Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/17889/2012**

THE IMMIGRATION ACTS

Heard at Field House
On 14th March 2013

Determination Promulgated
On 8th August 2013

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

MR GAVIAN JERMAINE HOWELL
(NO ANONYMITY ORDER)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Shibli, instructed by North Kensington Law Centre
For the Respondent: Mr Sartorius, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a Jamaican citizen born on in 1994, who reached the age of majority therefore on 8 August 2012 appeals with permission against the determination of First-tier Tribunal Judge Geraint Jones QC, given on 14 September 2012 dismissing

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his appeal against the respondent's decision on 10th August 2012 to refuse him further leave to remain outside the Immigration Rules on human rights grounds, with particular reference to Article 8 ECHR (private and family life).

2. On 23 May 2012 the appellant had been served with form IS151A informing him of his status as an illegal entrant or person subject to administrative removal under Section 10 of the Immigration and Asylum Act 1999 and on 10th August 2012 he was notified that a decision had been taken to remove him. The decision under appeal is not a decision to make a deportation order.

Factual Matrix

3. The appellant came to the United Kingdom in 2000, accompanying his father and younger sister. The appellant was six, and his sister four years old. The appellant only ever had six months' leave to remain in the United Kingdom as a visitor, from 28 May 2000 to 27 October 2000. He has been in the United Kingdom illegally as an overstayer since that time. The appellant's biological mother remained in Jamaica. There is some evidence that she married in Canada last year, but at the hearing, the appellant stated that she still lives in Jamaica. There is no recent evidence from the appellant's mother before me.

4. On 2 October 2002, his father was convicted of manslaughter and conspiracy to rob, sentenced to eight years' imprisonment, and recommended for deportation. He remained in prison until he was deported in June 2008. He is said to have subsequently died in Jamaica in July 2012.

5. On 10 March 2006, the respondent served notice of decision to make a deportation order in relation to the appellant and his sister, in line with the deportation of their father, who was removed in 2008: the appellant challenged it unsuccessfully through the Immigration Tribunals but the deportation was not proceeded with on the advice of Hackney Social Services, who carried out an assessment in June 2008. Further decisions not to deport the appellant were also taken on 17 January 2011, on the basis of criminal convictions, and in May 2012, following further convictions.

6. On 6 August 2008, the appellant applied to remain in the United Kingdom on Article 8 grounds; that application was rejected on 10 December 2008. There does not appear to have been an appeal. The appellant was then 14 years old.

7. It appears that the woman who has acted as a step-mother to the appellant and his sister, and who he regards as his mother, came to the United Kingdom shortly before he did and that she began caring for the appellant at that time. His step-mother attempted to adopt the appellant and his sister, unsuccessfully, and on 31 May 2010, she applied for leave to remain in the United Kingdom, with the appellant as a dependant. That application was also unsuccessful.

8. The appellant's criminal history began in 2010 when he was 16 years old. The family was mostly supported by his step-mother's extended family and friends: their housing circumstances were very difficult, but on legal advice his step-mother was

not working. The family were awaiting being able to apply for discretionary leave pursuant to the "seven year rule" which then applied to children.

9. Over the next couple of years, the family moved from one house to another because they had no settled home. The appellant felt awkward and unwanted and spent a lot of time on the streets; he became involved with the Beaumont Gang in Hackney and wore their gang colours. His education was not proceeding well, partly because he is dyslexic. The family moved to Leyton, then back to the Hackney area, but their domestic circumstances continued to deteriorate. The appellant in his statement says that he would hang out at the Walthamstow Bus Garage or walking around the Westfield Shopping Mall nearby and when approached by police would sometimes say cheekily "I am looking for someone to rob". He knew his friends were "a little bit bad". He was friends with one young man in particular, whom he knew to be a thief, but considered relatively harmless.

10. By the time the family had been back in Hackney for a short period, the appellant had stopped spending any significant time at the various addresses where his step-mother and sister lived. They were moving every couple of months, staying with people who were kind enough to permit it. Their hosts were unwilling to take the appellant in because he was no longer considered a child, and they preferred to help the female members of the family unit. On at least one occasion his presence in places where his mother and sister were living had caused them to have to move on. His original friends would no longer allow the appellant to go to their houses either.

11. The appellant's step-mother and sister moved to Enfield to make yet another fresh start, living in very crowded accommodation with no room for him. The appellant would stay outside the house, eating a cheap "chicken and chips" box meal and being with his friends. He carried a knife. On another occasion he carried a hammer 'in order to prevent trouble'. The appellant was out very late at night. He got into fights. For between six months and a year it was easier for him to hang out with the gang than to go home.

12. When preparing his statement in June 2012, the appellant said that he did not wish to go to Jamaica because his biological mother and father out there were not hardworking but were "useless and wasters". He loved them, but he did not respect them. He wanted to stay in the United Kingdom and support his sister in her footballing career and perhaps undertake an apprenticeship as a carpenter. He asserted that there was no risk of his committing further offences.

Social work and police evidence

13. The evidence which emerges from the social worker at Young Hackney and the police officer who reported on the appellant's criminal history supports some of the factual matters set out in his statement but paints a rather darker picture. Full details are set out in Appendix A to this determination.

14. The police records show that in the four years between 23 January 2008 and 10 January 2012, the appellant was a self-proclaimed gang nominal linked to the

Beaumont Crew and the Balance/Kingshold gangs. He was stopped on 38 occasions, five of them near Walthamstow Bus Station. He repeatedly breached both his Youth Rehabilitation Orders (YRO) and his Detention and Training Orders (DTO). On at least two occasions, when stopped, he stated that he was 'waiting to rob someone'.

First-tier Tribunal determination

15. The First-tier Tribunal Judge considered the materials before him and dismissed the appeal, on the basis that the appellant remaining in the United Kingdom was not conducive to the public good, and that such family and/or private life as he enjoyed with his step-mother, who had brought him up, and with his 16-year-old sister, was not sufficient to make his removal disproportionate.

Permission to appeal

16. Permission to appeal was granted by Upper Tribunal Judge Chalkley on the basis that he considered it properly arguable that the First-tier Tribunal Judge might have erred in law by failing not only to refer to but to follow and properly apply the decision of the European Court of Human Rights in *Maslov v Austria* [2008] ECHR (GC) 1638/03 and in the weight given to some of the matters in a statement from Detective Constable Fraser which dealt with the appellant's history of criminality.

Rule 24 Reply

17. The material paragraphs of the Reply were as follows:

> "… 4. The relationship between the appellant and his sister was fully assessed, it was not necessary for the judge to refer to Section 55 [of the 2009 Act], it is clear from reading the determination that he did look at the best interests.
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> 5. The grounds do not demonstrate that there were substantial matters of disagreement between the appellant's statement and the one from the police that the judge placed some weight on. There was ample evidence of the appellant's links to gang violence from the documents the judge took note of including the information from the appellant's supervising officer.
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> Proportionality was considered in light of all these matters and the appellant's private life was in the main based on his links to gangs."

Error of Law

18. At the beginning of the hearing I heard submissions on error of law. I am satisfied that having regard to the failure to refer either to Section 55 or to *Maslov* and the failure to distinguish the weight to be given to convictions and other offences with which the appellant was said to have been involved, that the First-tier Tribunal determination contains a material error of law and the determination must be remade.

Substantive Consideration

19. I heard submissions in relation to the proper disposal of the appeal by way of remaking it in the Upper Tribunal.

Submissions for the Secretary of State

20. Mr Sartorius observed that the appellant was a prolific offender as mentioned in the Youth Offending Team report. The appellant sought to lessen his involvement in the incidents, which had not been disputed previously. The First-tier Tribunal Judge had been entitled to doubt his account in this respect and the Tribunal should uphold the determination made.

Appellant's skeleton argument

21. Mr Shibli's skeleton argument set out the issues: first, whether there was an error of law in the First-tier Tribunal and second, whether removal of the appellant would be a disproportionate interference with his Article 8 ECHR rights to private and family life. He set out the history, including a statement by the appellant's father and natural mother on 8 June 2011 'granting…parental rights and custody of the appellant and his sister' to their step-mother. There are no legal proceedings to that effect.

22. Mr Shibli contended that the First-tier Tribunal determination failed to deal with the best interests of the appellant's sister, now sixteen years old. He set out the applicable authorities and international materials. The arguments relating to her interests begin at paragraph 27 on page 7 of the skeleton argument. He noted that the judge did not record that she had given oral evidence and set out her evidence of the death of their father, their not knowing their natural mother, the unstable housing situation caused by their being in the United Kingdom illegally (until recently - the appellant's step-mother and sister now have discretionary leave until 2015) and their unusual sibling closeness, due to the difficult circumstances in which they had grown up. Those are the factors which the appellant considers should be weighed in relation to his sister's best interests.

23. From paragraph 29, Mr Shibli's skeleton argument dealt with the evidence of Detective Constable Fraser who summarised the appellant's criminal history. He set out the disputed elements of that history. He noted that the evidence was hearsay and, following *Bah (EO(Turkey) – liability to deport)* [2012] UKUT 00196 (IAC), the reduced weight to be given to hearsay evidence. The First-tier Tribunal had speculated about the reason why so many cases had not proceeded to court, or had collapsed at court. The judge had in effect treated the appellant as a person with more convictions than he actually had.

24. The skeleton argument next dealt with *Maslov v. Austria - 1638/03* [2008] ECHR 546. The judge had taken into account the appellant's long residence in the United Kingdom, from the age of 6-18 years at the date of hearing and that he knew comparatively little of life in Jamaica in consequence. The appellant would contend

that no weight had apparently been given to his having committed the offences as a minor and that inadequate weight had been given to his long residence. His previous convictions were less serious than those of Maslov. He relied on comments at paragraph 84 of *Maslov,* that there was little room for justifying expulsion on account of mostly-non violent offences committed when a minor. Aggravated rape and homicide were given as instances when expulsion was justified. The First-tier Tribunal Judge's determination lacked anxious scrutiny in this respect.

25. At paragraphs 52-59 of the skeleton argument, Mr Shibli set out his arguments on the appellant's housing difficulty and the evidence from his step-mother and sister. The appellant was not welcome, once visibly no longer a child, at the addresses where his female relatives were living. He would not have been prepared to live there, anyway, because of his disgust at the conditions in which they lived: one place was a two bedroom flat with loud music, a hard drug using husband, a pregnant wife, and people coming and going at all hours, more like a club than a home; another was full of drug addicts and the family would wake up to credit cards with white powder and rolled up banknotes all over the place; a third was a house where they had their own rooms but nothing was working, no hot water, no cooker, nothing at all.

26. The step-mother and sister no longer lived in Hackney where the appellant had committed his offences. They now lived in Enfield. The Young Hackney and Enfield Youth Offending Team had put together a plan which involved excluding the appellant from Hackney, supervision by the Enfield Youth Offending Team, working on his offending behaviour and offering education, training and employment opportunities.

27. The respondent had decided not to pursue a deportation order in May 2012, following the appellant's most recent conviction. It was unclear why administrative removal was now considered proportionate since the appellant had committed no further offences nor had any allegations been made against him. His removal would constitute a disproportionate breach of the appellant's private and family life under Article 8 ECHR, as well as that of his sister and step-mother.

Submissions for the appellant

28. At the hearing, Mr Shibli accepted that in the light of the decision in *D v Secretary of State of the Home Department* [2012] EWCA Civ 39, the decision in *JO (Uganda)* could not now be relied upon, but indicated that otherwise he would rely on the case law set out in the skeleton argument. The appellant was now an adult, having reached the age of majority in August 2012. The decision to remove him had been taken two days after he reached 18 years old. He had never been lawfully resident in the United Kingdom.

29. All the offences now under consideration were committed when he was between the ages of 16 and 18 and the appellant had not spent, in total, more than 10 months in detention. The police evidence was hearsay, and in many cases, double hearsay, since many of the allegations had not resulted in convictions and often not in

prosecutions. It was difficult for the appellant to challenge those allegations. The appellant disputed many of them.

30. The appellant's father had been shot dead in Jamaica in July 2012. His mother was in Canada. His step-mother was the only parent he had known since his father was arrested and later deported to Jamaica, when the appellant was five years old. She and the appellant's sister had discretionary leave until 2015, when the appellant's sister would be 18 years old. They were his family and he had continued to see them regularly, even when they were sleeping on friends' floors.

31. Mr Shibli accepted that the appellant's family life with his step-mother and sister was limited; they had not lived in the same household for many years now, but he clearly had some family life with his sister. The position with his step-mother was more tenuous. He asked me to consider the appellant's witness statement at paragraph 3 and 45 in particular, and that of his step-mother, in particular paragraphs 46-48 thereof. The best interests of his sister were set out in her witness statement. The appellant was the only male family member for his sister, since his father's death in 2012.

32. There had been a number of decisions by the respondent not to deport the appellant, the last being in May 2012, when he had already accumulated most of his offending history. There was no explanation as to what had changed in the meantime, except that the appellant was now over 18 years old.

33. The appellant and his social worker had explained the reasons for his offending. He had spent a lot of time on the street, or living in other people's houses, because of the family's difficult housing circumstances. There was no reason to doubt the evidence of his step-mother and sister about the dire family circumstances in those times. The situation was very different now and the risk was lower in consequence. Hackney Youth would help him adjust, despite his exclusion from the Hackney geographical area.

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

Discussion

35. The First-tier Tribunal Judge did not address the Article 8 ECHR provisions within the Immigration Rules after July 2012. Neither party sought to argue that on the facts here, those Rules could determine this appeal in the appellant's favour. The three areas which have been identified as requiring remaking are the sister's best interests under s.55 Borders, Citizenship and Immigration Act 2009, the *Maslov* assessment, and the weight to be given to the police evidence obtained under the monitoring process triggered by the appellant's status as a gang nominal in Hackney.

The police evidence

36. I approach the question of the police evidence first. At paragraph 27 of the determination, the First-tier Tribunal Judge referred to DC Fraser's witness statement

as to the appellant's criminal offending as 'substantially unchallenged'. What the First-tier Tribunal determination said was this:

> "27. Unusually, the respondent adduced evidence. A substantially unchallenged witness statement from Detective Constable Fraser, dated 23 May 2012, is in evidence. It details the appellant's unenviable criminal history and convictions.
>
> 28. The Detective Constable details that his statement deals with the appellant's offending history, profile, criminal behaviour and associates. He says that information has also been obtained from other police systems relating to the appellant's known associates and his links to gangs. He goes on to say that intelligence reports support a view taken by the police that the appellant's presence in the United Kingdom is not conducive to the public good. The Detective Constable says that during his interaction with the police, the appellant has provided a total of eight different addresses over a four-year period. One of them is identical to an address provided by the appellant to the United Kingdom Border Agency which has a further seven addresses on file for the appellant over a similar four-year period.
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> 29. The Detective Constable's witness statement details ten incidents, albeit that not each of them resulted in a conviction. The incidents that did not result in convictions are nonetheless relevant and I can take them into account because the happening of the incidents, as set out in the evidence of the Detective Constable, has not been challenged or disputed. …
>
> 50. A full reading of the witness evidence from the Detective Constable leaves me in no doubt whatsoever that the appellant is a youth of well-established criminal propensity with sufficient guile to know, when arrested, how to avoid his culpability being detected to a sufficient degree to allow convictions to follow. He is a thoroughly undesirable individual who has decided that a criminal lifestyle is for him and that he can choose his own rules by which to live, even if they involve inflicting serious harm upon others. It cannot be conducive to the public good that he remains resident in this country. Indeed it would be entirely conducive to the public good if he is required to depart."

37. The list of incidents runs to three pages of the First-tier Tribunal determination, between paragraphs 30-49. The appellant's witness statement of 12 June 2012 comments on nine of the 23 recorded incidents:

> **(2) Arson with intent to endanger life (November 2008).** The 14-year old appellant was said to have thrown a firework into a storage room at a block of flats and was charged with arson with intent to endanger life, the prosecution subsequently being withdrawn at court, the appellant now says that:
>
> > "I got caught up in a suggestion that it would be fun to set some rubbish on fire [on bonfire night], we thought that it would be our own bonfire without needing to collect wood and that is about as far as the thinking went between us. None of us had it in our contemplation that anyone could get hurt from this at all."

An elderly lady is said to have been hospitalised with the effects of smoke inhalation and later died.

(3) Robbery (August 2009). By now age 15, the appellant is said to have robbed a 10 year old schoolboy of a £10 note and run off. The appellant says it had nothing to do with him and was a case of mistaken identity. The police report says that the parents did not pursue the case because they did not want to traumatise the victim child.

(11) Racially Aggravated Section 4 (October 2010). The appellant and another boy called two white females 'white trash' and one of them is said to have pulled out a knife. The appellant gave a 'no comment' interview and the case was discontinued at court. The appellant says that the women were 'dirty crack and heroin addicts' and known to the police; that the incident was in Hackney not Dalston, and that there was no knife.

(12) Robbery, Driving Offences (December 2010). The appellant admitted asking some kids who were playing with a moped to let him have a little go, before he went to escort his mother home from one side of the estate to the other. The police report says that he was one of a group of youths who intimidated a Pizza Hut delivery rider into handing over his pizza and moped and that he was arrested two days later. He was charged, convicted, and given a 4-month DTO.

(13) Possession of Offensive Weapon, Assault Police (December 2010). The police report says that a group of six males damaged a till at Perfect Chicken in E9. The appellant was found still loitering nearby and pulled an 8 cm lock knife on police trying to pick him up. He gave a 'no comment' interview, was charged and convicted and given a DTO for 8 months. The appellant admitted being there but said he was just eating cheap chicken and chips and leaning on a car. He had nothing to do with it. His having a knife with him was not a conscious decision. Members of his mother's family had refused to accommodate them further and his mother and sister were staying with friends. The appellant was on the streets and had to carry a knife, to keep people from approaching him and to stay safe.

(14) Possession of Offensive Weapon (June 2011). The appellant was stopped by police when he had a blue handled claw hammer in his waistband. He stated that he was carrying it because of increased gang violence. He was charged, convicted, and eventually received a 4-month DTO. The appellant's comments accord with those of the police in that he was carrying the hammer because he felt unsafe.

(17) GBH/ABH (December 2011). The appellant was said to have had a fight with a member of the Gilpin Square Boys Gang, who was stabbed in the shoulder, abdomen and leg. In his statement he admitted having a fight but not stabbing the other boy. The case was discontinued at court.

> **(18) Violent Disorder (December 2011).** The appellant was arrested after an incident at Westfield shopping centre. He gave a false name when arrested and denied involvement in a large fight between the Beaumont Gang (whose colours he was said to be wearing) and the Young Blood City Gang, in which 'punches were thrown and chairs were used as weapons' and a member of the opposing gang was stabbed. He was arrested, gave a false name and refused to give his associates' names. He given the sentences set out in (16) above. In his statement, the appellant said that this incident occurred when his home life was improving and that he was not wearing gang colours. He had nothing else to say about the incident.

38. There is no comment on the remaining incidents. Each of the above incidents is supported by a crime number and a custody record reference. Whilst the information summarised is indeed hearsay, and I do take account of the appellant's comments, the summary is based on information in police and gang nominal records and I have no reason to consider that it is substantially inaccurate.

The best interests of the appellant's sister

39. The appellant's sister is still a child. She lives with his step-mother and has done so throughout. His step-mother and sister have not visited him during his last incarceration and his step-mother was unwilling to serve as a bail address for him in July 2012.

40. The First-tier Tribunal considered private and family life at paragraphs 22-26 of the determination. The conclusion, at paragraph 26, that although the appellant's sister would very much like him to remain in the United Kingdom, there was no evidence before the Tribunal that there would be any adverse psychological impact save a degree of sadness, and that the appellant no longer lives with them, is supported by the documents and evidence before me now.

41. There is nothing to indicate that it would not be in the sister's best interests to continue residing separately from her brother and in the United Kingdom, with their step-mother. The suggestion that he is the only male in the family is negated by the type of man that he has become; it is not in the interests of his sister to continue to be linked with a gang nominal who carries knives and hammers and lives as the appellant has lived.

42. I am satisfied that there is nothing in the s.55 arguments.

The *Maslov* assessment

43. The Court of Appeal summarised the *Maslov* test in *Peart v Secretary of State for the Home Department* [2012] EWCA Civ 568 thus:

> "23. In *Maslov v Austria* [2009] INLR 47 the European Court of Human Rights considered the approach to be taken by national authorities when considering the deportation of a foreign national on the grounds that his presence constitutes a danger to the community. It was common ground that the effect of that decision,

and of decisions in earlier cases (notably *Boultif v Switzerland* (2001) 33 EHRR 1179 and *Üner v The Netherlands* [2007] INLR 273), is that in assessing whether removal or deportation is proportionate the following factors are relevant (although their weight will vary according to the specific circumstances of the case):

(i) the nature and seriousness of the offence(s) committed by the appellant;
(ii) the length of the appellant's stay in the country;
(iii) the period of time that has elapsed since the offence was committed and the appellant's conduct during that period;
(iv) the nationalities of the persons concerned;
(v) the appellant's family situation;
(vi) whether any spouse or partner knew about the offence at the time he or she entered into the relationship;
(vii) whether the appellant has children, and if so, their ages;
(viii) the seriousness of the difficulties the spouse or partner is likely to encounter in the country to which the appellant is to be removed;
(ix) the best interests and wellbeing of any children;
(x) the strength of the social, cultural and family ties with the host country and the country to which removal is to be made.

24. Moreover, as the court pointed out in paragraphs 74 and 75 of its judgment in *Maslov*, it is necessary to have regard to the age at which the person came to this country and the extent to which he was brought up and educated here. In the case of a settled migrant who is lawfully present and has spent the major part of his childhood and youth in this country very serious reasons are required to justify removal. The appellant, of course, is not a lawful migrant, because attempts to regularise his immigration status came to nothing and were not subsequently pursued, but even in a case where the person is not lawfully present in this country, the fact that he has been here since childhood is still a weighty consideration: see *JO (Uganda) v Secretary of State for the Home Department* [2010] EWCA Civ 10 per Richards L.J. at paragraph 31."

44. Sub-paragraphs (vi) and (viii) are not applicable. The appellant has no spouse or partner. His strongest point is the length of his stay in the United Kingdom; he has been here since he was six years old and is now 19 years old; that is a 'weighty consideration'. He is Jamaican as are his step-mother and his sister. They have been granted discretionary leave but only for another 18 months, until his sister reaches 18. None of the parties is settled.

45. The appellant and his sister assert mutual affection, but they do not live together and it seems, despite her evidence to the First-tier Tribunal, that his step-mother no longer wishes him to live with her. I have dealt with the question of his sister's best interests; despite their mutual regard, resuming living with the appellant given his lifestyle is unlikely to be in her best interests, which lie in continuing to live with their step-mother and grow up as peacefully and lawfully as possible.

46. That leaves (i) and (x) as the determinative factors. On the appellant's own case, he has received a total of 10 months' detention for seven convictions dealing with 10 different offences, over a four year period. The offences were: attempted robbery,

possession of a bladed article, driving offences, violent disorder, possession of an offensive weapon, breach of a YRO, and common assault. I remind myself that he is a gang nominal in the Hackney area and that he is the subject of a 12-month geographical ban from Westfield Shopping Centre.

47. The First-tier Tribunal Judge's description of the police report as 'substantially unchallenged' may not be entirely accurate, but the appellant does not challenge the substance of most of the incidents. Even taking into account his comments, he emerges as a seasoned criminal and self-confessed gang member, which is how he was treated in the First-tier Tribunal determination. It is also clear that he was, in effect, living on the streets in Hackney and Dalston and that, whatever is now said, he is estranged from his step-mother and his sister, who have not been able to control his offending.

48. The appellant has repeatedly breached his DTO and YRO orders. I note that the Hackney and Enfield Youth Offending Teams consider that on release, he should be excluded from Hackney and receive help with his offending behaviour, including education and employment assistance. It is not suggested that he is a reformed criminal about whom there is no further concern. On the contrary, his ability and/or willingness to comply and to change his ways has not been demonstrated, although he asserts it. He is very poorly educated, because of his dyslexia and his difficult childhood, and is now homeless, rootless, and immersed in gang culture. His social, cultural and family ties in the United Kingdom, other than with London criminal gangs, are very weak.

49. In Jamaica, to which he would be removed, there is also a significant gang culture. His mother lived there until recently and there was some confusion in the evidence about her present country of residence, despite the evidence that she married in Canada last year. His father was shot last year in Jamaica. He may well have other relatives there who have not been disclosed.

50. The appellant's last known conviction was in May 2012. It is right that no later offences have been disclosed but the appellant remained detained until at least September 2012. It is unclear whether he is currently in immigration detention or on bail. His history up to and including May 2012 suggests that he is likely to return to criminality on his release as does the proposal put forward by the Hackney and Enfield Youth Offending Teams.

51. I am satisfied, on the evidence before me, that the administrative removal of this appellant to Jamaica does not breach the United Kingdom's international obligations under Article 8 ECHR and is proportionate.

52. This appeal is therefore dismissed.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision and remake it by dismissing the appeal.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I have not been asked to make one under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) and I do not consider it appropriate to do so.

Date: Signed:

Judith Gleeson
Judge of the Upper Tribunal

Appendix A
SOCIAL WORK AND POLICE EVIDENCE

53. The appellant is a gang nominal in the Hackney area, that is to say, he is on a list maintained by Hackney Council of known gang members whose activities are monitored by Hackney Police. The social worker recommended that the appellant be excluded from Hackney and monitored by a different London borough.

54. The social worker at Young Hackney, Mr Myirie, was his designated ISS officer. ISS officers are nominated only in relation to the sentencing of young people at risk of custody as a result of a serious offence or as a prolific offender: in the appellant's case it seems that he was both. Mr Myirie had only two weeks to work with the appellant before he reoffended and was again detained. His account is derived from documents provided in that context and records that the appellant was sentenced on 14th December 2010 for a driving offence, including being re-sentenced for two previous matters, and that on that occasion he received a detention and training order (DTO) for twelve months.

55. On 16 July 2011, while still serving the community element of his DTO, the appellant appeared at Thames Youth Court for possession of a weapon and was made the subject of a youth rehabilitation order (YRO) for two years with six months' ISS requirement. He breached the YRO on 9 November 2011, but the DTO was permitted to continue, with an additional unpaid work requirement of 40 hours.

56. Between July 2011 and 16 December 2011 the appellant did not reoffend.

57. On 16 December 2011, the appellant was arrested in connection with an incident in which a young person was assaulted and stabbed, suffering a non life threatening injury. The appellant was carrying a bladed article and when arrested on 11 January 2012, he was charged with possession of an offensive weapon and grievous bodily harm. He was sentenced to four months DTO for the offences of possession of an offensive weapon and the breach of the YRO.

58. A month later, the GBH offence was changed to common assault; the appellant was sentenced to another four months' DTO on that count.

59. Meanwhile, in December 2011, he had committed a further offence of violent disorder and on 4 May 2012, he received a one year YRO with supervision requirement and exclusion requirement due to begin on his release on 24 May 2012.

60. The statement records that Miss M gave the appellant unconditional love and affection, but had been unable to visit him in Feltham Young Offenders Prison because she did not have the appropriate identity documents. Miss M, the appellant and his sister were all in the United Kingdom unlawfully. The strength of the family unit was recognised.

61. The appellant's offences took place in a particular gang area in E9 in Hackney and in December 2011, he had been added to Hackney Council's list of gang nominals (persons mentioned in police interviews as involved in gangs in the area), following which he was monitored by Hackney Police to ensure that he did not commit any further offences. It was not possible to restrict his movements as to where he resided or socialised but, during the short period in which the Young Hackney ISS process was in place, he was made aware that his continued association with other gang nominals in certain areas could increase the risk of

his reoffending which might result in his being excluded from certain geographical areas by the court.

62. The report concluded that the appellant had done very well to survive and live as normal a life as possible in his dire personal circumstances. Young Hackney suggested that the appellant should be excluded from Hackney and be supervised by Enfield Youth Offending Team.

APPENDIX B

FAMILY EVIDENCE

1. The Tribunal file contains a declaration made in June 2011 by the appellant's natural parents living in Kingston, Jamaica, confirming that the children were living in England with Miss M with their full permission and consent and that Miss M was fully and unreservedly responsible for their care, maintenance and upbringing. At paragraph 6 they stated "we are satisfied that [Miss M] is providing stable and satisfactory living arrangements for our said children".

2. However, an email bearing the same date as the deportation decision noted that the appellant was not residing with Miss M, who was estranged from him and not happy for him to use her address for bail.

3. A short statement from the appellant's sister stated that she was upset living without him and felt sad and quiet. By the time she made the statement on 13th September 2012 their father had died in Jamaica and she did not know her birth mother. Her opinion was that the appellant did not know how to be in Jamaica. She continued:

   > "I know he hasn't been around and I have missed him while he has been gone but I know that this is just a bad phase that my brother has had to go through because he spent so much time alone and outdoors while we were living in places he didn't like to be or was unwelcome. Everything has changed now though now, he can come home and we have leave to remain, that means we can all live together alone without other dirty people making us feel like a burden, now we can live together with watch the programmes that we like to watch and eat healthy, my brother will be able to cook and we can watch movies and football together ([Miss M] likes to watch movies so we can watch them together).
   >
   > It will be so strange if [he] is not allowed to come home just because of what he's gone through. I worry for him going to Jamaica, I am scared that they will do to him what they did to my dad, I am scared that they will expect my brother to be just like my dad. [He] is not like anyone else, he is like us, me and [Miss M]. Please just let [him] come home."

4. A letter from Miss M records the "countless trials and struggles" that she and these two children faced. It had not been an easy task but she had not shied away from it. She describes the appellant as a very shy individual, kind-hearted and very selfless.

   > "Yes it is a fact that he has been in trouble with the police but he is not a criminal. I never meant for [him] to end up in the situation that he is in now and I never imagined that my family would be ripped apart like this. For years I have pleaded with the authorities to allow me to even be able to work to be able to provide and protect my kids so to ensure that they were always comfortable, healthy and living in suitable living conditions … my son is a victim my circumstances as they were now I find myself in a better position and all that I ask is that you allow my son to come home and let us have this chance as a family and allow me to make my words true to my kids and show that we are good products of society."

5. An email from the Waltham Forest College where the appellant studied from 2007 to 2008 before leaving school recorded that he was affected by SPLD (dyslexia) and had achieved only Literacy Entry Level 1 and Numeracy Entry Level 2 by age 15, as well as undertaking certain personal progress awards and workshops.

6. A letter from the UKBA dated 28 May 2012, giving notice of intention to remove, cited eight addresses at which the appellant had claimed to live in the period October 2008 to April 2012. A further letter of 10 August 2012, accompanying the decision to remove, noted that it was Miss M not Mr M who had submitted the 31 May 2010 application with the appellant as dependent, and that the Secretary of State had on three occasions decided not to deport the appellant, June 2008, January 2011 and May 2012. What is now proposed is administrative removal, not deportation.

7. Turning to the police report, it contains details of attempted prosecutions and completed prosecutions. The appellant has ten convictions, one for attempted robbery, two for possession of a bladed article, one for a driving offence, two for possession of an offensive weapon, two for failure to comply with the requirements of the Youth Rehabilitation Order and convictions for common assault and violent disorder. There had also been a warning in 2007 for criminal damage.

8. Police intelligence systems showed that the appellant had been stopped on 38 occasions, five in the area of the bus station at Walthamstow between 23 January 2008 and 10 January 2012, and that he was a self-proclaimed gang member linked to the Beaumont crew and also the Ballance/Kingshold gangs. The list of events in chronological order was given as follows:

"(1) 24th October 2008 arrested and charged with arson with intent to endanger life, prosecution withdrawn at court.

(2) 27th August 2009 arrested for robbery, prosecution not proceeded with.

(3) 10th February 2010 arrested for attempted robbery and possession of a knife, twelve months YRO and £50 compensation varied to supervision/curfew and finally four months DTO as appellant repeatedly breached the other requirements.

(4) 23rd February 2010 stopped and identified himself as a member of the Beaumont crew. No prosecution.

(5) 1st March 2010 observed by PCSO for ten minutes, looking at members of the public, when challenged appellant said he was "waiting to rob someone", escaped.

(6) 5th March 2010 observed at Walthamstow Central Bus Station.

(7) 15th March 2010 stopped, said he was waiting to rob someone, detained and searched carrying a green bandana the local colours for the Beaumont crew.

(8) 20th September 2010 detained and searched under Misuse of Drugs Act result negative.

(9) 2nd October 2010 carrying large axe with a black handle, charged and convicted of point/bladed article given a YRO which he breached followed by supervision requirement/activity requirement/curfew requirement which he also failed to comply with, four months DTO and conviction of failing to comply with the requirements of a YRO."