IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: PA/04617/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1st March 2024

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

NW
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms A Harvey, counsel instructed by ATLEU
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 16 February 2024

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

Introduction

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Cockrill promulgated on 25 February 2020.

2. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.

3. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 3 August 2020.

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Anonymity

4. An anonymity direction was made previously and is maintained because this appeal concerns a protection claim.

Factual Background

5. The appellant is a national of Jamaica aged in her fifties. She first came to the United Kingdom as a visitor in 1998, was granted further leave to remain as a student and ultimately, indefinite leave to remain, following her marriage to a British citizen.

6. The appellant was arrested for an offence involving the trafficking of drugs into the United Kingdom in 2014 and an initial referral was made under the National Referral Mechanism. In respect of the appellant's claim to be a victim of trafficking, a positive reasonable grounds decision was made on 11 August 2014. This was followed up by a negative conclusive grounds decision in March 2015. In 2015, the appellant was convicted, following a guilty plea, of involvement in the importation of cocaine and sentenced to 4 years imprisonment.

7. Upon being notified of her liability for deportation, the appellant made submissions to the effect that her removal to Jamaica would breach the United Kingdom' international obligations. In essence, the appellant's account is based on the circumstances in which she was involved in importing illicit drugs into the United Kingdom and her fears of the consequences of being termed an informer on return to Jamaica.

8. In refusing the appellant's protection claim, the Secretary of State certified that section 72 of the Nationality, Immigration and Asylum Act 2002 applied, that the appellant had not provided a credible account of being trafficked, she did not have a subjective fear and there was a sufficiency of protection in Jamaica.

The decision of the First-tier Tribunal

9. At the hearing before the First-tier Tribunal, the appellant and her daughter gave evidence. There was much expert evidence before the judge concerning the appellant's mental state as well as a trafficking report. The Refugee Convention reason advanced was that the appellant was a former trafficked person and former victim of a criminal gang. The judge considered that the section 72 presumption point had been rebutted, that the respondent had effectively conceded the point and the OASys assessment pointed to a limited risk of re-offending. The judge found that the core of the appellant's account was credible, albeit there were troubling aspects. The judge accepted that the appellant would be at risk of attack throughout Jamaica and that there was no realistic prospect of state protection. As the appeal was allowed on asylum grounds, the judge did not examine the appellant's Article 3 and 8 claims.

The grounds of appeal

10. The grounds of appeal which accompanied the application for permission to appeal to the First-tier Tribunal can be summarised as follows.

11. The first ground was that the judge erred in proceeding with the appeal in the absence of the Conclusive Ground decision which the respondent had failed to

provide and which raised concerns as to the reliability of several relevant aspects of the appellant's claim.

12. In the second ground, the judge was said to have erred in his findings relating to the appellant's earlier contact with an individual referred to as 'G,' Other concerns with the judge's findings are set out in numbered paragraphs 9-15. These include an alleged failure by the judge to make findings on death threats said to have been received by the appellant in the United Kingdom and to her daughter in Jamaica. Criticism is made of the lack of reference to the decision in *AB* (Protection-criminal gangs-internal relocation) Jamaica [2007] UKAIT 00018.

13. Permission to appeal was refused by First-tier Tribunal Judge Fisher on 2 July 2020. In refusing permission, the judge categorised the grounds as a disagreement. In addition, it was stated that there was no burden on the appellant to produce the NRM decision and there had been no application by the respondent to adjourn the hearing for a copy of the said decision to be produced. Otherwise, the judge's findings were said to have been open to him.

14. In the renewed application to the Upper Tribunal dated 8 July 2020, the original grounds were relied upon. In addition, it was argued that there was a shared responsibility to produce the Competent Authority decision, applying *DC* (trafficking protection/human rights appeals) Albania [2019] UKUT 351 (IAC) as well as the overriding objective.

15. On 15 July 2020, the respondent made an application to amend the grounds. Commentary is made to the effect that the respondent was unable to confirm that the NRM decision was before the First-tier Tribunal. The proposed amendment was that should the '2019 reasoned negative Conclusive Grounds' decision have been served on the First-tier Tribunal and the Secretary of State, the judge erred in failing 'to use that decision as the starting point for its own conclusions on the Refugee Convention,' applying *DC*.

16. Permission to appeal was granted on the basis sought, with the judge granting permission remarking that there was an arguable error in the judge failing to consider whether internal relocation would be safe and reasonable for the appellant and there was merit in the argument that the judge failed to consider *AB*. In addition, it was noted that the NRM decision was before the First-tier Tribunal, at page 73 of the appellant's supplemental bundle.

Previous proceedings

17. On 22 February 2021, Upper Tribunal Judge Hanson allowed the Secretary of State's appeal and set aside the decision of Judge Cockrill while preserving many of the findings including those regarding traumatic events in the appellant's past as well as positive findings from the National Referral Mechanism which were reached after Judge Cockrill's decision. Having had sight of a positive NRM decision dated 28 July 2020, which postdated the decision of the First-tier Tribunal, the only issue remaining to be considered was the alleged failure to consider the country guidance case of AB [97].

18. In a decision promulgated on 12 August 2021, Judge Hanson remade the decision, dismissing the appeal, concluding that the appellant would not be of interest to an organised criminal gang in Jamaica and there were no very compelling circumstances to overcome the public interest in the appellant's

deportation. He refused permission to appeal to the Court of Appeal in a decision dated 11 October 2021.

19. On 27 October 2022 the appellant was granted permission to appeal to the Court of Appeal against Judge Hanson's decision.

20. Those proceedings ended by consent with Judge Hanson's decision of 22 February 2021 in which he found a material error of law as well as his decision of 11 October 2021 being set aside. The Court of Appeal Statement of Reasons explained that the appeal was settled on consent on the terms that the findings of fact made by Upper Tribunal Judge Hanson at [9-13] of the Statement were preserved.

21. An Upper Tribunal case management review hearing took place on 11 January 2024 before the Vice President where both parties were represented. Directions were made for this case to be listed before a Judge of the Upper Tribunal other than Judge Hanson and those who had dealt with the permission application. The Vice President directed that the question to be considered at the hearing was as follows:

> Does the decision of Judge Cockrill disclose an error of law in the application of AB in the light of all the material before him and (in addition) the subsequent positive conclusive grounds decision of the competent authority.

22. Ms Harvey filed a skeleton argument in advance of the error of law hearing listed for 16 February 2024. It suffices to say, that it was contended that there was no error of law in the decision of the First-tier Tribunal who had addressed his mind to the question of internal relocation including the reasonableness of relocation. It is argued that Judge Cockrill's findings were supported by the positive Conclusive Grounds decision.

The error of law hearing

23. Ms Ahmed's main argument was that the Upper Tribunal was obliged to take the extracts from Judge Hanson's remaking decision as summarised in the Court of Appeal's Statement of Reasons from [9] to [13] as the starting point in considering whether there was an error of law in the decision of Judge Cockrill. The finding upon which Ms Ahmed's attention was focused appeared at [11] of the Statement of Reasons where it states that Judge Hanson rejected the appellant's 'submission that she would not be admitted to the Witness Protection Programme (WPP) in Jamica.' She argued that this was a complete answer to the appeal, in that if the appellant would be admitted to the WPP she was not at risk of persecution.

24. Otherwise, I heard submissions from the representatives in relation to the application of *AB*. At the end of the hearing, I announced that there was no material error of law in the decision of the First-tier Tribunal. I give my reasons below.

Decision on error of law

25. The difficulty with Ms Ahmed's insistence that Judge Hanson's finding regarding the WPP finding was preserved, is that the earlier decision of Judge Hanson dated 22 February 2021, which found a material error of law in the decision of the First-tier Tribunal, was set aside by the Court of Appeal, with no preserved findings.

26. Ms Harvey submitted that the representatives present at the case management hearing before the Upper Tribunal on 9 January 2024 were aware of the content of the Statement of Reasons and the respondent's representative was supportive of the Vice President's approach. Ms Harvey added that the grant of permission to the Court of Appeal was done on the basis that Judge Hanson's findings were speculative and unreasonable. She explained that there was only a need to turn to the Statement of Reasons if an error of law was found. Ms Ahmed had no reasoned rebuttal to Ms Harvey's submissions on this point.

27. It appears abundantly clear that the position outlined in the Statement of Reasons is of no current consequence as Judge Hanson's error of law decision has been set aside. I accordingly find that the position is as stated by the Vice President, that is the question is does the decision of Judge Cockrill disclose an error of law in the application of *AB* and that the only material to be considered is the evidence before Judge Cockrill and the positive conclusive grounds decision. Should an error of law be found, then account will need to be taken of the Statement of Reasons and the agreements reached therein.

28. Turning to the sole ground of appeal before me, I will set out in full the Secretary of State's grounds regarding the judge's treatment of *AB*. At [14] of the grounds, the respondent states that the there was an 'absence of reference to the Country Guidance of *AB*,' setting out the following paragraphs.

> 163. When we refer to persons being "admitted" into the programme, we do not believe that the test can be what the individual's preferences are or whether there are hardships that will be involved (e.g. having to live for at least some period of time in difficult circumstances). The test is simply whether, if they sought access to it, they would be admitted to it.
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> 164. What, however, would be the position of a person who would not be admitted to the Witness Protection programme? Here the first question to be asked is whether it is reasonably likely they will be traced and targeted in their new place of residence. As already indicated, we do not consider that, except in high profile cases, such persons would face a real risk of being detected by criminal gangs based within the KMA or other inner-city urban areas. But each case will turn on its own facts.

29. The grounds add that the judge was not asked to depart from *AB*.

30. That *AB* might to be relevant to this appeal was indicated by the respondent's reliance on the case at paragraph 72 of the decision letter served on 3 May 2019 together with the conclusion that *AB* indicated that there was an internal flight option for the appellant and that gangs do not enjoy freedom to act with impunity.

31. Judge Cockrill did not expressly mention the decision in *AB* however I find that the judge would have been aware of the importance of the decision from the decision under appeal, the Home Office country information and guidance report; Jamaica: fear of organised criminal groups dated August 2019 as well the appellant's skeleton argument. Indeed, at [31-41], the judge sets out the respondent's case in detail, including the Secretary of State's view that the appellant could approach the Jamaican authorities for help and support, that there was a sufficiency of protection and that the appellant could safely and reasonably relocate.

32. The appellant's case is based on her fear of return to Jamaica as an informer. Judge Cockrill accepted that the appellant had given a 'true narrative' regarding

the core elements of her account [72]. That account was set out in full between [11-30] of the decision.

33. Judge Cockrill accepted that the appellant had been targeted by a sophisticated transnational gang in Jamaica, where she was abducted with her daughter, subjected to a violent rape and coerced into transporting a kilogramme of cocaine in her clothing.

34. Judge Cockrill accepted that the gang knew where the appellant lived and who her family were. The judge found that the appellant would be 'extraordinarily vulnerable to attack if she went back to Jamaica.' The judge found at [77], that the appellant would be viewed as an informer because 'the appellant who pleaded guilty would be seen as someone who has informed on Mr G, who has escaped justice so far, although 13 years imprisonment was imposed in his absence.' The judge further noted the large scale of the drugs operation, that this was no 'amateur' gang and the 'considerable level of purity' of the drugs transported by the appellant. He found that the appellant's ill-treatment by being raped prior to being made to carry the drugs emphasised 'in the most appalling way the preparedness of these people to harm her.'

35. The First-tier Tribunal judge also relied on the report of Dr Fleetwood, an expert on the international drug trade and drug couriers. The judge recorded that Dr Fleetwood's evidence was 'extremely valuable in placing (the appellant's) account in an appropriate country context and recorded that it reinforced his conclusion that NW succeeded on asylum grounds [79].

36. Having made the foregoing factual findings, which are not subject to any challenge, Judge Cockrill found that there was no realistic prospect of the appellant receiving police protection anywhere in Jamaica from the gang in question [78]. The judge's findings are not incongruous with the conclusion of Wall LJ at [55] of Atkinson [2004] EWCA Civ 846, which I note was a certification case, that 'It is sufficient for this court to find that the evidence before us raises a serious question as to whether the State of Jamaica provides a sufficiency of protection to informers.'

37. In *AB* did no conclusion was reached as to the availability of effective protection for informers. At [153] there is reference to evidence that the major criminal gangs 'have the wherewithal to carry out revenge attacks or reprisal killings against persons whom they have a serious and specific interest in targeting,' as well as that the Jamaican authorities have the willingness and ability to protect in cases where persons will be admitted into their Witness Protection programme. The following comments were made on the position of informers.

154. (In our view this evidence also casts considerable doubt on whether informers as a class can be seen as unable to receive effective protection. If they are able in significant numbers to enter this programme, then it would appear in broad terms that their protection can be secured. However, we lack evidence on this and the precise issue of protection for informers is not raised by the particular facts of this case.)

155. Nevertheless, we recognise that apart from the safety-net of this programme, there does appear to be a protection gap. For persons targeted by gangs who are not reasonably likely to be admitted into this programme, we think the evidence adduced by Mr Sobers and others strongly points to them not being able to secure protection from the authorities through the range of normal protective functions carried out by the authorities - unless they can internally relocate without being at real risk of detection by their persecutors.

38. The judge did not mention the WPP directly however it is clear from his conclusions that there is no prospect of protection for the appellant, that he does not accept that the appellant would be admitted into that programme. That makes eminent sense, as the appellant is not a witness but a convicted criminal.

39. Ms Harvey informed me that the WPP issue did not loom large in the hearing before the First-tier Tribunal and it was not mentioned in submissions. On this, I note that while the WPP is mentioned in the decision letter, there was no suggestion that it would be available to the appellant. Furthermore, the Jamaica: fear of organised criminal groups report August 2019 at 8.1.1 confirms that position, stating that the programme's "main objective is to enlist legitimate witnesses of major crimes whose safety and security is at risk.'

40. The 2018 US State Department Crime and Security report which was before the judge notes that 'the majority of crime victims do not report crimes due to fear the report will get back to criminals, or the feeling that nothing would come from such reports.'

41. Ms Ahmed attempted to expand the grounds to include the issue of internal relocation. As I indicated at the hearing, as the judge had found the appellant to be at risk from the gang throughout Jamaica, the question of relocation did not arise and there was therefore no need for him to make findings on this matter. If I am wrong on this, the unchallenged expert evidence before the judge would have led to a conclusion that the appellant could not reasonably be expected to relocate. In addition to the circumstances leading to her criminal conviction, the appellant has experienced a number of traumatic events in her life which the judge explored at [14-21]. In addition, the appellant's son was murdered in unclear circumstances and her niece was killed. Dr Seltzer, a consultant psychiatrist diagnosed the appellant as suffering from PTSD and there was also a report from Dr Thullesen a psychologist specialising in victims of trafficking. In addition, the Conclusive Grounds decision is that the appellant was the victim of sexual slavery between the ages of 8 and 15 and a victim of modern slavery for forced criminality in the circumstances in which she transported the cocaine to the United Kingdom.

42. In concluding that the appellant would be at risk throughout Jamaica, the First-tier Tribunal Judge arrived at a decision that was wholly open to him on the evidence. There was no error in his approach.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 February 2024

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