



IAC-AH- -V1

**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/10927/2017**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 18<sup>th</sup> November 2022**

**Decision & Reasons Promulgated  
On the 4<sup>th</sup> January 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**DAIN ANTHONY SMITH**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant:    In person

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

- 1.** This is the remaking of a decision concerning the appellant's appeal against the decision of the Secretary of State to make a deportation order on 13 June 2017 by virtue of section 32(5) of the UK Borders Act 2007.
- 2.** The appellant's appeal against this decision was previously allowed in the decision of First-tier Tribunal Judge Cockrill, promulgated on 1 October 2018. That decision was set aside following an error of law hearing on 27 May 2022. This is the remaking of the decision of the First-tier Tribunal.

### Anonymity

- 3.** No direction has been made previously, and there is no obvious reason for one now.

### Background

- 4.** The appellant, who is a national of Jamaica, was granted entry to the United Kingdom as a visitor on 24 October 2001, aged six. Thereafter he was granted limited leave to remain as a dependant of his mother from 7 October 2003 onwards and indefinite leave to remain on 4 October 2006.
- 5.** On 30 August 2016, the appellant was convicted of possession of Class A and Class B drugs with intent to supply and was sentenced to thirty-three months imprisonment, following a guilty plea.
- 6.** The Secretary of State made a deportation order on 13 June 2017 by virtue of section 32(5) of the UK Borders Act 2007. The appellant made representations which relied upon his private and family life in the United Kingdom with his mother and siblings, his relationship with a partner and the absence of relatives in Jamaica.
- 7.** On 1 September 2017, the appellant was served with a notice of decision, refusing his human rights claim. The Secretary of State considered whether the appellant could benefit from the exception to deportation owing to his family life, as set out in paragraph 399(b) of the Rules. While it was accepted that the appellant's relationship had formed when he was in the UK lawfully, it was not accepted that it was subsisting or that it would be unduly harsh for the partner to remain in the UK without the appellant. The appellant's claimed family life with his many relatives in the UK was also rejected. The Secretary of State did not accept that the appellant met any of the requirements of paragraph 399A of the Rules regarding the private life exception to deportation. There were said to be no very compelling circumstances such that the appellant should not be deported.
- 8.** Following the setting aside of the decision of the First-tier Tribunal, this matter was set down for a remaking hearing before the Upper Tribunal. An appellant's bundle was on the file, dating from the appellant's hearing before the First-tier Tribunal on 17 September 2018. No further evidence was filed.
- 9.** Shortly before the continuance hearing, the appellant's previous representatives informed the Upper Tribunal that they were no longer acting for him.
- 10.** In advance of the hearing, the respondent served a skeleton argument.

### The hearing

- 11.** The appellant attended the hearing in person and confirmed that he was willing to proceed without a representative. While the appellant had a file of documents with him, he stated that there was nothing new that he wished to submit and that he had no witnesses. He added that his mother and her former partner were at work. Mr Melvin stated that he had given the appellant a copy of his skeleton argument in advance of the hearing.
- 12.** After a discussion of the current basis of his appeal, the appellant stated that he was not relying on a relationship with a partner or a parental relationship with a child and that there were no health issues concerning him or any other person. In the absence of a representative, I put questions to the appellant to help him focus his evidence and gave him the opportunity to add anything further he wished to say. Thereafter, Mr Melvin cross-examined the appellant. I will summarise the appellant's evidence below.
- 13.** The appellant has been living in the UK since the age of six and is now aged twenty-seven. He has not been to Jamaica since he came to the UK. He was challenging the respondent's decision because all his life was spent in the UK, he grew up here, went to school here and all his friends are here. In the UK, the appellant has three siblings as well as his mother and his mother's former partner who he regards as a stepfather. All are in good health. His siblings are aged sixteen, fourteen and six. His grandmother, who was living in the UK, passed away in 2018. His mother and siblings would be devastated if he was removed. His mother did not attend the hearing as it was listed at short notice, and she could not get the time off work. The deportation process was breaking him down and left him feeling frustrated as he felt held back from doing what others could do.
- 14.** In terms of rehabilitation, the appellant stated that he had learned his lesson. It had been his only imprisonment and he considered that he was better than that. He thought that he had been childish, selfish, and uncaring but was now focused on being a better person. He wanted to be there for his family. He was dependent upon his mother and friends for financial support as well as trying to find cash in hand jobs. He had previously been working for John Lewis but lost this job and others because he had no permission to work. He had been unable to make use of the bricklaying skills he had learned in prison for the same reason. The appellant did a course to obtain work in warehouses and had previously worked as a delivery driver. His mother is a PA in a school and his stepfather a self-employed trader in stocks and shares. He was not sure of their respective earnings, but his mother was in receipt of Universal Credit.
- 15.** The appellant has no family in Jamaica. He does not speak Jamaican patois, only English. His stepfather has no family in Jamaica either. The appellant agreed that his mother had visited Jamaica, but this was not to see family or friends but a work trip with her friends.

- 16.** The appellant did not think that his mother would be able to support him financially in Jamaica because she had to look after his siblings and pay the household bills. In addition, the appellant was the oldest child, the implication being that he was expected to support himself. He did not think he could get a driving job in Jamaica as he was going back with nothing. In terms of his concerns regarding being removed to Jamaica, the appellant stated that he feared for his life as it was a dangerous place. He had come to this conclusion from watching documentaries after he was served with his deportation papers.
- 17.** I heard submissions from Mr Melvin, and I then invited the appellant to speak on his own behalf, which he briefly did. The following is a summary of what was said.
- 18.** Mr Melvin relied on his skeleton argument as well as the decision under appeal. He noted that in the decision setting aside the First-tier Tribunal determination, certain findings were preserved including that the appellant's family were all in the United Kingdom. The appellant's case was based on Exception 1, as set out in section 117C(4) of the 2002 Act. The first two legs of that exception were accepted. It was not accepted that there would be very significant obstacles to his integration in Jamaica. Carrying out the broad evaluative judgment, applying *Kamara* EWCA Civ 813 [2016], there were no medical issue and no long-term effects following the appellant's previous drug addiction. The appellant had acquired transferable skills including erecting marquees, driving for a flooring company, and undertaken a course for warehouse work. The appellant had previously stated he attended church and could do so in Jamaica.
- 19.** Mr Melvin did not accept that the appellant did not speak the language in Jamaica as he was brought up for 6 years there and had spent the last twenty years in a Jamaican household. The appellant has family who can visit him in Jamaica and give him financial support. There was no evidence of the mother's earnings or whether the stepfather would assume a role. The appellant's mother visited Jamaica with a friend, and it was not known if there were further visits. There was no submission being made that the appellant's drug dealing had a Jamaican connection or that there was debt owed to Jamaican drug gangs. There was no evidence that all those deported to Jamaica are at risk from gangs. The latest CPIN was dated July 2022 and concerned fear of organised criminal groups. There was no Country Guidance case which said that the general public at risk from criminal elements. Furthermore, the appellant would be entitled to apply for financial assistance under the Facilitated Return Scheme. On a broad evaluative judgment test, the appellant would not be someone who was unable to operate on a day-to-day basis and build up a variety of human relationships. There were no very compelling circumstances.
- 20.** Mr Melvin ended his submission by arguing that while the appellant was not sentenced to four years of more, it was a very serious offence given the appellant's admission that anyone who deals drugs is dealing in death and he was prepared to do that for the money.

- 21.** The appellant stated that he realised what he had done but he had changed his ways and become a better person. He would not mess up his life in the same way again. The deportation was like a second sentence. He needed to be in the UK for his mother and siblings who he did not think would cope without him. His removal would cause him to have a break down.
- 22.** At the end of the hearing, I informed the appellant and Mr Melvin that I would look at human rights reports, including the CPIN, which were in the public domain.
- 23.** The decision was reserved.

#### Discussion

- 24.** The burden of proof is on the appellant to demonstrate that he meets one of the exceptions to deportation. The standard of proof is the balance of probabilities.
- 25.** In reaching my decision, I have taken into consideration all the evidence before me, both written and oral as well as background material on Jamaica which is in the public domain.
- 26.** The appellant relies on Exception 1 to deportation which is contained in Section 117C of the Nationality, Immigration and Asylum Act 2002, as amended, as well as paragraph 399C of the Immigration Rules. Section 117C states as follows:
  - (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.*
- 27.** In the decision setting aside that of the First-tier Tribunal, I preserved the findings made in relation to paragraphs 117B (4) (a) and (b), which were set out at [42-43] of the decision and which are reproduced here, for clarity.

42. The relevant paragraph, so far as I can see in this appeal, is paragraph 399A. I have explained the chronology in this appeal. The Appellant has been here lawfully for a long time, arriving when he was six years old and he gained a period of leave. I recognise that he was a dependant on his mother and there came a point where leave was not extended to him but significant emphasis needs to be given to his young age at that time and, in my judgment, it would be wholly wrong to try to blame the Appellant for any shortcomings which may have taken place with his mother in regularising his position. What is plain and clear is that he gained indefinite leave to remain in this country in 2006.
43. The Appellant has this one conviction and sentence. He has had no Cautions, as I have expressed already and, of course, no previous convictions. I accept the proposition that he is socially and culturally integrated in this country. I say that because he has been educated here both at primary and secondary levels. I can see that he has had a serious drug habit and has misused 'Skunk' Cannabis and that had not only cost him a very considerable amount of money every day, I accept his estimate that it was £60 per day that he was spending on 'Skunk,' but critically, and more importantly, it has drawn him into the wrong company and drawn him into owing money and in order to fuel his drug habit he became involved in this particular set of offences of possession with intent to supply. He allowed himself to commit these serious criminal offences and of course he has now been suitably punished for that criminality. Nevertheless, I make plain that I find as a fact that he is both socially and culturally integrated. He has siblings in this country, all his family ties are here and that, in my judgement, is plainly the case.

**28.** The principal issue before me is therefore whether there would be very significant obstacles to the appellant's integration in Jamaica. I am bound to apply what was said by the Court of Appeal in *Kamara*, which can be found at [14] of the judgment.

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.

**29.** The appellant's concern regarding being removed to Jamaica is speculative and theoretical, in that it based on documentaries he has viewed as opposed to any subjective fear of being a potential target of violence or other ill-treatment. I have considered the respondent's guidance in the form of the Country policy and information note: fear of organised criminal groups (OCGs), Jamaica, July 2002 as well as the US State Department human right report on Jamaica dated 2021. There is nothing in either report which suggests that a person in the appellant's situation would be at risk of ill-treatment solely owing to removal to

Jamaica. While violent crime is a high, there is nothing in the reports to support the contention that merely by being present in Jamaica, the appellant would be at risk of harm from gangs or the general population.

- 30.** I find that there are no very significant obstacles to the appellant's integration in Jamaica for the following reasons. The appellant confirmed that he is in good health. His mental health issues which followed his previous illicit drug use appear to have abated.
- 31.** Indeed, there is no medical evidence to suggest that the appellant has poor mental health. I find that the appellant, as a young healthy man, would be in a position to find work in Jamaica. Prior to his imprisonment he worked for the John Lewis Partnership and during his imprisonment he acquired further skills including bricklaying and catering. He also holds a driving licence.
- 32.** Since his release from prison, the appellant has had several job opportunities, some of which he has been unable to take up owing to his immigration status. The skills the appellant has acquired in the United Kingdom are transferable to Jamaica. The appellant has been residing in this country since he was aged six and I accept that it is likely that he has little memory of Jamaica. Nonetheless, he was looked after by his mother who brought him to the United Kingdom from Jamaica and therefore it cannot be said that he is unfamiliar with Jamaican language and culture. Nonetheless, I accept that it will be challenging for the appellant to begin living in a country he left over twenty years ago and where he has no friends or family. The appellant's mother visited Jamaica for social reasons in the recent past and I find that she could be reasonably be expected to visit the appellant in Jamaica. In addition, while taking into consideration the mother's modest income, this would not preclude her from offering the appellant some financial support as well as emotional support. The appellant's extended family in the United Kingdom, which includes an aunt and cousins could also assist him with emotional and financial support.
- 33.** The appellant told the previous judge that he is a churchgoer. I find that it is open to the appellant to attend church in Jamaica which could assist with his integration there. I find that the appellant will be enough of an insider to render it likely that, over time, he will be able to develop his private and family life in Jamaica. Lastly, I understand that the appellant is eligible to apply under the Facilitated Returns Scheme which can assist with his initial integration. This is a matter I can take into consideration, applying *OA (Somalia) [2022] UKUT 33*.
- 34.** Having found there to be no very serious obstacles to the appellant's integration, I now turn my attention whether there are very compelling circumstances over and above the Exceptions to deportation. I note the strong public interest in removing foreign nationals who commit crimes. The appellant's offence was serious, and I place particular weight on the remarks of the sentencing judge

“You were a drug dealer. You did it, as was made clear by the probation officer, almost exclusively for financial reasons, partly also for status reasons....”“When you were caught by the police you tried to get away and you tried to throw away your bag, which contained nine snap bags of skunk and a wrap of cocaine in your possession. You had two mobile phones, one of which made it clear that you were dealing in drugs, both class A and class B and you have admitted that anyone who deals in Class A drugs is dealing in death and you are prepared to do that just for money.”

- 35.** On the appellant’s side of the equation, he has spent the majority of his childhood and adult life lawfully in the United Kingdom and has been educated here. He has not committed any further offences and I accept that he is genuinely remorseful. All that can be said of the appellant’s private life is that he lives with his mother and minor siblings, that he has an aunt and cousins living in the United Kingdom and has a relationship with his mother’s former partner.
- 36.** There is no evidence of any real dependency by the appellant on his mother other than financially, which is solely brought about by the fact that he is facing deportation. I find that this does not amount to anything more than the normal emotional ties between parents and adult children.
- 37.** It is of course regretful that the appellant has squandered his future because of the crime he committed. I accept that he has left behind his former associates and lifestyle and that he has developed insight into his offending. Life in Jamaica will be initially difficult given that he currently has no family nor friends there but as discussed above, the appellant does not face very significant obstacles to his integration.
- 38.** It is also the case that the appellant can speak English and is financially independent of the state. These factors are, in any event, neutral factors in a proportionality assessment.
- 39.** Considering the appellant’s circumstances cumulatively, I conclude that there are no very compelling circumstances present which would outweigh the strong public interest in the removal of foreign criminals.
- 40.** The appeal is dismissed.

## **Decision**

The appeal is dismissed on human rights grounds.

No anonymity direction is made.

Signed: T Kamara  
Upper Tribunal Judge Kamara

Date: 3 January 2023



**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed: T Kamara  
Upper Tribunal Judge Kamara

Date: 3 January 2023

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.