



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/18030/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 April 2019 & 13 August 2019

Decision & Reasons Promulgated  
On 21 August 2019

Before

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

Between

**DEZMAN EDWARDS  
(ANONYMITY ORDER NOT MADE)**

Appellant

and

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

Respondent

**Representation:**

For the Appellant: Mr M Mukulu (Amity Chambers)

For the Respondent: Ms Holmes and Ms Cunha (Senior Presenting Officers)

**DECISION AND REASONS**

1. This is the appeal of Dezman Edwards, a citizen of Jamaica born 7 October 1969, against the decision of the First-tier Tribunal (Judge Thomas) of 28 December 2018 dismissing his appeal on human rights grounds, itself brought against the refusal of his human rights claim of 13 August 2018.
2. The Appellant entered the UK in 2001 as a visitor and subsequently overstayed his leave.

3. He had lived in rented accommodation in Jamaica, working in the building trade, and had no permanent home there. One brother returned there in 2003 and was killed in 2011.
4. The Appellant met his partner, [MM], a British citizen, in August 2009, their relationship starting that October. He lacked evidence of their cohabitation as his immigration status prevented him obtaining documents in his own name. The Sponsor feared life in Jamaica and refused to return there. Her son [KT] had lived with them since December 2010, and saw the Appellant as a father figure with an important role in his own life, his own father being in Jamaica; he gave evidence that the Appellant had had a positive impact on his mother's life. She was in full time employment earning £1,300 monthly.
5. The Secretary of State refused the application on the basis that the Appellant had not demonstrated two years of cohabitation to qualify for the partner route, had overstayed his leave, and could not demonstrate very significant obstacles to integration to life in Jamaica.
6. The First-tier Tribunal accepted that the relationship between the Appellant and Sponsor was genuine and subsisting. The test under the Exception in the Rules required insurmountable obstacles to be shown, and there were none here: the Sponsor's objections to life in Jamaica were essentially matters of choice due to the difficulties and upheaval that would ensue, and the Appellant would face no cultural and linguistic barriers to returning to a country where he had lived for much of his life.
7. Having regard to the statutory factors, the Appellant spoke English and had employable skills, and had lived in the UK apparently without recourse to public funds, all of which was in his favour as to his integration. However his presence had consistently been over a period when his residence was precarious. He had not attempted to regularise his stay sooner, and there was no evidence to show any objective risk of suffering a similar fate to his brother. Accordingly the appeal was dismissed.

*Grounds of appeal and the error of law hearing*

8. Grounds of appeal contended that the First-tier Tribunal had erred in law in vaguely referred to the Sponsor's concerns about life in Jamaica without further particularising them. The First-tier Tribunal granted permission to appeal on 18 January 2019 in the light of those grounds.
9. At the April 2019 "error of law" hearing Mr Mukulu submitted for Mr Edwards that relevant country evidence had been overlooked, particularly a report from the Guardian newspaper. Risks to life demanded reasoned adjudication and could not be dealt with by the briefest of reasoning that treated the Appellant's Sponsor's fears as wholly uncorroborated.

10. Ms Holmes replied that this was a short decision and doubtless that showed the Judge's style was one of concision. Nevertheless the essential point had been spotted and addressed.

### **Findings and reasons – Error of law hearing**

11. The salient immigration rule in this appeal is the *Exception* within Appendix FM, addressing leave to remain for (overstaying) partners.

#### **“Appendix FM**

...

**EX.1.** This paragraph applies if ...

...

(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.

**EX.2.** For the purposes of paragraph EX.1.(b) “insurmountable obstacles” means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.”

12. So the Appellant needed to establish insurmountable obstacles to the relocation of himself and his British citizen wife to Jamaica, this being a high threshold equating to very significant difficulties entailing serious hardship.
13. As set out above, there was in reality evidence before the First-tier Tribunal to the effect that British citizens relocating to Jamaica could face a threat to their life or well-being. Yet the Tribunal concluded that “There is no evidence to show the Appellant or Sponsor is likely to suffer the same fate as his brother and or innocent UK settlers who were attacked.” It seemed to me that the available evidence, published as it was in a national newspaper with a reputation for journalistic accuracy, represented sufficiently concrete evidence as to require reasoned adjudication. It received none.
14. I accepted following the error of law hearing that this represented a material error of law, and so it was necessary to complete the determination of this appeal via a further hearing. There was no challenge to the general fact-finding of the First-tier Tribunal; the real question was the proper inferences to be drawn from those facts. Given that the assessment of proportionality having particular regard to the evidence of serious harm befalling migrants to Jamaica represented a discrete issue as to which there is the need for only limited factual findings, I considered it appropriate for the appeal to be retained for a continuation hearing in the Upper Tribunal.

*Evidence at the Continuation hearing*

15. At the resumed evidence the Appellant gave evidence, saying that his family was from Kingston. They had never lived anywhere else. He had no family in other parishes in Jamaica; he had a brother [L] who had been shot in Spanish Town. He did not think his partner would stay in Jamaica for any extended period; he believed her family had once lived in Kingston and St Kathryn.
16. Cross examined he said that he had learned of [L]'s death after a friend had contacted him. He did not have any medical or police report on the death. The police had not found the perpetrators and had stopped investigating now. His parents had owned no land in Jamaica and had no problems with gangs. The Appellant had had only one friend in Jamaica who was no longer there but had moved abroad.
17. He had never worked in the UK and denied using any public resources, he had never been to see a GP but had been to hospital for X-rays and blood tests; he took medication for his blood pressure, paying the full price for those tablets. He used public transport though paid for his own bus pass. Re-examined he said that he had never been charged by the NHS. He had had no police report regarding his brother's death having had no contact with the police himself.
18. The Appellant's partner gave evidence saying that she had been to Jamaica a few times on holiday; she had an older brother there. She would not say that she knew the country, she had only really been to Kingston twice on holiday and she did not know any other parishes. She felt that as soon as one came off the plane one would be seen as a foreigner and thus at risk. She feared life in Jamaica as she had no support network and would just not be confident of navigating life there: it was not somewhere that she felt was her home. Other people might be able to migrate to different countries, but foreign nationals and returnees had been murdered in Jamaica and she did not want to end up as a statistic.
19. Cross examined she said that her relationship with the Appellant had lasted since 2009. She knew that he was liable to return to Jamaica having understood that he was seeing a lawyer for a long time, though it was not until 2016 that she had really appreciated how significant the problems were, when a solicitor made him come and collect his paperwork. She earned £19,500 a year roughly. She would sponsor him if he wanted to return here, but it would then be very difficult to manage financially. She had been on holiday to Jamaica and had enjoyed herself, but only in the context of staying on a compound in an all-inclusive compound. She had no family there and was not aware that the Appellant had any family there. If he lived there then she would doubtless return to visit him.

20. For the Respondent it was submitted that the Appellant still could not show that he had met the partner requirements of Appendix FM and so had to meet the unjustifiably harsh threshold. The Sponsor retained sufficient links with Jamaica to warrant holidaying there and could reasonably be expected to visit him there. They had pursued a relationship notwithstanding his precarious immigration status. The crime rate was not sufficiently high to put people at general risk of serious harm. This was a long term overstayer who had showed a disregard for immigration control and had not established very significant obstacles to integration in his country of origin where he could be presumed to retain social, cultural and family ties. There was some reliance on public funds here and his good character was the least one could expect from a foreign national present without leave. The government had taken various steps to develop a protection system that was effective to the international law standard. The Secretary of State did not dispute the brother's death but the circumstances were vague: one could not conclude whether or not he had been caught up in criminal activities himself.
21. For the Appellant Mr Mukulu argued that the Appellant was a foreign national who would be at enhanced risk of serious crime, possibly even murder. The Secretary of State had adduced no evidence such as an unpaid bill to show that the Appellant was in debt to the NHS: he had paid his NHS surcharge on the present application. this was a genuine relationship that could not be conducted via modern means of communication or otherwise remotely.

### Findings and reasons - Continuation hearing

22. The Respondent provided evidence by the way of the Country Policy and Information Note *Jamaica: Fear of organised criminal groups* (Version 3.0 August 2019)

#### **"3.3 Prevalence of organised crime.**

The USSD's 2018 Crime and Safety Report noted that 'Most criminal activity is gang-related. Organized crime elements are prevalent and extremely active. The same report observed that: 'Police are unable to patrol and protect most neighborhoods adequately, so burglaries are quite common. Home break-ins occur in Kingston, even in gated and affluent neighborhoods. Past incidents have shown that when occupants neglected to use security features provided, criminals were afforded opportunities to gain entry into residences. Most wealthy residents hire private, armed guard forces to deter criminals. Burglars can commit rape, robbery, and assault if they are surprised in a home. The Bertlesmann Stiftung 2018 Jamaica report stated: 'The state's monopoly on the use of force is established nationwide in principle, but it is challenged by organized gangs and networks involved in revenge killings, fraud, and drugs and gun smuggling in parts of the capital

city, Kingston, two rural parishes in central Jamaica and two rural parishes in western Jamaica. There were targeted killings of police officers in summer 2015, the military has been deployed against drug gangs and murder rates are rising. Meanwhile, the security forces have been accused of human rights violations.’ The report further added that: ‘Jamaican violence has become endemic among poor black communities. Violence is often directed against other members of the same class not for ethnic, religious or political reasons but economic, turf or domestic conflict reasons. ‘There are numerous violent incidents, reported by the police as occurring primarily between organized gangs, sometimes within a community or between different communities, mostly related to the trafficking of guns and drugs, and fraud.’ Furthermore, the Bertlesmann Stiftung report noted that young men ‘are vulnerable to recruitment by organized gangs and criminal networks’.

#### **4.2 Other criminal activity**

According to the OSAC, in the Jamaica 2019 Crime & Safety Report, ‘Gangs are a major security issue across the country and are the source of the majority of violent crime nationwide.’ Regarding kidnapping, the OSAC 2019 Crime and Safety Report stated: ‘Kidnappings can happen in any part of Jamaica; a wide range of criminals with varying levels of professionalism and differing motives can execute kidnappings. At one end of the spectrum are high-end kidnapping gangs that target high-profile/high-net-worth individuals. Such groups employ teams of operatives who carry out specialized tasks (e.g. collecting intelligence, conducting surveillance, snatching the target, negotiating with the victim’s family, and establishing/guarding safe houses). On the other end of the spectrum are gangs that roam the streets and randomly kidnap targets of opportunity. These gangs are generally less professional, and often will hold a victim for a short period, just long enough to use the victim’s ATM card to drain his/her accounts or to receive a small ransom. Sometimes express kidnappers hold victims for a couple of days if the victim has a large amount in a checking account and a small daily ATM withdrawal limit...The FCO further added that ‘Public order incidents and demonstrations can occur across Jamaica, and may cause significant disruption to traffic and public transportation. You should avoid all demonstrations; they have the potential to turn violent and are often used by criminals as cover for robbery and theft... Criminals are known to use techniques which distract drivers to gain access to vehicles to steal handbags and other items of value.

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...

## 5. Organised gangs

### 5.1 Number of gangs

A report by the Jamaica Observer newspaper, published in July 2017, stated that a Jamaican pastor named 190 operating gangs on the island<sup>40</sup>. In an article published in February 2018 by the Jamaican newspaper *The Gleaner*, a British-based criminologist stated that there are over 200 gangs operating in Jamaica.”

23. The country evidence provided by the Appellant before the First-tier Tribunal and Upper Tribunal collectively:
- (a) The Jamaica 2019 Crime and Safety Report from OSAC (the U.S. Department of State Overseas Security Advisory Council);
  - (b) The Guardian newspaper report of June 2018 that had been overlooked by the First-tier Tribunal, titled *Retirees returning to Jamaica face extreme murder risk, say police ... Returnees warned they are seen as soft targets following multiple killings of UK expats*.
24. The OSAC report records a 21.9% fall from 1,647 in murders from to 1,287 from 2019 to 2018, and a fall in the numbers of shooting on a similar scale.

“There is serious risk from crime in Kingston. Violent crime, including sexual assault, is a serious problem throughout Jamaica, particularly in Kingston and Montego Bay. Jamaica’s police force is understaffed and has limited resources. Gated resorts are not immune to violent crime.

In 2017, Jamaica’s homicide rate was 56 per 100,000; in 2018, the homicide rate dropped to 47 per 100,000, but remains three times higher than the average for Latin America and the Caribbean.

...

Embassy personnel may not travel into notoriously high-crime areas of Kingston including, but not limited to Mountain View, Trench Town, Tivoli Gardens, Standpipe, Cassava Piece, Grants Pen, and Arnett Gardens. In Montego Bay, Embassy employees must avoid Flankers, Canterbury, Norwood, Rose Heights, Clavers Street, and Hart Street. The downtown “Hip Strip” of bars, clubs, and vendors in Montego Bay is an area where tourists should remain aware of pickpockets and theft.

In Kingston, Embassy personnel reside in several housing compounds that have 24/7 armed guards. Residences must adhere to rigid security

standards for a high-crime crime environment; each must be equipped with locked window grilles, alarm systems, and a safe room.

Rape and sexual assault are serious problems throughout Jamaica, including at resorts and hotels.

...

### **Crime Victim Assistance**

Local police assistance is available throughout the country. Police support for foreign victims of crimes varies between semi-responsive and responsive due to a shortage of labor, training, vehicles, and resources. Police do not usually mistreat victims of crime, but response times, investigation techniques, and the arrest/conviction rates of suspects are below the standards found in U.S. police departments."

#### 25. The Guardian report recounts:

"Jamaican expats who retire there after decades in the UK face an "extreme risk" of murder, a former police chief on the Caribbean island has said, as official figures revealed that at least 85 Britons, Americans and Canadians have been killed in the country since 2012.

Senior police figures told the Guardian that returning residents were seen as soft targets by criminals and needed much more protection following the murders of three British retirees on the island in as many months.

...

Percival Latouche, the president of the Jamaica association for the resettlement of returning residents, said he had counted more than 200 British, American and Canadian expats murdered in the country since 2000 and had attended 165 funerals in that time.

Mark Shields, Jamaica's former deputy commissioner of police, said returnees were seen as easy pickings by criminals, who see them as wealthy and naive to the country's security risks. "I've always considered them to be an extreme risk," he said, adding that police chiefs had previously "under-appreciated" the scale of the crime but that it was becoming a major issue. "There's a significant risk to returning residents for robbery, fraud and the ultimate crime of murder," he said.

Shields, who now runs his own security firm in Jamaica, advised Jamaican expats to "think very carefully about immersing themselves in local Jamaican culture in a rural community when they haven't been back that much".

Some gangs are known to wait until retirees' pensions land before striking, while others tail them in rental cars from Kingston or Montego Bay airports and rob them once they reach their destination.



Undercover police officers patrol the two airports on the hunt for corrupt baggage handlers or taxi drivers, who have been known to tip off gangs about new arrivals returning to live in Jamaica.

One such gang was led by a police officer and convicted several years ago of 20 robberies, all involving returning residents, although it was suspected of having committed many more crimes over the course of a decade, said Cornwall "Bigga" Ford, a former senior superintendent who caught the group before he retired in 2015. "Once returning residents come back they need support. They need good support," Ford said. "They work so hard, buy these nice houses all over the place and some of the places are remote. They need security, they need to put up alarms, cameras and have dogs."

26. One can readily see that most of the recorded violence has two focusses. There is a very significant amount of criminal violence amongst gangs and the law enforcement authorities, including revenge killings and targeted killings arising from turf wars. And there is a limited amount of crime which is targeted towards those expatriates who are considered to be worth the subject of extortion, via kidnapping or otherwise. There is little or no evidence that would raise a general risk to the average returnee who would be returning relatively anonymously – they would not be purchasing a desirable retirement home in a remote area which would require the extensive security arrangements of which the former police deputy commissioner spoke.
27. I note the evidence that police support for "foreign victims of crimes" is variable but that statement is made in the context of US citizens travelling to Jamaica for diverse purposes (the OSAC report effectively equates to the FCO advice regularly given by the UK to British nationals) that do not necessarily equate with a person with no particular profile settling there. I do not read that statement as inferring that a British citizen with a Jamaican partner, both of whom have some familiarity with the country and are likely to have extended family there, would be unable to avail themselves of state protection.
28. The Appellant and his partner would not fall into either category on a return to Jamaica. There is no suggestion, to their credit, that they have any gangland connections. They do not have any significant financial assets; indeed their relative shortage of funds is something that is at the forefront of this appeal.
29. The Secretary of State has not challenged the Appellant's account of his brother's sad demise at the hands of criminals in Jamaica. However, the account is very vague, and there is nothing therein from which one could infer any particular risks eventuating against the Appellant and his partner some years later.

30. Accordingly the only risks that they would arguably face arise from the generalised background violence. In fact the evidence provided to me from the Appellant today indicates a welcome decrease in the crime levels, though doubtless there is still a depressingly high amount of criminal violence. However I do not accept that this amounts to an “insurmountable obstacle” to relocation abroad, or to “unjustifiably harsh” consequences, to pose the test as posed in the family life context by GEN.3.3 of the Immigration Rules. Citizens of many countries face much higher crime levels than are present in the UK, and British citizens regularly choose to live in countries where policing and the institutions of government are less well developed than they are here. The Sponsor has effectively chosen to potentially join their ranks by contracting a relationship, as a mature and intelligent adult, with someone with no secure status in the UK. That is the policy that has been enshrined clearly in the Immigration Rules since July 2012, and that has received very extensive coverage in the media and, one imagines, within the communities where migrants are mostly<sup>b53</sup> likely to situate themselves.
31. That resolves the sole issue as to which this appeal was set down for a continuation hearing. However, I recognise that the Appellant is entitled to an overall assessment of his case, notwithstanding its previous failure, which folds the question of risks from crime into the other positive factors present in his case, which must then all be assessed against the public interest.
32. The only route under the private life section of the Immigration Rules under which the Appellant could (in theory) sustain a claim is the “very significant obstacles to integration” proviso. However I do not consider he would face very significant obstacles to integration in his country of origin. I infer from his evidence that he has lived amongst the Jamaican diaspora in the UK. He has managed to sustain himself here for a significant period, apparently without working. He has no significant health problems. He may have no close family there but it is hard to accept he has no extended family to call upon; and it seems probable that a person will have more than one friend in a country where they have lived for most of their life. He is clearly resourceful enough to survive amongst his fellow nationals were he required to return to Jamaica.
33. As to the Appellant's case outside the Rules (or at least for family life purposes, under GEN.3.2 within Appendix FM addressing family life), I accept that the Appellant will have established some significant degree of private life in the United Kingdom during his lengthy residence here which demands respect. And of course he has his genuine and prolonged relationship with the Sponsor. Departing for another country represents a serious interference with that private and family life.
34. The question remains as to whether this serious interference with private and family life is proportionate. One must acknowledge the importance of

maintaining immigration control and having a clear and consistent system of rules by which the presence of visitors to the UK is regulated. The measure remains, absent any children from their relationship, essentially whether there are insurmountable obstacles posed by relocation abroad, or other exceptional factors amounting to unjustifiably harsh or disproportionate circumstances. I cannot see any such factors here. The Sponsor has lived in the UK for a long time of course and is accustomed to life here. But she has evidenced no connections with this country that extend beyond the norm. Routine UK connections by way of family and friends cannot amount to disproportionate consequences given the starting point identified by the Immigration Rules, which require that overstayers demonstrate that the Ex.1 exception is established.


35. As to the section 117B factors, the Appellant clearly speaks English. He is financially supported by his Sponsor. I take the point made by his advocate that he has paid the Immigration Health Surcharge, and not been a great burden on the health service, but government policy as enshrined in section 117B and the Immigration Rules especially aims to take account of the burden on public resources that any migrant foreseeably represents over time. One can hardly reside in the UK for some eighteen years without working absent some recourse to the resources available to the community generally.
36. Of course the Appellant's residence has consistently been very precarious: one can hardly imagine a more precarious basis for a person's residence than that presented by a long term overstayer who only ever had a visit visa to enter the UK. So overall the section 117B factors count against him.
37. I find the immigration decision is not disproportionate to immigration control and the appeal is dismissed.

## Decision

The appeal is dismissed.

Signed

Date 13 August 2019



Deputy Upper Tribunal Judge Symes