Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04255/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 May 2019	**On 4 July 2019**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

K N M
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms A Radford, Counsel instructed by Turpin & Miller LLP solicitors
For the respondent: Mr T Melvin, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order
The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appealed with permission against the decision of the First-tier Tribunal to dismiss her appeal against the respondent's decision of 20 April 2017 refusing her international protection under the Refugee Convention, humanitarian protection, or

leave to remain in the United Kingdom on human rights grounds, and certifying that she is a person who committed a particularly serious crime for the purposes of the non-refoulement provisions of section 33(2) of the Refugee Convention (exclusion from refugee protection), pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002 (as amended). The appellant is a citizen of Jamaica.

2. The decision of the First-tier Tribunal was set aside by the Upper Tribunal in a decision sent to the parties on 29 January 2019 and is now to be remade in the Upper Tribunal.

Conviction

3. On 22 June 2016, the appellant was convicted of conspiring to steal and sentenced to 2 years' imprisonment. She had taken part in a conspiracy at the Paddy Power betting shop in Dalston where she worked, calculated to appear as a robbery by a third party. The appellant was the cashier, and one of the other defendants was the shop manager. Her two co-accused were also convicted.

4. The appellant did not plead guilty and on conviction was sentenced to 2 years' imprisonment. The Judge found that she had '[lied] consistently and systematically' in her oral evidence and that it was a carefully planned operation which he treated as a category 2 offence.

5. The appellant appealed against her sentence, but she did not pursue her appeal and the challenge to the 2-year sentence lapsed on 14 June 2016.

6. The appellant had no previous criminal history and has not offended again since her release in 2017.

Refusal letter

7. In his refusal letter of 20 April 2017, the respondent reminded the appellant that on 8 March 2016 she had been notified that section 32(5) of the UK Borders Act 2007 was applicable to her and that she is a foreign criminal sentenced to a period of imprisonment of at least 12 months and as such her deportation was required, as conducive to the public good, under the 2007 Act, unless she could show that one of the exceptions in section 33 was applicable to her.

8. Representations asserting that the appellant qualified under Exception 1 in section 33(2) were submitted, referencing the Refugee Convention, humanitarian protection and Articles 3 and 8 ECHR.

9. The Refugee Convention submission was based on the appellant's claimed bisexuality and the risk to her in Jamaica from a former male partner, who had caused her serious physical harm over a period of 3 years, allegedly because he had discovered her primarily lesbian sexuality. The appellant said that in 1996, she terminated a pregnancy by her male partner without his knowledge or consent, which caused him to beat her and tell everyone in the community that she was lesbian. In April 1997, the appellant came to the United Kingdom and has only returned once since then, for a wedding in 2011.

10. The appellant claimed to have seen her former partner's brother and sister in 2011, when she returned to Jamaica with her husband and sons for her brother-in-law's wedding, and she claimed that she had been threatened then with further harm. Her husband, who said he had known of the appellant's orientation since meeting her in 1997, supported her account of her sexuality and the threats.

11. The respondent did not accept that the appellant was a lesbian as alleged, nor that she was bisexual. The appellant had not mentioned her sexuality between 1997 and her imprisonment on 26 February 2016, and on arrival in prison had said that she was heterosexual. The appellant had named her current lesbian partner, but there was no supporting evidence, written or oral, from that woman or any other Jamaican or United Kingdom lesbian partner. She had produced no evidence of going to gay clubs or joining lesbian organisations before making her asylum claim.

12. The respondent also did not accept that there was a continuing risk from the claimant's previous partner in Jamaica, despite the serious harm alleged, which was supported by a Rule 35 report.

13. The respondent considered that the Refugee Convention exception was not made out, rejecting the appellant's claimed sexuality and also her account that she had been 'outed' in Jamaica by her former partner. The respondent accepted that if the appellant's claimed sexuality (or the perception thereof) was established, that she would be at risk of serious harm or mistreatment, amounting to persecution.

14. The appellant's humanitarian protection claim under the Council Directive 2004/83/EC (the Qualification Directive) and the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 fell with the Refugee Convention claim. Article 3 failed for the same reason.

15. The respondent then considered Article 8 ECHR which also engaged Exception 1 if established. The appellant had been in the United Kingdom, mainly lawfully, for 19 years at the date of decision and had indefinite leave to remain before the deportation decision was taken. She was a person of previous good character who had no previous or subsequent offences or convictions. Her conviction now stood unchallenged.

16. The appellant's husband and three sons were all British citizens. It was accepted that the appellant had a genuine and subsisting parental relationship with them, and that given their ages, it would be unduly harsh for the children to go to Jamaica with the appellant. However, the respondent did not consider it would be unduly harsh for the three boys to remain in the United Kingdom with their father, if the appellant were deported.

17. The appellant's relationship with her husband began when she was lawfully in the United Kingdom in 1997, but her status then was precarious. The children were all born when she was here without extant leave and they are all British citizens.

18. The respondent accepted that it would be unduly harsh to expect the appellant's husband to go and live in Jamaica with her. The respondent considered that it would not be unduly harsh to expect him to remain in the United Kingdom without the

appellant. He had his own mother and two brothers here, as well as the appellant's uncle, and although he had some health problems, he was able to work at times. The respondent did not accept that the family would become destitute, or the children homeless, as claimed: state support would be available and he had managed while the appellant was incarcerated.

19. The respondent considered whether, applying the Exceptions in section 117C of the Nationality, Immigration and Asylum Act 2002 (as amended) and paragraph 399A of the Immigration Rules HC 395 (as amended), the appellant should be granted leave on the basis of her private life. The respondent accepted that the appellant had been lawfully resident in the United Kingdom for most of her life, but not that she was socially and culturally integrated (by reason of her criminality) nor that there were very significant obstacles to her reintegration in Jamaica following deportation.

20. The respondent then considered whether there were very compelling circumstances outweighing the public interest in deportation. The appellant had polycystic ovary syndrome and had experienced depression in prison, caused by separation from her husband and children, for which she received counselling. There were suitable medical facilities in Jamaica.

21. The respondent considered whether the appellant should be permitted to remain as a *Zambrano* carer for her sons, but concluded that the appellant's husband was able to do that.

22. The section 33 Exception was not made out and the respondent considered that there was a strong public interest in deporting the appellant as quickly and efficiently as possible, for the prevention of disorder or crime. The application was certified under section 72.

23. The appeal was not certified under section 94B of the 2002 Act, and the appellant had an in-country right of appeal which she exercised.

Evidence before the Upper Tribunal

24. In remaking this decision, I have had regard to the record of the oral evidence before the First-tier Tribunal, which is admissible although the Judge's conclusions have been set aside. I heard oral evidence from the appellant and Ms Sherratt, and I have the assistance of written submissions from the appellant's Counsel and the Home Office Presenting Officer.

25. I have had regard to the hearing bundle, which comprises 84 pages of evidence from the school and social services about the children; 16 pages of medical evidence; evidence that the appellant is working and a copy of her student ID; 45 pages of evidence about rehabilitation and ongoing dangerousness; and 58 pages of evidence about the appellant and her husband. The medical evidence about the children supports the school and social work evidence of the impact on the children of the appellant's absence. I have had regard to it but there is no need to set it out in this decision.

Vulnerability adjustment

26. At the beginning of the hearing, Ms Radford said that the appellant was a vulnerable person: she had post-traumatic stress disorder and was very anxious. She took citalopram and medazepam for her anxiety, and metformin for her polycystic ovarian syndrome. Ms Radford relied on the Presidential Guidance regarding vulnerable persons (see *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123).

27. I asked what adjustments might be required to enable the appellant to cope with the hearing. Ms Radford said that no specific adjustments were needed, save that the hearing should be dealt with early in the list so that the appellant did not need to 'hang around' and feel more anxious. That was done. I have had regard to the appellant's status as a vulnerable witness, when assessing credibility in this appeal.

28. At the beginning of the appellant's oral evidence, I asked her how she was feeling and she said that she had taken her medication before coming to Court. I asked her to let me know if she was uncomfortable or needed a break. That did not happen. At the end of the appellant's oral evidence, I asked her how she felt. The appellant said that she had felt 'OK' in the Court and thanked me.

Appellant's evidence

29. The appellant gave an account of her experiences in Jamaica, which is not supported by any evidence from a female partner, or from anyone in Jamaica. There is no evidence from any of the female partners she has had in the United Kingdom either. The appellant's evidence is that on arrival in 1996, she did not tell her grandparents what had happened to her or about her lesbian sexuality. There is no evidence other than that of the appellant and her husband about the incident at the family wedding in 2011.

30. There is no corroborative evidence of her pregnancy or the abortion, and nothing from any doctor, counsellor, social worker, prison officer or any of her female partners to support the lesbianism/bisexuality element of the appellant's case, revealed for the first time during her prison sentence in 2016, some 19 years after the appellant came to the United Kingdom.

31. The appellant has produced a Rule 35 medical report, which evidences extensive scarring supporting the physical abuse the appellant is said to have endured in Jamaica at the hands first of her mother, before she left for America when the appellant was 8 years old, and later of her male partner. The Rule 35 report does not mention abuse by the appellant's mother and there is no attempt to differentiate the scarring which might have been caused in the appellant's early childhood and that which occurred at the hands of an abusive partner in her teenage years.

32. The core of the appellant's current claim is based on the effect of her deportation on her family members, her husband and her three sons. The appellant's evidence was that the extended family provided only limited support for her husband while she was incarcerated. Social services became involved and the children were referred to

CAMHS, a situation which did not end until several months after the appellant was released from immigration detention following her prison sentence.

33. By the date of the First-tier Tribunal hearing, the appellant's husband was out of work again, having had a dispute at his previous employment about pay. Social services were no longer involved with the family as there were no child protection concerns once the appellant was out of prison and back home.

34. The appellant's updated witness statement of 26 April 2019 was adopted at the hearing. It is relevant particularly for details of her family life in the United Kingdom and her children's educational difficulties. The appellant described her relationship with her sons as extremely close: all three of them were clinging, loving and emotional boys, relying on her for emotional support.

35. Before the appellant went to prison, her evidence is that her boys were outgoing and happy, and doing well at school, although the eldest had been diagnosed with special educational needs (SEN) at primary school and received support at school under the supervision of a Special Educational Needs Coordinator (SENCO). The appellant had a strong feeling that the youngest boy also had SEN needs, and her instinct was later confirmed. The youngest boy now has a SENCO. The elder has left school and is at further education College.

36. At home, the appellant said she made sure all the boys did their homework. She provided healthy meals, and the family cycled a lot and went for family days out to various parks. They were an active family; the eldest boy was involved with kick boxing.

37. The eldest boy was added to the SEN register at the end of primary school, in year 5 (age 9-10), although the appellant had raised it previously with that school. The appellant worked closely with the eldest boy's primary school: he had support every day at school, plus additional materials to bring home. The appellant spoke to his SENCO at least three times a week.

38. At secondary school, the appellant remained closely involved with the eldest boy's education, emailing and meeting his teachers regularly: she bought GCSE materials once he was about 14, so that they could work on them together.

39. When the appellant went to prison, her husband and the boys visited her almost every weekend, but the circumstances of the children deteriorated. The elder two did not want to leave their home or go to school. The appellant telephoned the children before and after school from prison, every day. She did all she could to support them, but they still suffered.

40. The eldest boy was very distressed. He was taking his GCSE examinations, but he was tearful and unwilling to go to school. The school arranged for him to see a counsellor, but that did not help: he just said he wanted his mother back. The eldest boy comfort ate the less healthy food the appellant's husband cooked for the boys in her absence and became obese.

41. The appellant obtained from prison teachers practice sheets for GCSE papers which she handed to an officer to give to the eldest boy each weekend when he visited, but that was not enough to save his education: he would not complete them, or say he could not do the work, and that summer he failed all of his GCSE examinations. The eldest boy asked to see a doctor and told the doctor he was not coping without his mother. The doctor made a referral to social services.

42. The middle child was keen to learn and took to school very well. He was an A grade student. The appellant was closely involved with his homework and working with the school. There were no educational issues and he progressed well, but when the appellant went to school, he was 14 years old and took her absence hard. He did not spend time with friends; he withdrew and spent time alone in the library and would not talk about his problems. His grades dropped from A to C in that year.

43. The youngest boy was a playful, happy baby but when he went to school, the appellant realised he had SEN problems like the eldest. He was in the top set at school when the appellant went to prison, but while he was away, the youngest boy dropped to set 3 from set 1, and began to wet the bed. He was very unhappy at school, not eating his lunch and crying for no reason.

44. After coming out of prison, the appellant took all three boys in hand. She worked with the teachers and with them at home. She could not repair the eldest boy's wholesale failure in his GCSE examinations, but she is supporting him while he studies electrical engineering at Tottenham College; he took a test for entry and the appellant took it herself, to help him. The appellant passed the test: her eldest son failed it, but under persuasion from the appellant, the College admitted him. The eldest boy has passed the first year at Tottenham College, and his mother has obtained a copy of the workbook being used by the school so that they can work through it at home. She is certain that if she can continue to support him, he will succeed in his studies and his life, but if she is sent back to Jamaica, the appellant thinks that the eldest boy will drop out of college and his future is bleak.

45. The middle child also received intensive home support from the appellant once she was out of prison, and he was awarded a 'gifted and talented' certificate at the end of his GCSE year. He had taken his GCSE examinations and the results were awaited at the date of hearing.

46. The youngest boy has been moved back up to a higher group, after the appellant spoke to the school and persuaded them. She is working at home with him to make sure he catches up on what he missed while she was in prison. He is no longer bedwetting, eats his lunch, does not cry at school and plays with the other children again.

47. The appellant had been the main earner before going to prison and wants to get back into employment and support her family. She described herself as 'a very determined and driven person'. The appellant is deeply sorry for the offence and has been punished for it; her family has suffered too. She says she will never ever get into such a situation again. If removed to Jamaica, the appellant would not take her children; they are British citizens and in education here with friends and family, whereas there is nothing and nobody for her in Jamaica and they do not know the culture.

48. The appellant gave oral evidence at the Upper Tribunal hearing. She adopted her evidence to date and gave brief supplementary evidence about correspondence from CAMHS which is in the bundle. She said that Dr Annette Wilson was still meeting with the family at St Ann's Hospital every two or so months, engaging with the family as a group, but speaking to each one of them. Dr Wilson encourages the family to get through the experience together, asking the boys how they were doing at school, and speaking about their anxiety and how to cope with it. Dr Wilson also telephones the family between appointments to see how they are coping.

49. In cross-examination, the appellant said that the last such meeting had been in the Easter Holiday this year. None of the boys was now taking any medication or receiving counselling. Social services had closed their child protection case for the family after the appellant returned home in June 2017, but the appellant could not quite remember when (from correspondence in the bundle, the final decision was made in November 2017). The social worker who had been visiting the family was quite happy with them.

50. Mr Melvin asked the appellant no questions about her sexual orientation or history, either in Jamaica or the United Kingdom. There was no re-examination.

Appellant's husband's evidence

51. The appellant's husband provided a brief written witness statement for the First-tier Tribunal hearing. He confirmed what the appellant had said about the family circumstances, and the threats made at the wedding (which took place in St Ann's, the other side of the island from where the appellant had lived with her abusive former partner).

52. In his oral evidence to the First-tier Tribunal, the appellant's husband said the abuser's sister and brother called her a lesbian, chased after her, and made gun signs. He had not previously believed they were taking much of a risk in travelling to Jamaica as they were not going to the same area. He did not think that the appellant would have relations with women in Jamaica.

53. The appellant's husband provided an updated witness statement for the hearing in May 2019. He said that the appellant had always been the primary carer of their sons and worked to provide for the family, as well as taking care of everything to do with the boys' education. He could not help, as he had not had a proper school education and had trouble reading and understanding things.

54. The boys had been devastated when she went to prison. They could not concentrate and their education suffered. They began having nightmares, and the youngest wet his bed. They visited the prison almost every week but having to go home without their mother was very difficult for her husband, and for the children. He got depressed and had an injury to his hand which made it much more difficult. He struggled to cope with the family alone.

55. Everything got better when the appellant came home, and the husband no longer took antidepressant medication. However, the husband and the boys remained very

anxious about the possibility of her being deported; their lives were at a standstill, awaiting the outcome of the appeal. If the appellant were deported, the husband and his sons would be unable to cope without the appellant and the children would be 'destroyed'.

56. The husband did not give any oral evidence at the May 2019 hearing, although he was present. Ms Willocks-Briscoe did not seek to cross-examine him.

Social work evidence

57. A letter dated 4 May 2017 from Sharon Charles, the family's social worker, confirms her concerns and those of the school during the appellant's incarceration. The boys' basic care needs were being met by their father, but their emotional needs were of concern and a CAMHS referral was made, as well as asking the school to put in extra support for the children, who were not keeping up with their school work. A Child and Family Assessment of July 2017 confirmed the same issues and recorded that the school is helping but that the father was not coping well at home. The litmus test would be when the appellant returned home.

58. A further Child in Need report of 24 November 2017 noted that the Child in Need Plan was being maintained to ensure a smooth reintegration of the appellant who was now back home with the family. The children were happy to have her home, but still worried about her being deported following the First-tier Tribunal hearing in January 2018.

59. A letter dated 8 January 2018 from Nicholas Cotterill, Social Worker, Safeguarding and Support Service, says that the children still had 'huge anxiety as they fear that their mother will be taken away from them again…I believe the deportation of [the appellant] would place [the boys] at a heightened risk of further suffering and emotional harm'. Mr Cotterill offered to provide a report detailing his work with the family but that offer was not taken up.

60. A letter from Dr Annette Wilson, Systemic Family Psychotherapy Lead and Interim CAMHS Access Lead dated 23 April 2018 noted that the boys had been referred to CAMHS by Sharon Charles, the social worker, after her home visit. She had seen the family on four occasions, as well as numerous telephone conversations, to get an update on the boys' emotional wellbeing and how they were managing the uncertainty regarding her possible deportation. Dr Wilson said that the children were still 'in a stage of anxiety' and that the secure foundation which the appellant provided for the family:

> "…contributes to the overall emotional wellbeing of the children's mental health presentation. It would have a detrimental effect on the boys' wellbeing and adverse impact on their mental health long term if [the appellant] was removed. Due consideration needs to be given to the vulnerability of these children, who desperately need their mother. From my assessment, I have no concerns about parenting, or either parent's relationship with their children. I would recommend that the family continue to stay together as any decision to

> deport [the appellant] would create serious irreversible damage to her children."

Evidence from the school

61. The First-tier Judge had before him evidence from Mr David Hearn, the vice-principal of the Greig City Academy where the younger two children studied. Mr Hearn considered the appellant a good parent, very proactive in her sons' education, and that while she was in prison, their academic achievement had been significantly affected, based on feedback from a number of members of staff. Head of Year teachers described her as 'brilliant' and the best parent they had dealt with; he considered her to be in the top 5% of positive school-parent relationships. The appellant's husband was still actively involved but not the same degree of engagement, although he was doing his best.

62. Mr Hearn was not aware of any issues of neglect, but the children had fallen below the high standards she achieved with them when she was there. Mr Hearn told the First-tier Judge in oral evidence that he did not consider this family to be 'in crisis' while the appellant was in prison. However, in his witness statement for the First-tier Tribunal hearing, he said this:

> "13. [The appellant] is a very supportive no nonsense parent. She knows her boys' strengths and weaknesses and has always been totally honest and transparent in her dealings with school. She has moved heaven and earth to keep the family functioning in difficult circumstances and it must be horrible for the family to have the uncertainty of this possible deportation hanging over them.
>
> 14. I have been a deputy head teacher in inner city schools in London for the last 20 years. I have seen the damage that family break down and many single parent families can cause. I understand some of the pressures that these boys are under on the streets and the need for a strong family unit to give them the structure and support that their peers do not have in their home lives.
>
> 15. If [the appellant] is deported a strong family unit will be severely disrupted with potential long-term consequences for society and the individuals concerned. All teenage boys and young men need their mothers. It is an awkward and unacceptable fact of life that young black boys in particular are at much greater risk of stabbing and street crime in inner city London where this family lives. …"

63. Following the First-tier Tribunal hearing, on 24 September 2018, Mr Hearn wrote a 'to whom it may concern' letter, clarifying his assertion that the family was not 'in crisis' while the appellant was in prison. He said that while there were difficulties, the school had not had to make any urgent referral to social services because of immediate concerns about neglect and abuse which was harming or endangering the boys, which would have required the involvement of a duty social worker. However, there were ongoing concerns about how the family was coping; the youngest boy in particular was developing anger management issues with aggression and violence to other students,

and his attendance dropped off, missing approximately one day a fortnight. The middle boy, previously a very good student, also began missing school. All this stopped when their mother came home.

64. In March 2017, the school completed a Multi-Agency Information Form at the request of social services. In late spring or early summer 2017, Ms Sharon Charles, a social worker, visited the family and found the boys to be struggling emotionally and presenting with mental health symptoms, following which there was a referral to CAMHS and a CAMHS report which led to a Child in Need Plan for the family. On 9 May 2017, the youngest boy was teased about his mother being in prison. He became upset and the school tried, unsuccessfully, to contact the social worker.

65. The appellant was released on 24 May 2017 and on 21 July 2017, the Child in Need Plan commenced. The school was contacted by social services for information in November 2017 and Mr Hearn's understanding was that at the Child in Need meeting on 24 November 2017, social services decided to continue Child in Need support while the appellant resettled into the family.

66. In a covering letter (undated) enclosing emails between the school and the appellant, Mr Hearn refuted the statement in the Home Office refusal letter that there was 'little evidence to show' that the appellant was playing a significant role in her eldest son's education before she went to prison. The Home Office had not contacted the school to ask for such evidence. In the six years that the boys had been at his school, Mr Hearn had been able to find 39 surviving emails from the appellant to Dawn Henriques, Head of SEN at Greig City Academy, some of which he enclosed, all of which showed the intensity and significance of the appellant's involvement with the boys' schooling.

Samara Sherratt's evidence

67. Ms Sherratt is the youngest boy's SENCO at Greig City Academy. In a letter dated 20 September 2018, she confirmed he is on the school's SEN register with the status 'SEN support'. A letter from his primary school, St Anne's Primary, confirmed that he was also identified as SEN at that school.

68. Ms Sherratt described the youngest boy as sensitive, with low self-esteem and poor mental health in consequence of having been separated from his mother while she was in prison. He was very close to his mother, who had been 'incredibly supportive' and in regular personal and telephone contact, to speak about his progress. The appellant had attended a session for parents on how to support children's learning outside school. The letter concludes:

> "I am extremely worried about the effect that [the appellant's] deportation will have on [her youngest son's] outcomes. He is on the SEN register because he has learning difficulties. He is also extremely vulnerable because of his emotional immaturity. We have been working really hard to address [his] needs and he has made excellent progress since his mother has been back in his life, as she has ensured he is supported both academically and emotionally. She has also supported the school in ensuring he gets the provision he needs. He is on the SEN register because he needs considerable support. The support we give

> him in school to ensure he reaches his potential will not be enough without a secure home environment. It is well known that broken attachments can have a devastating effect on children's outcomes. I am genuinely concerned that [his] outcomes will be extremely poor if his mother is removed from his life."

69. Ms Sherratt gave a witness statement on 24 April 2019. Much of what is in the statement is summarised above. The youngest boy was not 'secondary ready' when he transitioned from St Anne's to Greig City Academy: he was 'sweet, kind, gentle and can be overly sensitive'. Counselling and mentoring were recommended, as well as learning support. He had difficulty with both spatial and verbal abilities, and while his mother was in prison, he developed a stammer. He was extremely anxious and often appeared sleep deprived. He remained emotionally immature for his age, lacking in resilience and coping mechanisms.

70. 'Parent voice' was an important component of SEN support, which was far less effective when the parent was not involved: in this case, the appellant had a supportive, pro-active approach, supporting her sons emotionally as well as educationally, and having high expectations and aspirations, extremely keen for them to better themselves. The middle child's head of year told Ms Sherratt that she was 'one of the easiest and best parents I have ever dealt with…I wish I had 200 others just like her'.

71. The youngest boy's mental health had improved when his mother came out of prison, but now he was worried again that she would be deported, and his behaviour was causing concern. He was not eating properly and would often try to leave lessons and come to sit with Ms Sherratt instead. In November 2018, when someone upset him, he came to her office 'crying, laughing out loud and rocking at the same time and had to go home'. The statement concluded:

> "I am extremely worried about [his] ability to cope if his mother is deported because his coping mechanisms are poor. He is already extremely traumatised by the uncertainty of the last few years. He is also extremely reliant on her support, and thrives when he gets this support, but the opposite happens when this support risks being taken away as this [witness] statement shows. He will fail to thrive because of her punishment, this would be very harsh and unfair when he has done nothing wrong."

72. Ms Sherratt adopted her witness statement and was tendered for cross-examination. Asked about her qualifications, she said that she had qualified at Cambridge University in teaching, and had a Masters in Special Educational Needs from Middlesex University. She qualified as a SENCO in 2018, and was pursuing a further qualification at Middlesex University, which hopefully she would complete in 2022, specialising in social and emotional mental health. Her work was only with the youngest boy, she had no knowledge of the rest of the family.

73. Ms Sherratt said that the youngest boy was no longer supported by CAMHS, nor was he taking medication or receiving counselling, to her knowledge. The youngest boy received SEN lessons in literacy, maths, some in-class support, and herself as the person to go to if he were troubled or anxious. He remained very weak cognitively,

relying on prompting, support and encouragement, and his mother's contribution was vital. He was in Key Stage 4, with GCSE examinations in 2020, but there was a risk in his mother's absence that he would not obtain any qualifications.

74. The outcomes for black boys in Tottenham were 'not great' and the youngest boy needed a decent start as an adult. His mother's support had been amazing: if she were removed, all SEN efforts would make no difference, as parenting was a crucial component. Parents were the centre of everything: there was only so much the school could do. Schools could not parent, hear a child read, make sure he did his homework. In his mother's absence, there would be nowhere near enough support, setting the child up to fail.

75. The boy's father also was not emotionally resilient and he had suffered from lack of parenting while his mother was in prison. Ms Sherratt thought that the boys' father probably also had some learning needs himself.

76. There was no re-examination.

Prison and Probation evidence

77. The appellant has provided the pre-sentence report, a bail application from March 2016, her OASys report from April 2016, and a letter from Amba Rajaloo, Probation Service Officer, dated 21 May 2018, which is the most up to date assessment of her ongoing risk to the public. Mr Rajaloo said that the appellant had complied with her licence since her release from immigration detention on 23 May 2017 and that her licence conditions had expired on 25 February 2018. A home visit had been undertaken and there were no concerns. Regarding the level of risk, the letter says this:

> "Since being released from custody and immigration detention, [the appellant] has fully complied with the conditions of her licence and the requirements of supervision. [She] has attended all her instructed appointments and has never been late for any one of them. She has always been polite, compliant, and engaged very well with myself. [Her] level of risk of serious harm was assessed as low and has always remained the same since she was released from prison. Due to her positive compliance, her reporting to probation has been reduced to fortnightly before her licence expired and I was satisfied that this frequency is sufficient to manage as her assessed level of risk of harm was low and her assessed level of re-offending was low."

The earlier documents support that analysis.

78. The appellant also provided a Rule 35(3) report dated 20 April 2017 by Dr Rebecca Ward describing the physical marks of the harm she said had been inflicted by her abusive partner. The accompanying body map shows multiple scars to the appellant's body, including a bite mark on her forehead and a screwdriver scar just below her chin. Her account is given as follows:

> "In Jamaica she was raised by her father who died when she was 15. She was living alone and started a relationship with another girl. One night she was in

bed with her girlfriend and she was seen by a male friend. He used this to blackmail her and forced her, and her friend, to sleep with him. As she lived alone, she was targeted the most, and he forced himself to be her boyfriend.

He was very violent towards her and would attack her with a knife or razor blade. He would often stab her with a screwdriver and on one occasion, heated the screwdriver on a burner and stabbed her with it. When beating her, he would sometimes use a 2-pin plug and cable. He was also sexually abusive and would hurt her, by clipping wooden clothes pegs to her clitoris. After each attack, she was not allowed to go to hospital and if needed stitches would be taken to a local nurse.

She identifies as bisexual and this is accepted by her current husband.

She fears a return to Jamaica will put her under threat as when she returned for a family wedding in 2011, she was seen by the brother of her abuser. Her and her husband were attacked with bottles thrown at them and escaped by running back to their hotel, which had security. The police were informed, but no action was taken."

79. Dr Ward concluded:

"The scars are consistent with the explanation given. She has extensive scarring that would be consistent with systematic abuse. The scar on her arm is large, and looks like the stitches have split before fully healed, as there is widening in the middle.

Her stab wound to her buttock has fat necrosis and this could be due to the screwdriver having been heated and causing damage to the fat. She gave good detail for how each was caused and was able to demonstrate this.

She has a history of depression and has access to healthcare and our mental health team. I have referred her to them for support and they will be able to alert accordingly should deterioration occur."

80. There is no mention of the physical abuse which the appellant says her mother inflicted on her, which on her account occurred when she was younger than 8 years old, as distinct from that caused by her male partner when she was in her late teens (15-19 years old).

Health evidence

81. The bundle contains the appellant's medical records from Holloway Prison, showing that the appellant had a shoulder injury in February 2016. She tested negative for drugs and infections such as tuberculosis, Hepatitis B, Hepatitis C and HIV/AIDS. There were no concerns about her being a risk to herself or to others, no self-neglect or disturbed thinking, and no disabling social problems with activities or relationships with others. She was not bullied in prison. She had polycystic ovary syndrome. She did not drink at all, but smoked in prison because she was stressed. There is both

hospital and general medical practitioner evidence that the appellant's husband has a long-term back problem caused by curvature of the spine.

82. On 24 October 2016, Dr H Rahman BSc MBCHB MRCGP, the family's GP, recorded the husband's hand injury from glass laceration, which required the RMF extensor tendon to be repaired, and hand therapy: as a result of that injury he could only work 'on and off' and struggled to cook for the children or attend to house chores. He was taking pain medication and also Gabapentin for his depression.

83. The eldest boy told Dr Rahman that he was helping his father with the housework, because his father was not coping very well. The eldest boy suffered from seizures and obstructive sleep apnoea: he endured many sleepless nights in his mother's absence and 'continues to build fear'.

84. The middle child was also having sleeping and eating problems and struggling to maintain a good level of education at school.

85. The youngest had a history of chronic constipation, treated with Movicol and sodium picosulphate; he also had obstructive sleep apnoea, secondary to hypertension. He was waking up at night and crying for his mother. Dr Rahman's report concluded:

> "This family have been residents of the United Kingdom for many years and deporting the mother will cause an unstable upbringing of these young males. The family have not been in Jamaica for many years and feel home is the United Kingdom. Given that [the father] has back and hand problems, he is unable to always cook and his absence from work because of this is resulting in a financial crisis. I would be most grateful if you would consider the emotional and wellbeing of the children when you assess the family's needs. I would recommend that she does not get deported as this will affect the children's physical and mental health and will continue to do so for many years."

86. On 18 September 2018, Dr Rahman wrote a letter to Becket House, following a previous letter on 30 August 2018 saying the appellant was not able to report as required. He said that the appellant suffered from anxiety, and now panic attacks, as well as post-traumatic stress disorder and depression. She found public transport difficult as the crowds on buses or trains caused her to feel she was being choked, with breathing difficulties, palpitations, chest pains, severe headaches, dizziness, nausea, and feeling faint. She was seeking counselling. He enclosed a list of medication (Mirtazapine, Metformin, Citalopram) and asked whether her reporting could be reconsidered.

87. That is the evidence before the Upper Tribunal for the remaking of this decision.

Findings of fact and credibility

88. I have considered the evidence concerning the appellant's claimed sexuality. I have regard to the lower standard of proof applicable in international protection claims. I note the lateness of her assertion that she is lesbian and/or bisexual, which was not

made until she had completed her prison sentence and was in immigration detention prior to removal, decades after she entered the United Kingdom.

89. I also note the complete lack of any supporting evidence (apart from that of her husband); there is nothing from any previous female partner, although the appellant has been living in the United Kingdom for over 20 years and, on her account and that of her husband, been free to enter into such relationships with his approval and consent.

90. I do not consider that the appellant has discharged the burden upon her, to the lower standard appropriate in protection claims, of showing that she is of lesbian or bisexual orientation. I find her to be heterosexual.

91. The appellant has scars which are diagnostic of very serious physical abuse. I bear in mind that the Rule 35 report is not a full medico-legal report prepared to the Istanbul Protocol standard, and the appellant does not appear to have mentioned that she was also abused by her mother as a child. However, the harm which the scarring discloses is clear and I accept that the appellant was badly abused by someone, in Jamaica before she left in 1997. I do not accept any other part of her account (and that of her husband) about what happened in Jamaica and in particular, I do not accept that her former male partner retains an interest in harming the appellant 22 years later.

92. The appellant's husband left school at 14 years old and it is the appellant who has always provided educational support for all three children, even during her imprisonment, when she bought textbooks and taught them each week when they visited. I accept that the appellant is an important educational resource for all three boys, as well as providing a safe and loving home for her family, including her husband, and that they coped less well in her absence, to the extent that the school referred the children's circumstances to CAMHS and social services were involved.

93. I also accept that in the appellant's absence, and because of his various injuries, the appellant's husband got into financial difficulty and had trouble cooking for and generally coping with his sons.

Submissions

94. In written submissions on behalf of the respondent, Mr Melvin argued that at [45] of my error of law decision the Upper Tribunal had already excluded the possibility of rebuttal on asylum grounds, on the basis that the appellant could advance a heterosexual narrative on return (see *SW* (Lesbians – HJ and HT applied) Jamaica CG [2011] UKUT 251 (IAC)). That is inaccurate: however, Mr Melvin also contended that the respondent did not accept that the appellant was lesbian or bisexual as claimed nor that she faced persecution for that reason either in Jamaica before coming to the United Kingdom in 1997, on a visit to Jamaica in 2011, or now if she were returned.

95. Mr Melvin observed that the appellant had not engaged with the LGBT rights community in the United Kingdom, until after the service of the deportation decision, and failed to mention her claimed bisexuality to anyone while in prison, although she

received counselling. The issue of bisexuality was not raised until the appellant was placed in immigration detention at the end of her sentence.

96. In relation to the best interests of the children, Mr Melvin noted that there were no up-to-date statements from any of them, and 'no indication of their current situation or their opinions on life if their mother were deported to Jamaica'. Mr Melvin accepted that there was a large amount of evidence demonstrating that it would be in the best interests of the children for their mother to remain in the family unit. Mr Melvin did not suggest that the family should relocate to Jamaica, but argued that the family could maintain contact after the appellant's removal, by modern methods of communication and visits.

97. The question for the Upper Tribunal was whether the appellant's removal would be *unduly* harsh, either for the children or the appellant's husband, with reference to section 117C of the Nationality, Immigration and Asylum Act 2002 (as amended). The respondent did not accept that the appellant would have difficulty in returning or reintegrating to Jamaica, where she lived until she was 20. Mr Melvin submitted that separation of the family would not be unduly harsh and invited the Upper Tribunal to dismiss the appeal.

98. In oral submissions, Mr Melvin relied on his skeleton argument, adding only that although the appellant when younger had been in the United Kingdom for 10 years without leave, nothing turned thereon.

Appellant's submissions

99. For the appellant, Ms Radford set out the appellant's history, beginning by making submissions on the section 72 certificate, which introduced a rebuttable presumption of seriousness based on sentence length.

100. Article 33(2) of the Refugee Convention was described in the UNHCR guidance as a 'measure of last resort' which should be applied 'restrictively and with great caution'. More than a past crime was required: it was not the previous conviction which was required to show dangerousness, but it was for the State to show 'that one or several convictions are symptomatic of the criminal, incorrigible nature of the person and that [she] is likely to commit offences again'. Article 33(2) was concerned with the present and the future, not the past. This appellant was not an incorrigible offender: she had committed one offence, albeit a serious one.

101. There followed lengthy excerpts from decided cases about the delay in claiming asylum and in advancing the bisexuality element of the appellant's claim. Ms Radford asked me to accept that the appellant's account of her sexual history was both detailed and consistent, supported by her husband's account and the scarring evidence, and that she had given a proper reason for not claiming earlier. There followed a lengthy excerpt from, and explanation of, *HJ (Iran) and HT (Cameroon)* [2010] UKSC 31, arguing that as the appellant had suffered past persecution and she had already been outed as a lesbian by her former abusive partner, she would be at risk on return and 'discretion' would not avail her.

102. In submissions on the Immigration Rules, Ms Radford set out the evidence about the children, noting that there was no dispute that the appellant had a genuine parental relationship with them and that it would be unduly harsh to expect them to move to Jamaica. The issue between Ms Radford and Mr Melvin was whether it was unduly harsh to expect the children and their father to remain in the United Kingdom without the appellant. The appellant noted the distress and hardship which had been caused to the husband and the boys while the appellant was in prison, even though they saw her regularly. The appellant and her husband had been together for over 20 years now, 15 of them before the index offence was committed. The appellant had lived in the United Kingdom lawfully for most of her life and was socially and culturally integrated, having all her tertiary education and employment history, her husband and children here. There were very significant obstacles to her reintegration now in Jamaica.

103. Ms Radford accepted that the index offence was serious, but it was a lone offence, the appellant having lived in the United Kingdom for 22 years, without committing any other offences. It was neither a violent nor a drug-related offence. There was no suggestion that the appellant's husband had any knowledge of her offence before her arrest and conviction.

104. It was now almost five years since the index offence, for three years of which the appellant had been at liberty, and her conduct had been 'very good', with 'excellent' progress with probation services, a low or no risk of reoffending, a stable marriage (despite some early problems), superb educational and familial support for her children, and no real connection now with Jamaica. Ms Radford concluded that:

> "45. Even giving the public interest its appropriate, significant weight, all the circumstances suggest that deportation in this case is unnecessary and disproportionate. The appellant has worked hard at rehabilitation, she is providing crucial care for her vulnerable children, and she does not pose a risk of harm or reoffending. The impact on her children would, on the other hand, be devastating and permanent."

105. Ms Radford asked the Upper Tribunal to allow the appeal.

106. In brief oral submissions, Ms Radford reminded me of the UNHCR guidance on Jamaica of 2014 and that the appellant had no internal relocation option, given that she had also had a problem in Montego Bay in 2011.

107. I reserved my decision, which I now give.

Section 72 certification

108. Where there is a section 72 certificate, the Court or Tribunal is required to deal with whether to uphold it and with the issues of exclusion from refugee and humanitarian protection before considering inclusion. The effect of section 72(2) of the 2002 Act is that this appellant must be treated as having been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom.

109. Section 72(6) provides that "A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person." Section 72(1) provides that where the presumption is not rebutted and the section 72 certificate upheld, the Tribunal *must* dismiss the appeal in so far as it relies on an appeal under the Refugee Convention.

110. Unless the appellant can rebut the dangerousness presumption in subsection 72(6), Article 33(2) of the Refugee Convention applies, such that the benefit of the prohibition on *refoulement* in Article 33(1) is disapplied:

> **"Article 33 – prohibition of expulsion or return (refoulement)**
>
> 1. No contracting state shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his …membership of a particular social group …
>
> 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, *having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the security of that country."*
>
> [*Emphasis added*]

111. I am satisfied, on the facts before me, that the presumption has been rebutted. The appellant's single offence was serious, but she has no previous history of criminality (apart from a period of overstaying on which Mr Melvin did not rely) and her behaviour, both in prison and subsequently, has been uniformly good. She received high praise from the Probation Service, the social workers involved with the family, and the school. She was considered in the OASys report to present a low to non-existent risk of reoffending or further harm, and she has not done anything to contradict that assessment.

112. I do not uphold the section 72 certificate and I proceed to consider the appeal substantively.

Analysis and conclusions

113. I consider whether the appellant can bring herself within (in context) Exception 1 in section 33 of the 2007 Act, either on Refugee Convention grounds, under the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, or on human rights grounds.

114. As regards the Refugee Convention claim, and the humanitarian protection and Article 3 ECHR claims, the evidence of the appellant's claimed sexuality is very weak, consisting of her assertion and that of her husband, with nothing from any of her partners. I note that her lesbianism or bisexuality was not asserted until the appellant was in immigration detention, having completed her prison sentence, and that the

evidence of the alleged threats in 2011 rests on similarly weak evidence. I have regard to the assessment of the sentencing judge that the appellant was not a witness of truth.

115. I am not satisfied, even having regard to the lower standard applicable to protection claims, that the appellant has discharged the burden of showing that she is a refugee nor that Exception 1 of section 33(2)(b) is engaged on Refugee Convention grounds.

116. I turn, therefore, to the human rights claim. I have regard to the Supreme Court judgment in *KO (Nigeria) & Others v Secretary of State for the Home Department* [2018] UKSC 53 and to the guidance given by the Upper Tribunal in *RA* (s.117C: "unduly harsh"; offence: seriousness) Iraq [2019] UKUT 123 (IAC), as follows:

> "*(1) In KO (Nigeria) & Others v Secretary of State for the Home Department [2018] UKSC 53, the approval by the Supreme Court of the test of "unduly harsh" in section 117C(5) of the Nationality, Immigration and Asylum Act 2002, formulated by the Upper Tribunal in MK (Sierra Leone) v Secretary of State for the Home Department [2015] UKUT 223 (IAC), does not mean that the test includes the way in which the Upper Tribunal applied its formulation to the facts of the case before it.*
>
> *(2) The way in which a court or tribunal should approach section 117C remains as set out in the judgment of Jackson LJ in NA (Pakistan) & Another v Secretary of State [2016] EWCA Civ 662.*
>
> *(3) Section 117C(6) applies to both categories of foreign criminals described by Lord Carnwath in paragraph 20 of KO (Nigeria); namely, those who have not been sentenced to imprisonment of 4 years or more, and those who have. Determining the seriousness of the particular offence will normally be by reference to the length of sentence imposed and what the sentencing judge had to say about seriousness and mitigation; but the ultimate decision is for the court or tribunal deciding the deportation case.*
>
> *(4) Rehabilitation will not ordinarily bear material weight in favour of a foreign criminal.*"

117. The appellant in this case is a 'medium offender' in the terms of *NA (Pakistan)*: her sentence did not exceed 4 years. If she can bring herself within Exception 1 (section 117C(3), the long residence exception) or Exception 2 (section 117C(4), the partner or parent exception) then her Article 8 ECHR claim succeeds (see [36] in the judgment of Lord Justice Jackson, giving the judgment of the Court).

118. If she cannot, then applying both *NA (Pakistan)* and *RA (Iraq)*, I must consider section 117C(6) and determine whether there are 'very compelling circumstances, over and above those described in Exceptions 1 and 2', in which case the public interest does not require deportation and again, the Article 8 ECHR claim succeeds.

119. The evidence before me is that the appellant is a hard working woman who takes education very seriously, and that her support is really significant in the educational future and the achievements of all three of her sons, two of whom have SEN needs and all three of whom suffered in her absence in prison, causing their school to trigger social work involvement and CAMHS support. I have regard to the acceptance by all concerned that the appellant's husband cannot perform this role, because he left school

at 14 and probably has SEN needs himself. In any event, he cannot read easily or understand the boys' school work enough to help them with it.

120. I remind myself that under part 5A of the 2002 Act, the maintenance of effective immigration controls is in the public interest, and that by section 117C(1), the deportation of foreign criminals is also in the public interest. At section 117C(2) we are directed that the more serious the offence committed by a foreign criminal, the greater the public interest in the deportation, and at section 117C(3), that where, as here, a foreign criminal has been sentenced to a period of imprisonment of four years or more, the public interest requires that criminal's deportation, unless Exception 1 or Exception 2 applies.

121. Exception 1 applies where the foreign criminal has been lawfully resident in the United Kingdom for most of her life; is socially and culturally integrated; and there would be very significant obstacles to her integration into her country of origin if she were to be deported to Jamaica. I have regard to the judgment of the Court of Appeal in *Secretary of State for the Home Department v Viscu* [2019] EWCA Civ 1052 at [44] in the judgment of Lord Justice Flaux, with whom Lord Justice Lewison and Lord Justice Underhill agreed:

> "44. The CJEU jurisprudence to which I have referred establishes (i) that the degree of protection against expulsion to which a Union national resident in another member state is entitled under the Directive is dependent upon the degree of integration of that individual in the member state; (ii) that, in general, a custodial sentence is indicative of a rejection of societal values and thus of a severing of integrative links with the member state but (iii) that the extent to which there is such a severing of integrative links will depend upon an overall assessment of the individual's situation at the time of the expulsion decision."

122. This appellant has been in the United Kingdom for 22 years, of which just under 11 years, from 31 October 1998 to 18 August 2009 were without leave, although she later achieved indefinite leave to remain. She is almost 42 years old now. Her situation when the expulsion decision was taken on 20 April 2017 was that she was still detained while her asylum claim was being considered. She was supporting her family as best she could while detained, but the rejection of societal values which her crime represented was not counterbalanced by the school support of which there is so much subsequent evidence. Nor, on the facts as found, does the evidence establish significant obstacles to reintegration in Jamaica. Exception 1 does not avail the appellant.

123. The next issue is Exception 2. The genuine and subsisting links between the appellant and her husband and sons are not disputed: the only issue under exception 2 is the meaning of 'unduly harsh'. The appellant's eldest and youngest sons are on the SEN (special educational needs) register and require extra educational support, which is being provided at their school and further education College respectively, and by the appellant at home. I accept that they have very significant educational needs which would not be easily met without the appellant's support, if they could be managed successfully at all.

124. It would be in the children's best interests if their mother remained in the United Kingdom to help them with their education, which their father cannot do because he left school at 14 and has difficulty with reading and understanding school work. There is a great deal of reliable evidence of her significant contribution to their education, even while she was in prison, and of the support that the appellant provides for all three of her sons in their secondary and tertiary education, particularly the eldest and youngest who have SEN needs.

125. The expression 'unduly harsh' sets a high test: see [22-23] and [27] in *KO (Nigeria)* in the opinion of Lord Carnwath, giving the judgment of the Court, approving the formulation in *MK* (Sierra Leone) v Secretary of State for the Home Department [2015] UKUT 223 (IAC), [2015] INLR 563 at [46] that 'harsh' denotes more than 'uncomfortable, inconvenient, undesirable or merely difficult… something severe, or bleak', and that the addition of the adverb 'unduly' raises that already elevated standard still higher.

126. The question whether deportation of a parent or partner is 'unduly harsh' and engages Exception 2 will always be a question of fact, requiring careful reflection and bearing in mind the potency of the main public interest in play. I have considered carefully whether Exception 2 is met here. I have had regard to all of the evidence from the school, the SENCO, the doctors, the social worker, and the appellant and her husband. I have also considered the evidence as to what happened when the appellant was removed from the family for her imprisonment and immigration detention: even though she saw the children and her husband almost every week, they deteriorated rapidly, particularly the oldest and youngest boy, who have SEN needs and are particularly emotionally and educationally dependent on their mother.

127. On the facts of this appeal, I am satisfied that exception 2 does apply. In the 'real world' situation, if the appellant is removed to Jamaica, the effect on her children will be unduly harsh. While she was in prison they were very distressed and the evidence is that contemplation of her removal has caused the youngest to become anxious again and to detach himself from class at school.

128. I have given particular weight to the evidence of Ms Sherratt of the importance of the 'parent voice' and her opinion that no amount of SEN assistance will be enough, absent this particular parent from her youngest son's life, as well as to the abundant evidence of how poorly the rest of her family coped with the appellant's absence in prison and detention.

129. Even if exception 2 were not applicable, I would consider that on these particular facts, very compelling circumstances under section 117C(6) had been shown. The boys are closely bonded to their mother, much more so than normal because of their SEN needs and their father cannot assist them, because he has similar issues and no education beyond the age of 14. I remind myself that he finds reading and understanding very difficult.

130. The Article 8 ECHR claim therefore succeeds and the appellant has successfully brought herself within section 33(2)(a) of the 2007 Act (Exception 1 to the automatic deportation requirements of section 32 of that Act).

DECISION

131. For the foregoing reasons, my decision is as follows:
The making of the previous decision involved the making of an error on a point of law.
I set aside the previous decision.
I do not uphold the section 72 certificate.
I remake the decision in this appeal by allowing the appeal.

Date: 1 July 2019 Signed Judith AJC Gleeson
Upper Tribunal Judge Gleeson