing that the Appellant's depression, including her suicide

risk, is caused by her social situation in the UK which is largely due to her unlawful immigration status and lack of entitlement to free NHS treatment.

111. The general tenor of Dr Reed's report is that, if the Appellant is able to obtain a NHF card, she will be able to access low-cost public sector treatment in Jamaica. I have rejected Dr Reed's assumptions about the situation which the Appellant will face in terms of lack of accommodation and finance. Dr Reed was not made aware about the Appellant's property in Jamaica, her relatives there and her ability to obtain financial support from her son.

112. Accordingly, even if there were evidence that withdrawal of any of the medication and treatment which the Appellant currently receives would lead to consequences meeting the threshold set out in AM (Zimbabwe) (which there is not), the evidence is that the Appellant would be able to access that medication and treatment in Jamaica.

113. The issue is not whether the Appellant's health would deteriorate on return but that it would do so to a very severe level and that the cause of that significant deterioration would be a lack of treatment or access to treatment. The Appellant has failed to provide evidence to substantiate her case on both counts.

114. For those reasons, the Appellant's appeal fails on Article 3 grounds.

Article 8 ECHR

Paragraph 276ADE(1)(vi)

115. The Appellant grew up in Jamaica and lived there until the age of 34 years. She will be familiar with the culture there. The evidence is that she has relatives in Jamaica in the form of two nieces. Whilst they live in an area where the Appellant says she would not wish to live, I have no evidence that they would not provide her with some support on return. Similarly, although I have no reason to doubt the Appellant's evidence that she does not get on with her son's former partner, I doubt that the former partner would be unwilling to offer any support. After all, she has a link to the Appellant via the Appellant's grandchildren. The Appellant has a house in Jamaica albeit I accept that this may be uninhabitable at the present time. Her sister also apparently has a property there. The Appellant speaks English.

116. In order to live in Jamaica, the Appellant would have to source medical treatment and a replacement for the care and support which she currently receives from the authorities in the UK.

117. Although I have concluded that the Appellant's evidence fails to meet the high threshold required to show a breach of Article 3 ECHR, I accept that the

problems which the Appellant would face on return are also relevant to the issue whether there are very significant obstacles to her integration there.

118. Of particular importance, is the Appellant's dependence on support from a carer, whether that be a relative or a paid carer. Whilst the Appellant has relatives in Jamaica, those are not close relatives. The Appellant has sufficient contact with them to know that they still live there and where they live. However, that does not necessarily mean that they would provide the sort of daily support which the Appellant currently needs. My difficulty however is that there is no evidence to show that they would not provide support.

119. Similarly, I have evidence that the Appellant's son can provide some financial assistance which might enable the Appellant to obtain some paid care in the absence of support from relatives. I do not have evidence about the extent of the financial support he could give the Appellant whether for care or otherwise (since she cannot work). However, an absence of evidence is not evidence of absence.

120. I find therefore that the Appellant has failed to show that she could not access medical treatment and care, including from relatives or a care-giver, via the public health system in Jamaica or privately paying if necessary with financial support from her son.

121. I accept, as the guidance in Kamara indicates, that integration is not simply about an understanding of the way in which society works. It is also about the ability to build up and continue human relationships. I accept given her physical and mental disabilities and the reliance which she has on care support to carry out basic daily tasks, that the Appellant will find it difficult to build new relationships in order to participate in society. I have given some weight to Dr Reed's report insofar as it shows that Jamaica is an unwelcome environment for those with physical disabilities and that there is societal stigmatisation of those with mental disabilities. Both factors have some relevance to the Appellant's case. However, I return to what I said above. The Appellant has some family members in Jamaica. Her grandchildren are in Jamaica. She has retained some contacts there.

122. The threshold inherent in the very significant obstacles test is a high one. The burden is on the Appellant to show that it is met. The Appellant has failed to provide evidence to show that there are very significant obstacles to her integration in Jamaica. She does not therefore meet Paragraph 276ADE(1)(vi).

Article 8 ECHR General

123. I begin my assessment of Article 8 outside the Rules with the length of the Appellant's residence. Although the Appellant might be able to meet the Rules if she were able to show continuous residence for over twenty years at

the time of any future application, she could not do so now. If she were able to demonstrate that length of residence, however, I accept that this would be a relevant factor in the Appellant's favour. However, the Respondent does not accept that the Appellant has shown that continuity of residence.

124. Although Judge Jackson preserved the First-tier Tribunal's finding that the Appellant had lived in the UK since 2001, I am unable to follow that finding on the evidence I have now. To begin with, the contemporaneous documentary evidence shows that the Appellant's date of entry was 2002 and not 2001. Judge Seifert also did not have the evidence I had that the Appellant had intended to return to Jamaica in 2018 and that her sister had gone so far as to buy her an air ticket for that purpose. For the reasons I gave earlier, therefore, I am unable to accept the Appellant's case that she has lived in the UK continuously since 2002.

125. There is evidence that the Appellant first came to the UK in 2002. There is evidence, mainly in the form of medical evidence, that she has lived here from 2013 onwards. There is therefore evidence that she has lived here for at least ten years. Even if she did return to Jamaica in the period 2002 to 2013 from time to time, therefore, I accept that the Appellant has lived in the UK for a significant period.

126. The evidence is that the Appellant does not have a close relationship with her sister in the UK. She does not suggest that their relationship amounts to family life. I would not accept on the evidence I saw and heard that such a case could be made out.

127. The Appellant is therefore limited to relying on an interference with her private life over the past ten years and possibly longer.

128. There are two difficulties for the Appellant. First, by Sections 117B (4) and (5), given the Appellant's precarious and then unlawful status, I am required to give the Appellant's private life little weight.

129. I accept that little weight does not mean no weight. However, private life is not simply about length of residence but quality of it. There is virtually no evidence about the quality of the life which the Appellant has built up in this period. There is little evidence of any relationships with friends formed here. The most recent evidence suggests that the Appellant's private life is formed only of medical care and treatment and social services care with some assistance from other charitable organisations.

130. I have found that the Appellant cannot succeed under Article 3 ECHR based on her medical condition. Case-law indicates that where a medical case fails under Article 3 ECHR, it is unlikely to prosper under Article 8 ECHR absent

some other factor relevant to the Article 8 "paradigm" (see eg GS (India) and others v Secretary of State for the Home Department [2015] EWCA Civ 40 at [86]). In this case, there is an absence of evidence about other factors forming part of the Appellant's private life.

131. I do not underestimate the level of care and support which the Appellant receives in the UK. I accept that the interference with that care and support occasioned by removal will be significant for her given her physical and mental health problems. Nor do I seek to underestimate the challenges which the Appellant would face on return to Jamaica. Although the obstacles do not reach the high threshold of being very significant obstacles within the test in the Rules, the Appellant is likely to find return to Jamaica difficult initially without the extensive care to which she has access in the UK. I have however found that the Appellant would be able to access care and support in Jamaica from relatives, other contacts and/or the authorities.

132. Moreover, I have to balance the interference with the Appellant's private life against the public interest having regard to the Section 117B factors. The Appellant has lived in the UK unlawfully for a lengthy period. She is unable to meet the Rules for the reasons I have set out. The maintenance of effective immigration control requires that those with no right to remain in the UK and who cannot meet the Rules should normally be removed. The Appellant has relied on extensive State support not simply in relation to her medical treatment but also for social services care. She is not financially independent. There is a strong public interest in the Appellant's removal for those reasons.

133. As I have already noted, the Appellant's private life is deserving of little weight on the basis that her residence here has been always precarious or unlawful. As indicated above, besides the medical treatment and care support, there is little of substance in the Appellant's private life in any event.

134. I have not found this an easy case to resolve. I do not underestimate the difficulties which the Appellant would face on return to Jamaica. I accept she relies heavily on medical treatment and social services care in the UK. However, that treatment and care is itself a double-edged sword. The Appellant's reliance on the State in that regard counts against her and in favour of the public interest because she has been utilising valuable publicly-funded resources when she has no lawful right to remain in the UK.

135. Balancing the interference against the public interest, and based on the evidence which is before me, I have concluded not without some hesitation that removal of the Appellant would not have unjustifiably harsh consequences for the Appellant. Removal would not breach the Appellant's Article 8 ECHR rights.

NOTICE OF DECISION

The Appellant's appeal is dismissed on human rights grounds (Article 3 ECHR).
The Appellant's appeal is dismissed on human rights grounds (Article 8 ECHR).

L K Smith
Upper Tribunal Judge Lesley Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 August 2023