



4 March 2015

## PRESS SUMMARY

**R (on the application of Jamar Brown (Jamaica)) (Respondent) v Secretary of State for the Home Department (Appellant) [2015] UKSC 8**  
*On appeal from [2013] EWCA Civ 666*

**JUSTICES:** Lady Hale (Deputy President), Lord Sumption, Lord Carnwath, Lord Hughes and Lord Toulson

### BACKGROUND TO THE APPEALS

The Respondent is a citizen of Jamaica. He arrived in the UK on 7 May 2010 on a one-month visitor's visa. On 14 October 2010 he applied for asylum on the ground that he is homosexual and feared persecution if he returned to Jamaica. On 20 October 2010, he was detained pending a decision on removal. This was done pursuant to a fast-tracking procedure as Jamaica was on the list of states designated under s 94(4) of the Nationality, Immigration and Asylum Act 2002 (the "*Act*").

Jamaica was added to the s 94(4) list by article 3 of the Asylum (Designated State) Order 2003 (SI 2003/970). This was done pursuant to the Secretary of State's power in s 94(5) of the Act as it was believed that the following conditions were met: "*(a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom's obligations under the Human Rights Convention*".

Jamaica's inclusion on the s 94(4) list meant that asylum or human rights claims from individuals entitled to reside in Jamaica were required to be certified by the Secretary of State as "*clearly unfounded*" unless the Secretary of State was satisfied that this was not the case (s 94(3) of the Act). The effect of this was that appeals made by applicants against immigration decisions in relation to "*clearly unfounded*" claims would have to be brought from outside the UK (s 92 of the Act).

The Respondent's complaints that it was unlawful to detain him and that the fast-tracking process was unsuitable for his case were rejected by the Secretary of State. As a result, on 15 November 2010 the Respondent issued a claim for judicial review seeking declarations on two grounds: (i) his detention was unlawful; and, (ii) the decision to include Jamaica on the list in section 94(4) of the Act was unlawful.

On the same day, the Home Secretary refused the Respondent's claim for asylum but did not certify it as clearly unfounded. This meant that he could appeal the decision whilst remaining in the UK. The Respondent was released from detention on 24 November 2010. On 4 February 2011, the First Tier Tribunal upheld his claim that he was homosexual and at real risk of persecution if returned to Jamaica.

The Deputy High Court Judge, Mr Nicholas Paines QC, dismissed both of the Respondent's grounds. The Court of Appeal allowed, by majority of two to one, the Respondent's appeal on whether Jamaica should be designated under section 94(4). It held unanimously that his detention had been unlawful on other grounds. The Home Secretary appealed to the Supreme Court solely on whether Jamaica should be included in the section 94(4) list.

## JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Toulson (with whom Lady Hale, Lord Sumption and Lord Carnwath agree) delivers the lead judgment. Lord Hughes concurs with the result but for different reasons.

## REASONS FOR THE JUDGMENT

Lord Toulson (in the majority) reads s 94(5) of the Act as referring to countries where its citizens are free from any serious risk of systematic persecution either by the state or by non-state agents which the state is unable or unwilling to control. The phrase “*in general*” differentiates persecution which occurs in the ordinary course of things from isolated incidents of persecution. It does not require the persecution to affect any particular percentage of the population [21].

Rather, the persecution must be a general feature of life in the country and apply to a recognisable section of the community. This reading is influenced by the fact that “*persecution*” within the Refugee Convention will often be directed towards minorities and that the majority of asylum and human rights claimants belong to minorities. Requiring the group persecuted to exceed a percentage threshold is open to several objections: there is no way of determining that threshold; it is hard to see why it should make a difference whether a group just exceeds or just falls below the threshold; and, there would be no way of obtaining reliable information about the size of many minority groups [22]. The leading authorities do not contend otherwise [13]-[19].

Lord Toulson is not persuaded that it makes little or no difference to individuals whether their state is on the s 94(4) list. The purpose of designation is that applicants from those countries will normally be detained and fast tracked, as borne out by the facts of this case. Designation of a state changes the complexion of the analysis of the claim [23].

Lord Hughes (in the minority) agrees that it would be impossible to lay down a defined percentage of the population which needs to be at risk before there exists “*in general*” a serious risk of persecution. However, the Secretary of State should not be prevented from designating a State under s 94(4) of the Act simply because some form of grouping or a recognisable section of the community may suffer persecution when in general that State is free from persecution [30]. To bar designation where the risk is systemic, in the sense that it applies to members of an identifiable group, risks redefining the phrase “*in general*” and removes the intended flexibility on the part of the Secretary of State to make these complex decisions [34]. Nonetheless, in this case the risk to all who are homosexual, lesbian, bisexual or trans-sexual can only properly be described as a “*general*” risk in Jamaica so that the appeal should be dismissed [36].

*References in square brackets are to paragraphs in the judgment*

## NOTE

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**  
[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)