Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01310/2012

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice	**Determination Promulgated**
on 22nd July 2013	**On 26th July 2013**

Before

UPPER TRIBUNAL JUDGE SPENCER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ADS

Respondent

Representation:

For the appellant: Mr T Melvin, Home Office Presenting Officer
For the respondent: Ms O Ukachi-Lois, counsel, instructed by Okafor & Co.

DETERMINATION AND REASONS

1. In view of the fact that the respondent was a juvenile when he committed the offence leading to the decision to make a deportation order I make an order with reference to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant.

2. This appeal comes before the Upper Tribunal following the grant of permission to appeal by First-tier Tribunal Judge V A Osborne on 29th May 2013.

3. In order to avoid confusion I shall refer to the parties as they were referred to in the appeal before the First-tier Tribunal. The appeal in the First-tier Tribunal was an appeal against the decision by the respondent, made on 7th December 2012, to make a deportation order in respect of the appellant, whereby the appellant would be deported to Jamaica. The decision followed the conviction of the appellant of an offence of robbery, in respect of which he was sentenced to 20 months in a Young Offender Institution at the Crown Court at Woolwich on 24th September 2012. The offence was committed on 10th October 2011, when the appellant was 17 years of age, he having been born in Jamaica on 20th May 1994. The appellant came to the United Kingdom when he was 5 years of age.

4. The sentencing judge, His Honour Judge M Moore, described the offence thus:

> "You were 17 years old at the time and the facts can be shortly stated that you, along with a friend basically followed a group of other young people/school children. You followed them until such time as they had stopped. You then basically summoned them down and you in particular wanted to take various items from the victim in this case,…, because victim he was. You felt his pockets. He tried to pull away. His bag was taken and you said the following: 'I'm going to bore you'. It was perfectly clear what that meant. Bore, shank, knife; they all tend to mean the same thing and judges are well aware of the language that is used on the street. In any event, items were taken to the value of £450."

5. At the hearing before me Mr Melvin amplified the grounds of appeal by his written submissions and orally and I also received oral submissions from Ms Ukachi-Lois.

6. There were a total of ten grounds of appeal all under the heading of failing to give reasons or adequate reasons for findings on a material matter.

7. The first ground was that the First-tier Tribunal noted that the appellant had been assessed as posing a high risk of harm and re-offending but failed to provide any reasons for its own findings as to these risks. The difficulty about this submission is that it is perfectly apparent from reading paragraph 21 of the determination that the First-tier Tribunal dealt with the NOMS (National Offender Management Service) report, in which the risks were set out. That indicated that the risk of serious harm was at a high level. It contained an OASys (Offender Assessment System) risk assessment which showed that the appellant had a medium risk of reconviction for any recordable offence and general re-offending and a high risk of violent offending. The First-tier Tribunal quoted from the NOMS report in paragraph 21 of its determination. In paragraph 22 it then went on to deal with reports relating to the appellant's education, which showed that he had been assessed as having special educational needs and reports from schools that he had attended prior to being excluded permanently in September 2008. In paragraph 23 of its determination the First-tier Tribunal said it had no reason to doubt the accuracy of the facts stated in the reports to which it had referred in paragraphs 21 and 22. It said that they were prepared by officials in the course of their employment, those officials having public duties to perform. There was no challenge to their accuracy. The First-tier Tribunal said that it accepted the accuracy of the facts stated in them and that the conclusions

stated in them were justified at the time the reports were written. Given that there was no challenge by the appellant to the accuracy of the reports, the First-tier Tribunal did not need to produce any reasons for accepting the conclusions as to future risk set out in the NOMS report. I set out the reasons given by the First-tier Tribunal for its finding that the appellant's removal would be disproportionate, despite those risks, in paragraphs 34 and 35 below.

8. In the second ground it was said that the First-tier Tribunal wrongly found that the response to the Request for Offender Management Information, in other words the NOMS report, was completed earlier than 2nd November 2012. In fact the First-tier Tribunal reached a conclusion which was the opposite of that asserted on behalf of the Secretary of State, namely that the undated NOMS report could not have been earlier than 2nd November 2012. That was expressly stated in paragraph 21 of its determination. It could not have been completed earlier than 2nd November because, as the First-tier Tribunal pointed out, it included the statement that an OASys assessment had been completed on 2nd November 2012.

9. The ground went on to assert that the report was actually completed and received by the Secretary of State on 7th January 2013. When invited to do so, Mr Melvin was unable to point to any evidence which showed that the NOMS report was completed on 7th January 2013. That date was the date of an email from a probation officer to a caseworker of the UKBA to which the NOMS report was attached. The probation officer apologised for the delay. What is evident is that the NOMS form was sent to the probation officer for completion on 7th December 2012. The ground criticised the First-tier Tribunal for stating that Mr Matthew Hawkins was the author of the report when in fact he was the caseworker who had requested the report. Nothing in my view turns on this, notwithstanding that Mr Melvin did seek to argue that it showed lack of attention to detail on the part of the First-tier Tribunal.

10. It was also asserted that in paragraph 40 of its determination the First-tier Tribunal found that the report had been completed without taking into account that the appellant was being mentored, whereas the report was up-to-date and did take that into account. Mr Melvin was unable to point to any passage in the report which acknowledged that the appellant was being mentored. It is apparent from reading paragraph 40 of the determination that the First-tier Tribunal said that the assessment was undertaken before Mr Brown became involved. Mr Brown was a person, who had been appointed as a mentor and advocate, funded by Southwark Council and who had been asked by the probation service to arrange housing for the appellant in the event of his release. In paragraph 26 of its determination the First-tier Tribunal said that Mr Brown had been involved with the appellant for 4 months. The date of the hearing was 12th April 2013, so that Mr Brown had been involved since approximately 12th December 2013. This accords with the date of the appellant's licence, which was stated in the NOMS report to be due to run from 10th December 2012 to 9th October 2013. It appears that notwithstanding release on licence the appellant was transferred into immigration detention.

11. The third ground, namely that the First-tier Tribunal failed to provide adequate reasons for issues raised in the NOMS report which demonstrated an increase in the appellant's future risk, namely that he had not accepted responsibility for his actions, whether he would still associate with negative peers and whether he had addressed his anger management problems, is a little difficult to understand. It was submitted there was no evidence that the appellant had addressed any of these issues therefore increasing his risk of harm and re-offending in the future. The difficulty with this submission was that these matters were properly assessed in determining the risks that the appellant presented in the NOMS report. In paragraph 2b of the report it was said that the risk was likely to be greater should the appellant continue to associate with negative peers and not make constructive use of his time. In paragraph 5d it was said that the appellant's previous convictions depicted a history of violent and aggressive behaviour towards other young males. He had also repeatedly failed to comply with past sentences. He struggled to accept responsibility and resolutely displaced blame and viewed himself as a victim of his circumstances as well as unfair treatment through authorities. Moreover, as Ms Ukachi-Lois pointed out, the evidence from the appellant, which does not seem to have been challenged, recorded by the First-tier Tribunal in paragraph 24(c) and (d) of its determination, was that while at Feltham Young Offender Institution he had pursued further education and pursued a variety of courses, the most important of which seems to have been a course in anger management.

12. In ground 4 it was submitted that there was no evidence that the appellant would follow his mentor's advice and guidance and no evidence his mentor had helped him address any of the issues which had been mentioned above. It would be difficult for the appellant to have pointed to evidence as he had not yet been released from custody. It appeared from Mr Melvin's submissions that what was being argued was that the First-tier Tribunal seemed to have placed reliance upon Mr Brown being the turning point in the appellant's life, which expectation was unjustified. Mr Melvin complained that there was very little by way of evidence as to Mr Brown's status but he conceded that the Secretary of State was represented at the hearing and therefore it was open to the Home Office Presenting Officer to have questioned Mr Brown about such matters.

13. It is apparent from reading the determination that Mr David Brown gave oral evidence without having previously prepared a written statement. The First-tier Tribunal dealt with his evidence in paragraph 26 of its determination. His evidence was that he was to work as a mentor and advocate assisting the appellant (if he were permitted to remain in the United Kingdom) under arrangements made and funded by Southwark Council and had been involved with the appellant for four months. He had been asked by the probation service to arrange housing for the appellant but when it became apparent that the appellant was not to be released all plans had to be "put on hold". His own assessment was that the appellant lacked social skills and was easily influenced. His past behaviour was attributable to his attempting to gain acceptance among his peers. He (Mr Brown) believed that the appellant wished to separate himself from his former friends. He (Mr Brown) was not able to say whether he would in fact do so – primarily because he had been in custody at all

times since. It would not be possible to say until he was released into the community. He (Mr Brown) believed that he would be able to assist the appellant in moving himself from his former friends and other bad influences. There was no time limit on his (Mr Brown's) involvement. He would be involved for as long as it took to turn the appellant around. He would be available to assist at all times.

14. In paragraph 27 of its determination the First-tier Tribunal said that it considered Mr Brown to be an impressive witness. He appeared to have a natural authority and to be readily able to relate to a young man such as the appellant. The First-tier Tribunal was in no doubt of his willingness to assist the appellant and that if anyone was in fact to assist and influence him, he (Mr Brown) had the stature, ability and authority to do it.

15. In ground 5 it was said that in paragraph 21 the First-tier Tribunal had noted the appellant had allegations (made) of sexual abuse against a pupil at school and his own sister which remained unresolved and increased his risk if returned to his home. It was submitted that the First-tier Tribunal had failed to make any findings in regard to this.

16. The position is that in paragraph 21(c) of its determination the First-tier Tribunal, quoting the NOMS report, said that the warning for sexual assaults (4th July 2008) had involved three female schoolgirls at the appellant's school and had resulted in his exclusion from school. Other assessments had suggested that he had inappropriately touched his younger sister and a friend of hers. It seems to me that as the First-tier Tribunal was quoting from the NOMS report it could not be expected to resolve these allegations of sexual abuse, since no evidence was adduced by the Secretary of State to enable it to do so. It is perfectly plain that those matters were properly taken into account in assessing the appellant's risk of re-offending in the NOMS report. In paragraph 2b of the report it was said that whilst the allegation of sexual abuse against pupils at school was some time ago as well as against his sister, this risk could not be totally ruled out, particularly given that it was unresolved. While this risk was not immediate, a return home could potentially increase the risk. In section 5 which dealt with the licence and bail information it was said that additional licence conditions were likely to be that the appellant should permanently reside at a probation-approved hostel and not have any unsupervised contact with any children under the age of 16 without prior approval of his supervising officer. It is difficult to see what findings the First-tier Tribunal could have been expected to make in this regard.

17. In ground 6 it was said that in paragraph 35 of its determination the First-tier Tribunal found that the appellant had not re-offended for eighteen months but failed to take into account that the appellant's original sentence from October 2011 was revoked on 24th September 2012, due to him failing to comply with his sentence requirements. It was submitted that the appellant had re-offended by failing to comply with the conditions of his sentence and therefore the First-tier Tribunal's finding that he had not re-offended for eighteen months was an error.

18. It is apparent from reading paragraph 35 of the determination that the First-tier Tribunal made no such mistake. In dealing with the time that had elapsed since the offence was committed and the appellant's conduct during that period, the First-tier Tribunal said that the last of the offences was committed in October 2011 and therefore about eighteen months ago, but thereafter the appellant failed to comply with the requirements of the Youth Rehabilitation Order which was imposed on him in May 2012, itself a further criminal offence. The First-tier Tribunal went on to say there had been no further offending since the failure to comply with the requirements of the Youth Rehabilitation Order but because the appellant had been in custody at all times since then his opportunity for offending had been limited and therefore it placed no weight on that. Mr Melvin conceded that the person who drafted the grounds had misunderstood what the First-tier Tribunal had said.

19. In ground 7 it was said that in paragraph 36 of its determination the First-tier Tribunal found that the appellant's earlier accident or physical or psychological trauma was the substantial cause for his offending in the past. It was said that, as the First-tier Tribunal itself noted, it did not know anything about this incident or what in fact happened, it had failed to provide adequate reasons for why an incident that it knew nothing about would have such a significant effect. The ground overlooks the passage in paragraph 2b of the NOMS report, where it was said that the risk was likely to be greatest should the appellant continue to associate with negative peers and not make constructive use of his time. It was said that should his perceived status among his peers be threatened that was likely to escalate risk due to his felt need to be recognised by older, more powerful individuals. Should he be of no fixed abode or return to live with his family the risk was likely to be heightened. It appeared his traumatic upbringing and lack of boundaries at home may have entrenched his choice of lifestyle where he was likely to have felt wanted and accepted as well as gain a sense of power. Mr Melvin submitted that the First-tier Tribunal was wrong to rely upon the appellant's school reports because they were compiled some years ago. In my view, however, the First-tier Tribunal was entitled to take them into account because they showed the difficulties which the appellant had encountered in his development. What the First-tier Tribunal said in paragraph 36 of its determination was this:

> "It is apparent from the school reports to which we have referred above in paragraph 22, and we are satisfied, that,
>
> (a) from a comparatively early age, Mr S had serious developmental difficulties,
>
> (b) that his difficulties resulted in serious misbehaviour at school and seriously affected his willingness and ability both to learn and to accept the normal rules of behaviour,
>
> (c) in consequence he did not obtain the benefits of education or attain anything approaching what one would normally have expected a boy of his age to have achieved,

(d) the schools to which he was sent did not fully meet his particular special needs, and

(e) although efforts to remedy the deficiencies in education have been made whilst he has been in detention, those deficiencies have not been made up.

His diction is poor. He is not an articulate speaker. He appeared to us to lack self-confidence. His self-confidence and maturity are significantly less than that which we would expect to see in a young man of his age. His description of himself as a "Mummy's boy" is, we have little doubt, accurate. Although he is but one month short of his 19th birthday, in terms of his maturity and mental development, he appears significantly younger than his calendar years. **Whether the reasons for the difficulties and their consequences are congenital, the consequence of some earlier accident or physical trauma or psychological is unclear and does not matter. We have little doubt that whatever the cause may be, it was a substantial cause of his offending in the past, wretched as that history of offending is, of his bad behaviour in school and of the current risks as assessed in Mr Hawkins' report (see above, paragraph 21) of future offending** (my emphasis). In summary, Mr S, although now an adult in years is significantly less than that in terms of his maturity. We have the most substantial doubts as to whether, even though he has had the benefit of the courses which he undertook whilst in custody, he would be able to obtain, let alone retain, employment in the United Kingdom. We have no doubt, and accept, that he would now be at a substantial disadvantage on the open labour market in the United Kingdom."

20. Although the ground did not specifically allude to it, Mr Melvin sought to argue that the First-tier Tribunal was not entitled to reach the view that the appellant would be at a disadvantage on the labour market in the United Kingdom since he had undertaken a number of courses whilst in detention. In my view, for the reasons which the First-tier Tribunal gave, it was perfectly entitled to reach the conclusions expressed in the passage of its determination quoted above.

21. Ground 8 criticised the First-tier Tribunal for stating in paragraph 38 of its determination that the appellant would return to live with his mother if he were released and not deported and that he was emotionally and financially dependent upon her. Reference was made to the passage in the NOMS report to the effect that the appellant would have to reside at approved premises and not with his family and that if he did return to live with his family his risk would increase.

22. In ground 9 it was submitted that the First-tier Tribunal failed to provide adequate reasons why his mother could not send him financial support from the United Kingdom and that there was no evidence the appellant was dependent upon his mother beyond emotional ties either before his offending or afterwards. His mother had failed to exert sufficient influence over him to prevent him from re-offending.

23. It was accepted by Ms Ukachi-Lois that the First-tier Tribunal had made an error in stating that the appellant would return to live with his mother on release because it is perfectly plain that it was to be a condition of the appellant's licence that he should not live at home on account of the concerns which were mentioned in paragraph 2b of the NOMS report. The finding by the First-tier Tribunal that on release the

appellant would return to live with his mother was relevant to the finding that the appellant enjoyed family life with his mother and his sisters. In paragraph 38 of its determination the First-tier Tribunal said that if the appellant were not deported and released from custody it had no doubt that he would return to his mother's home and live with her. It said that in the light of its above conclusions, both as to his present employability and as to his general development, it was satisfied that he would be dependent on her, both emotionally and financially, as well as on account of the fact that he was living in her home. His family life would not necessarily suddenly cut off on attainment of the age of 18 and it was satisfied that in the circumstances of the case there would be family life between the appellant and his mother and his sisters.

24. Mr Melvin submitted that the First-tier Tribunal failed to take account of the fact that the appellant had not been living with his mother prior to his incarceration. When asked to justify that proposition Mr Melvin sought to do so by reference to paragraph 2b of the NOMS report, in which it was said that males were at risk from the appellant, especially given the incident when a large group of males forced entry into his home and trashed it in June 2011. The reference to his home, however, in my view does not indicate that that was a home that was different from his mother's. That view of the position is borne out by what was stated later in the paragraph, which was that should the appellant be of no fixed abode or return to live with his family the risk was likely to heighten. That proposition was necessarily based on the fact that the appellant was at home when he committed the offence.

25. In my view, even if in the future the appellant were not to be able to live at home because of the terms of his licence, that would not prevent family life existing between himself and his mother and sisters for the other reasons which were given by the First-tier Tribunal. In any event, the First-tier Tribunal went on to say that if the relationship did not in the appellant's case qualify as family life it could not but qualify as private life and the question with which the First-tier Tribunal was concerned was whether the appellant's removal would involve a disproportionate interference with the right to private and family life. Since the appellant had lived in the United Kingdom since July 1999 and did not wish to return to Jamaica, his removal in consequence of the deportation order would involve an interference with his private life.

26. In paragraph 10 of the grounds it was said that in paragraph 29 of its determination the First-tier Tribunal found that there were doubts about the truth and accuracy in the evidence of the appellant and his mother regarding the ties they had to Jamaica and there was no evidence that their family members did not reside in Jamaica. In paragraph 30 of its determination, however, the First-tier Tribunal had found that the appellant did not have any ties to Jamaica. It was said that the First-tier Tribunal failed to provide adequate reasons for its conclusions.

27. Again in my view this involves a misunderstanding of what it was that the First-tier Tribunal actually said. In paragraph 29 of its determination the First-tier Tribunal said it would be less than frank to say that it had no doubts as to the truth and

accuracy of what the appellant and his mother had told it as to the absence of friends and relatives in Jamaica. In paragraph 30, however, it said that despite its significant doubts as to the reliability and truthfulness of the appellant and his mother on that point, it accepted that there were no members of the appellant's family with whom he or his mother now had or had within the last (at least) seven years any contact and who would, if the appellant were removed to Jamaica, be willing and able to assist him. The First-tier Tribunal then set out six reasons for that conclusion. In my view the First-tier Tribunal acted perfectly properly in indicating the doubts that it had and then indicating the evidence which resulted in those doubts not succeeding in preventing it from reaching the conclusion it reached in relation to the absence of ties to Jamaica. The grounds of appeal did not seek to suggest that those reasons were perverse.

28. In his written submissions Mr Melvin submitted that the First-tier Tribunal failed to apply the principles set out in the decision of the Court of Human Rights in Maslov v Austria [2009] INLR 47 correctly since it failed to appreciate that in that case the offences were non-violent in nature. In his written submissions and also in his oral submissions he submitted that the appellant's offences of stabbing, possession of an offensive weapon, a violent attack on a schoolboy with a metal pole and a violent robbery demonstrated that the First-tier Tribunal's finding that the appellant's offending was not in the very serious category, as required by Maslov, were unsustainable. In his written submissions he also referred to the decision of the Court of Appeal in SS (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 550. He was obliged to concede, however, that that decision of the Court of Appeal concerned automatic deportation and it was significant that the provisions relating to automatic deportation contained in the UK Borders Act 2007 did not apply to persons under the age of 18, as to which see section 33(3). He accepted that that demonstrated that there was a difference between the public interest in the deportation of juveniles and the public interest in the deportation of adults. In my view Mr Melvin was right to make that concession because it is perfectly plain that the decision in Maslov underlines that difference.

29. It is apparent that the First-tier Tribunal gave particular regard to the principles set out in the decision in Maslov. In paragraph 60 of its determination it quoted paragraphs 71, 72, 73, 74 and 75 of the judgment and in paragraph 35 it analysed the appellant's situation in relation to the factors identified in paragraphs 71 and 73 of the judgment in Maslov.

30. In paragraph 35(a) of its determination the First-tier Tribunal dealt with the nature and seriousness of the offences committed by the appellant. It said it had set out earlier the circumstances of the offences which the appellant committed as described by the judge in his sentencing remarks. It had no reason to doubt, and accepted, the accuracy of what he had said. Not only had the First-tier Tribunal previously set out the description by the judge of the previous offences of the appellant but it also set out the previous findings of guilt in paragraph 3 of its determination. In paragraph 35(a) it said the first of the offences (that committed on 9th October 2009) involved the appellant stabbing a 20 year old autistic young man who had learning difficulties

with a knife (there was no evidence of the injuries caused). It is clear from the appellant's antecedent history that the offence was not an offence committed with intent. It was dealt with by him being made subject to a referral order of 10 months at Camberwell Green Juvenile Court. The First-tier Tribunal recited that both the two last offences, committed in 2011, involved the threat of the use of a knife. In the earlier of the two the appellant kicked the victim of the offence. The First-tier Tribunal said they were all nasty and serious offences, particularly bearing in mind the use and threats of violence and the repetition of offending. The First-tier Tribunal went on to say that that said, however, and without intending in any way to condone the offences, the sentences which had been imposed on the appellant indicated that the courts which had dealt with him for those offences, taking his age into account, had not considered the offences to be *"in the very serious category"*. The First-tier Tribunal said it saw no reason to depart from the views of those courts.

31. It is perfectly plain from reading the determination that the First-tier Tribunal applied the principles set out in Maslov that, when assessing the nature and seriousness of the offences committed by an applicant, it had to be taken into account whether he or she committed them as a juvenile or as an adult. In paragraph 85 of its judgment the Court said it had made it clear that very serious offences could justify expulsion even if they were committed by a minor. The fact that the applicant's offences, committed when he was a minor, were non-violent in nature with one exception, was one of the factors which led the court to conclude that an exclusion order was disproportionate. Each case, however, must be considered on its own facts. I take the view that for the reasons which the First-tier Tribunal gave, it was entitled to reach the conclusion that although the offences were serious, nonetheless, taking into account all relevant circumstances, they did not fall into the very serious category of offences.

32. In paragraph 73 of its judgment in Maslov the court said that when assessing the length of the applicant's stay in a country from which he or she was to be expelled and the solidity of the social, cultural and family ties with the host country, it evidently made a difference whether the person concerned had already come to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult. In the appellant's case he came here at the age of 5. In paragraph 74 of its judgment in Maslov the court said that that although article 8 provided no absolute protection against expulsion for any category of aliens, including those who were born in the host country or moved there in their early childhood, the court had already found that regard was to be had to the special situation of aliens who had spent most, if not all, their childhood in the host country, who were brought up there and received their education there. In paragraph 75 the court said that, in short, it considered that for a settled migrant who had lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons were required to justify expulsion, that was all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile.

33. Furthermore in paragraph 82 of its decision the court said it considered that where offences committed by a minor underlay an exclusion order, regard must be had to the best interests of the child. The court considered that the obligation to have regard to the best interests of the child also applied if the person to be expelled was himself or herself a minor, or if – as in the present case – the reason for the expulsion lay in offences committed when a minor. In paragraph 83 the court said that where expulsion measures against a juvenile offender were concerned, the obligation to take the best interests of the child into account included an obligation to facilitate his or her reintegration.

34. In paragraph 40 of its determination the First-tier Tribunal set out the reasons for its finding that the appellant's deportation would be disproportionate. It included the fact that he was still a juvenile when he committed the last of the offences, being aged 17 years and 5 months, and the fact that he was then and still was a very immature and callow young man who had the developmental difficulties to which it had referred. The First-tier Tribunal said it expressly had regard to the risks of future offending set out in the NOMS report but against those risks set out a number of points, which included the fact that if the appellant offended again he was likely to be returned to the Young Offender Institution to serve the outstanding balance of his sentence, the fact that he was aware that should he offend again his past history and his having no continuing connection with Jamaica would not save him from deportation again and the fact that he would have the benefit of the assistance and guidance from Mr Brown, who had become involved after the NOMS assessment had been made. The First-tier Tribunal went on to outline other factors relating to the age at which the appellant had come to the United Kingdom, the fact that he had lived in the United Kingdom at all times since his arrival, had received such education as he had here and had no continuing connections with Jamaica. The First-tier Tribunal also reiterated the appellant's developmental difficulties and the fact that he was assessed as having special educational needs which were not fully met.

35. The First-tier Tribunal then went on to consider the public interest in the appellant's deportation and expressed its view that it could see no sound basis for thinking that not removing the appellant in the particular circumstances of this case would impair public confidence in the treatment of foreign nationals who had committed serious crimes. The First-tier Tribunal also pointed to the fact that there was no reason to believe that if the appellant were removed to Jamaica he would receive any assistance and/or guidance of the kind that would be available to him from Mr Brown if he were permitted to remain or any assistance and guidance at all. It referred to a point relied upon by Mr Melvin, namely that the emergency accommodation and financial assistance referred to in the Secretary of State's letter might be available but it did not consider that in his particular circumstances it would be sufficient. It expressed the view that without the assistance and guidance which Mr Brown would give, and in the absence of any family or friends and any real prospect of finding work, the characteristics and factors identified in the NOMS report would draw the appellant back into association with criminal gangs and violent criminal offending.

36. It is also the case that the First-tier Tribunal examined the appellant's position in the light of paragraph 399A(b) of HC 395, as amended, and reached the conclusion that the conditions set out in that paragraph were fulfilled in the appellant's case. Nonetheless, that was not the sole basis upon which the First-tier Tribunal allowed the appellant's appeal.

37. It is apparent from reading the determination of the First-tier Tribunal that this was a very carefully considered and detailed assessment of the situation of the appellant and the requirements of the public interest in the deportation of foreign criminals. The First-tier Tribunal paid full regard to the public interest, the relevant factors of which were set out in paragraph 14 of its determination. I take the view that in the particular circumstances of this case, notwithstanding the risk to the public from the appellant, the First-tier Tribunal was entitled to reach the conclusion that his deportation was not justified. The contrary arguments advanced by the Secretary of State in my view amount to a criticism of the final conclusion of the First-tier Tribunal and do not disclose an error of law. It is clear from reading the determination that the First-tier Tribunal gave clear reasons for its conclusions, so that the reasons challenge by the Secretary of State fails. While it might be that the First-tier Tribunal adopted a merciful and generous view to the benefit of the appellant and that a differently constituted First-tier Tribunal might have reached a different conclusion, in my view it cannot be said that the conclusion that the First-tier Tribunal reached was one which no reasonable First-tier Tribunal could have reached.

38. In these circumstances the appeal to the Upper Tribunal is dismissed so that the decision of the First-tier Tribunal shall stand.

Signed Dated

P A Spencer
Judge of the Upper Tribunal