IAC-BFD- MD

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01955/2013

THE IMMIGRATION ACTS

Heard at Field House, London	**Determination Promulgated**
On 26th September 2014	**On 31st October 2014**
Prepared	

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR KAMBULU JOAO
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer
For the Respondent: Mr G Hodgetts, of Counsel

DETERMINATION AND REASONS

1. This is the resumed hearing of an appeal by the Secretary of State against the determination of the FtT (Judge Page and Mr Yates) in which it allowed the Respondent's appeal against the decision made on 12th September 2013 by the SSHD refusing to revoke a deportation order made against the Respondent on 12th

November 2007. In this determination for the sake of clarity, I will refer to the Parties as they were before the FtT, Mr Kambulu Joao as the Appellant and the Secretary of State as the Respondent.

2. The Appellant is a citizen of Angola born 2nd June 1982. He entered the UK aged 8 years old, in December 1990. He was granted ILR, after application made through social services when aged 15. He is now 33 years old. His last offence was when aged 19 years.

3. The Appellant was brought to the UK by a man, Pedro Mbala (aka Paul Mbala), who posed as his father to social services. The Appellant refers to him as "uncle" but the true relationship is unknown. Sadly he was the subject of abuse by this man, both physical and mental, and had his first contact with social services in May 1992 (aged 9). Mbala continued to pose as the child's father to social services which led to the Appellant being returned to him despite having been taken again into care in 1993 (aged about 11), Eventually, after further abuse at Mbala's hands, including 'loaning' the child to others to claim benefits and for sexual abuse, the Appellant was taken into full time permanent care by the local authority in 1995 (aged about 13) when they eventually realised that Mbala was not his father. Mbala was later deported in about 1997.

4. Social services, through Jane Coker Solicitors, applied for Indefinite Leave to Remain for the Appellant and this was granted on 12 November 1997 when he was 15 years old.

5. The Appellant was thus known to have been subject of abuse since the age of 9 and was finally in full time care at the age of 13. By this time he was already a drug user. This led to foster placements and placement in a care home. He got himself involved in adolescent juvenile delinquency and crime between 1998 and 2002 (aged between 15 and 19). The last offence, at age 19, committed in January 2002, is the index offence of aggravated burglary for which he was sentenced to 10 years detention in a Young Offender's Institute.

6. The Respondent served a notice of intention to deport on the Appellant shortly before his release from YOI detention. The appellant's appeal against that decision was dismissed on 21st November 2007 and a signed deportation order dated 11th December 2007 was made against the Appellant. The appellant was taken into immigration detention following his release from YOI custody but was subsequently granted bail to his girlfriend's mother's address.

Procedural History

7. The Appellant made application to revoke the deportation order made against him and the subsequent appeal against the Respondent's refusal came before the FtT. In its decision promulgated on 28th January 2014 that Tribunal allowed the Appellant's appeal concluding that to deport him to Angola, would constitute a disproportionate interference with his Article 8 ECHR Protected Rights (family and private life). The Respondent sought to appeal that decision and although this was initially refused by

the FtT, it was granted on a renewed application before the Upper Tribunal. The grounds seeking renewed permission claimed that the FtT had misdirected itself in concluding as it did that "although the Appellant managed to abscond, thereby evading removal when the Secretary of State was in a position to do so, he could have been "found without difficulty" as he remained in the Oxford area" The Respondent claimed that this speculation on the part of the FtT, together with its 'admonishment 'of the Secretary of State infected its reasoning.

8. The remaining ground contended that the FtT had taken an incorrect approach. It had failed to show that the Appellant had demonstrated that his case is one of those exhibiting "exceptional circumstances" that precluded deportation. *MF (Nigeria)* [2013] EWCA Civ 1192. *SS (Nigeria)* [2013] EWCA Civ 550.

9. UTJ Pitt granted permission in the following terms:

> "Paragraphs a) and b) of the grounds, concerning the Appellant's avoidance of immigration control for a number of years, would appear to be more clearly arguable but I grant permission on all grounds."

10. The error of law hearing came before me on 24th June 2014. I found that the determination of the FtT was legally unsustainable and my reasons for so doing are set out here.

> "I am satisfied despite Mr Hodgetts lengthy submissions, that the determination of the First-tier Tribunal is legally unsustainable. I state my reasons relatively shortly.
>
> Whilst it is correct that in the narrative part of the determination there is reference to the Secretary of State's reasons for making the deportation order and her reference to paragraphs 398 and 399 of the Immigration Rules, nowhere in the reasons part of the determination is there any reference to the Immigration Rules and their relevance to this appeal, or indeed to deportation cases generally. Nowhere in the reasons part of the determination is there reference to the public interest in deportation in its various components. For example there is no reference to the relevance of the Immigration Rules expressing the Secretary of State's view of where the public interest lies. I see no adequate consideration of the public interest in relation to the seriousness of the offence. I accept that in the course of the determination, the First-tier Tribunal did refer to the fact that the Appellant had been convicted of a serious offence, but this does not amount to the same thing as taking into account its effect on the public interest.
>
> What the First-tier Tribunal appears to have done is to place great weight on the Appellant's troubled background and childhood together with the circumstances that the family would face should he be returned to Angola. What it has not done is given clear findings demonstrating what are the exceptional circumstances in this Appellant's case such that the public interest in deportation is outweighed.
>
> For those reasons I am satisfied that the First-tier Tribunal erred in law. That error of law is such as to require the decision to be set aside and the decision will have to be remade. I informed the parties at the conclusion of the error of law hearing that I was reserving my decision on whether the First-tier Tribunal's determination disclosed an error of law requiring it to be set aside. I indicated that the appropriate course in the

event of my finding an error of law would be for there to be a resumed hearing before a panel of the Upper Tribunal. The parties were in agreement to this. This matter is now set down for a resumed hearing with the parties being given the opportunity to make any further submissions/call further evidence upon which they may seek to rely, in the light of my findings above".

Resumed Hearing

11. The resumed hearing came before me on 26th September 2014. By consent the majority of the facts and findings made by the FtT were not challenged. They are set out here.

> "He [the Appellant] entered the United Kingdom in December 1990 when aged 8 years. He was granted indefinite leave when he was aged 15. He is now 31 years old. His last offence was in 2002 when he was aged 19 years. It was this offence that gave rise to the respondent's decision to deport him.
>
> There have been a number of significant changes since the first Tribunal dismissed his deportation appeal in 2007. The first Tribunal did not have to apply the subsequent and significant development in Article 8 ECHR case law in **Maslov v Austria [2009] INLR 47 ECHR (Grand Chamber)** and the determination of the Upper Tribunal in **Masih (Deportation – public interest – basic principles) Pakistan [2012] UKUT 00046**. At the time of the first deportation appeal in 2007 the Appellant was single. Now he is in a relationship with a British citizen, Layla Mona Jamal Kanoun, with whom he cohabits together with their daughter Myah, born on 31 March 2013.
>
> The appellant has an unfortunate background in the United Kingdom. He arrived in the UK in December 1990 on a flight from Zimbabwe with a man called Paul Mbala who posed as the appellant's father. In May 1992 the appellant first made contact with social services after a report of abuse by Paul Mbala when the appellant was aged 10 years. The appellant then spent six months with a foster carer but was then returned to his presumed father Paul Mbala. In 1993 the appellant was taken into care when he was aged 12 to live with his foster carer for one and a half years. In 1995 he was placed in full-time local authority care when aged 13. He then lived with his foster carer Judy Beaupierre for eighteen months. In 1997 the appellant began getting into trouble, and eventually crime, and was transferred to children's home (sic) aged 15 years. On 12 November 1997 he was granted indefinite leave to remain when aged 15 years.
>
> In 1997 he first met Paul Bragg, a social worker with the Eastern Children's House who became like an adopted father.
>
> On 23 March 1998 the appellant, then aged 15 years, was convicted of his first criminal offence for possessing an article with a blade and for an assault occasioning actual bodily harm, and made the subject of a supervision order of twelve months.
>
> Then in June 1998 the appellant committed a robbery whilst on bail, then aged 15 years. On 10 September 1999 he was given a conditional discharge for two years.
>
> During the year 2000 social services attempted to attain Angolan identification paper without success in order to apply for citizenship on behalf of the appellant. This attempt was unsuccessful. On 20 July 2000 the appellant was sentenced, when aged 18

years, for an offence of having a bladed article, theft, and resisting arrest, [offenses committed on 3 November 1999 when aged 17 years], and sentenced to fifteen months' detention in a young offenders institution.

In 2001 the appellant was released from detention and sent to a hostel with shared accommodation. Once there he returned to his association with others involved in crime. It was during this period that he first met Layla Kanoun when she was visiting her father in London from Oxford. [The appellant now cohabits with Layla at her address in Oxford].

In January 1992 he was friends with Layla but they were not in a relationship. It was then that he committed an offence of aggravated burglary (with three others) and on 7 November 2002 he was sentenced to ten years' detention in a young offender's institute. This was a grave offence, reflected in the ten year sentence.

The judge's sentencing remarks are to be found recorded at paragraph 2 of the determination of Judge Braybrook and Mrs Roe in their determination promulgated on 21 November 2007. The appellant and his three associates entered a flat at 3am and tied up the occupant and assaulted him in an attempt to make him divulge where the money was kept. In this incident the occupier was stabbed. The sentencing judge noted that it was not clear which of the four men had stabbed the occupier.

It was during his incarceration for this offence that the appellant began his relationship with Layla Kanoun. She began visiting him in prison around the end of 2003.

On 12 November 2007 the appellant had his appeal against the Respondent's decision to deport hearing. But he did not call Layla as a witness because he did not want to involve her at this point. At paragraph 12 of the determination the Tribunal recorded that the appellant had said he had built up a relationship with her during his detention and that she was someone with whom he planned to settle down eventually. The Tribunal determination recorded that as there had been no previous mention of this relationship and no evidence from her they could not give any weight to this claimed relationship on the basis of the appellant's oral evidence. Consequently they found that the appellant had no family life in the UK to engage Article 8 ECHR. The appeal was dismissed.

On 11 December 2007 the deportation order was signed. The appellant was not deported because, Ms Lewis explained at the hearing, there had been obstacles in obtaining a travel document to deport the appellant to Angola.

In October 2008 the appellant was released from immigration detention on bail to reside at the home of Layla's mother at 73 Cranley Road, Oxford, OX3 8BP – where the appellant and Layla still reside."

12. What is challenged however are the circumstances surrounding the Appellant's absconding in 2010. Any findings made on this issue will need to be weighed in the balance on the proportionality test under Article 8. In order to place the issue of the Appellant's absconding into context it was proposed that the Appellant and his partner Layla Kanoun give oral evidence.

Oral Evidence

13. I pause there because prior to hearing that evidence, Mr Walker on behalf sought to adduce further documentary evidence relevant to this issue. It consisted of copies of various correspondences passing between the Respondent, the Appellant's then representatives Turpin and Miller, and the Appellant's Member of Parliament Rt Hon Andrew Smith M.P.

14. Mr Walker accepted that this evidence was not before the FtT but said that it was material evidence concerning the Appellant's absconding and the FtT's erroneous conclusions at [49] of their determination when they concluded that,

> *"However it does appear to the Tribunal that the appellant remained living in Oxford with Layla Kanoun and he could have been found without difficulty".*

15. Mr Hodgetts on behalf of the Appellant unsurprisingly objected to this course. Not only was this evidence not before the First-tier Tribunal, but the application to admit it was made without notice and "late in the day".

16. I was satisfied that this evidence was material to this appeal, in the sense that it could reflect on the Appellant's overall credibility and it would be wrong to exclude it. I asked Mr Hodgetts if he now required time to take further instructions. After taking brief instructions he indicated he was ready to proceed.

17. I heard evidence from the Appellant Kambulu Joao. The Appellant agreed that he had absconded and failed to report as he should have done in 2010. He explained that in June 2010 he reported to the police station as he was meant to do. He thought at this point that the appeal process was still ongoing and that he had been asked to report to the police station simply because the immigration service were going to have a word with him about the proceedings. Instead, he found himself placed in the detention suite at the police station. An immigration service caseworker who was present started asking him various questions such as whether he was married, had children or was working. She told him he was here illegally and gave him the impression that she did not know the procedures. He thought to himself that she was not really aware of his case.

18. He said that at this point he became scared nervous and confused. He did not know what was happening but in his panic realised he did not want to return to detention nor to Angola. He explained that he had had experienced seventeen months in immigration detention after being released from imprisonment. His first thought was that he would be detained again. He bolted for the door, pushed the immigration service caseworker out of the way and ran off.

19. Later that day he contacted his solicitor who tried to get information from the police on whether he was to be detained. Although he was living in the Oxford area he stayed out in the street and slept where he could. He decided to use Layla's address for correspondence only. He did speak to Layla regularly and kept in regular contact with her.

20. He said that he also kept in touch with Andrew Smith MP because he wanted the restriction order lifted. He thought his MP would assist in sorting out his immigration status. He also kept in touch with his foster carer and probation officer but felt confused because he did not know what the authorities wanted from him. He accepted that he did not get in touch with the immigration authorities again until 2013.

21. In response to Mr Walker, the Appellant agreed that a deportation order had been signed against him in 2007. He said however he was in the process of appealing that deportation order and his thoughts were that the Home Office were aware that he was seeking to overturn it.

22. When asked if he knew that the police had come looking for him at his girlfriend's house, he said that he was aware that this had happened and that his girlfriend knew what was happening to him because the information had reached her. He said that the police officers put fear into her and that was the reason why he lived out on the street. She made the police aware that she had not seen him, which at the time she was questioned, was correct.

23. After living two to three months on the street, he started staying at his girlfriend's again. He denied that he had assaulted either the immigration service officer or the police officer when he ran off. He said that neither his solicitor nor his probation officer were aware where he was staying. He did keep in contact with his probation officer because he provided him with support. His probation officer advised him to hand himself in to the authorities.

24. I next heard from Layla Kanoun. She was asked to recall the events in June 2010. She said that a couple of days after the Appellant had absconded, the police came to her house. She had not had any physical contact with the Appellant at that point so did not know his whereabouts but he had phoned her. The Appellant was concerned that he may be picked up and that was why he did not come to her house. He did contact her every two days or so by telephone and they met up elsewhere.

25. In response to Mr Walker Layla Kanoun said that she had tried to contact the Appellant a few hours after he ran off but was not unable to. She had no idea where he was initially and she did not pester him as long as she knew he was alright. That was enough. She accepted that the Appellant did not want to put her in a difficult position by knowing where he was.

26. She explained that she contacted the Appellant's solicitor and explained what had happened. She thought it was may be a month before she saw him again and that he would stay the odd night with her. She said that he returned to her house full time just before she become pregnant with their child. She thought that was in June 2012.

27. It was put to her that the Appellant had thought that he had returned to her house in September 2010. Layla said she could not be specific it was a long time ago and a lot has happened since then. She was pressed on this point as to whether he had

returned to live with her permanently three months after absconding or twelve months. Again she responded by saying it was all a long time ago.

28. I am satisfied having heard from the Appellant and his witness that both gave their evidence to the best of their abilities considering they were trying to recollect events which happened four years ago. There were some discrepancies in their evidence about when the Appellant had returned to Layla Kanoun's address, but I am satisfied that the important point is that what motivated the Appellant to go underground or "couch surf" (the description used in the psychiatric report), arose out of his fear of being deported to Angola.

29. I am satisfied that the FtT took the wrong approach to the Appellant's absconding when they made a finding that the Appellant could have been found without difficulty. It is the Appellant's responsibility to conform and comply with the authorities of this country. He patently failed to do so. That is now a factor which must be weighed in the proportionality balancing exercise now before me.

The Issues Before Me

30. The resumed hearing on 26th September 2014 post-dates the introduction of the Immigration Act 2014 which came into force on 28th July 2014. Because the decision, is being remade, both representatives agreed that the Appellant's appeal is now governed by the provisions of the 2014 Act.

31. Both representatives submitted that the relevant parts of the 2014 Act are contained in the new sections 117A - C. Those sections set out the statutory guidelines that must be applied when a Tribunal has to decide whether an immigration decision to remove someone from the UK would be in breach of his Article 8 rights. The appeal before me is of course an application to revoke a deportation order as opposed to an appeal against the making of a deportation order but I am satisfied from the wording of section 117A(1) that as the refusal of a revocation of a deportation order is an immigration decision, then the new Act applies. The representatives clearly thought so.

32. The provisions of sections 117A - C are set out here below for ease of reference.

> "**117A Application of this Part**
>
> (1) This Part applies where a court or Tribunal is required to determine whether a decision made under the Immigration Acts –
>
> (a) breaches a person's right to respect for a private and family life under Article 8, and
>
> (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
>
> (2) In considering the public interest question, the court or Tribunal must (in particular) have regard –

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom , that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception a applies where –

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exception 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or Tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."

33. The facts of this case are set out in paragraphs 11 -30 above. What is in issue, however, is where the balance lies in assessing proportionality. The Appellant relies upon the principles in *Maslov and Uner v the Netherlands*. The Respondent's case (in line with section 117C of the 2014 Act) is that the Appellant is a foreign criminal sentenced to a term of imprisonment of ten years, and the public interest requires deportation unless he can show that there are very compelling circumstances applicable to his case, over and above those described in Exception 1 and 2 (section 117B).

Discussion and consideration

34. Turning to the Appellant's criminal history, it is clear that he commenced offending as a juvenile aged 15 years. He possesses an unenviable record for juvenile crime. This culminated when aged 19 years (and now an adult) in his commission of the aggravated burglary and the subsequent sentence to a term of ten years detention in

a Young Offender's Institute. A sentence of that length must be accorded very great weight indeed in the balancing exercise. The majority of the offences committed are of a serious nature and the last offence was committed when an adult.

35. I accept Mr Hodgetts' submission that although an adult, the Appellant's last offence could be seen in the light of its being an extension of his juvenile offending and that the Appellant has now "grown up". There is merit in this and it is evidenced by the OASYS report which states that the risk of reoffending is low. Nevertheless a sentence of ten years for an offence, even as an "extended adolescent" is a serious and weighty matter. It is a sentence which weighs heavily indeed when considering the public interest. The public interest includes not only the risk of re-offending but also must contain an element of deterrence and protection of the public.

36. Mr Hodgetts whilst accepting the weighty considerations of the public interest said the Appellant's case must be considered in the light of the *Maslov* principles. The Appellant was brought to the UK as a child of 8 years. He had no control over being brought here. He has known no other life and the majority of his offending was committed whilst a juvenile or "as an extension of his adolescence". Whilst I find merit in that I must keep in mind that the level of seriousness of the Appellant's last offence requires very compelling circumstances to be put forward sufficient to outweigh the public interest.

37. What are the factors put forward on behalf of the Appellant which can be said to amount to very compelling circumstances over and above the ones set out in the Exceptions of paragraph 117C above?

38. First the Appellant has a subsisting relationship with Layla Kanoun and they have a child together. Their child is now around 2 years of age. The Appellant from all accounts is a good father and has a close relationship with Myah. However there is nothing that I have heard which shows that their relationship is other than the normal family relationship of father and child. The child is of tender years and the Social Work Impact assessment report confirms the child's best interests are served by having two parents living with her and not being separated from her father. I also accept, as does the Respondent, that it would be unreasonable to expect Layla Kanoun and the child both of whom are British citizens, to relocate to Angola especially in view of this Appellant's circumstances, more of which are discussed further in this determination.

39. Other than the relationship with the child, and other than the fact that deportation would obviously split the family, those factors of themselves, would not carry sufficient weight in my judgment to counter the public interest in deporting someone sentenced to a ten year term of imprisonment.

40. The next factor which I must consider and one which carries greater weight for the Appellant is that set out in Exception 4(1). The Appellant has been in the United Kingdom, as far as can be shown, since he was 8 years of age. He is now 33 years of age. I accept that a deportation order was signed against him in 2007 and there is an

argument to say that since that time he has been here unlawfully. However if one goes back to the time of the signing of the deportation order, it is correct to say that he has spent most of his life here in the UK.

41. Further, I find that the Appellant must be classed as social and culturally integrated in the United Kingdom. He knows no other country than the UK. It was known that he was 8 years of age when he entered the United Kingdom, it is uncertain as to how old he was when he left Angola because the scant information available simply records that he entered the United Kingdom via Zimbabwe. The Appellant states he has no recollection or little recollection of life abroad. That is hardly surprising. I see no evidence which casts doubt on that claim. I accept as a certainty that he does not speak Portuguese nor Bantu, which are the two prevalent languages in Angola. With respect to the Appellant I see no evidence to show he could be educated or tutored to master either of these languages easily. There are no familial ties with Angola. There is no evidence of any contact with anyone in Angola other than knowledge of a man who abused him as a child.

42. Even so, because the Appellant comes within the provisions of section 117C(6) the public interest in his case, requires deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2. *SS (Nigeria)* [2013] EWCA Civ 550 held that a claim in respect of Article 8 against deportation needs to be a "very strong" one to succeed. In *AM v SSHD* [2012] EWCA Civ 1634 the Court of Appeal said,

> "*Deportation in pursuit of the legitimate aim of preventing crime and disorder is not, therefore to be seen as one dimensional in effect. It has the effect not only of removing the risk of reoffending by the deportee himself, but also of deterring other foreign nationals in a similar position. Furthermore, deportation of foreign criminals preserves public confidence in a system of control whose loss would itself tend towards crime and disorder.*"

43. I am satisfied that there are factors in this Appellant's case which can be described as very compelling, such as to outweigh the public interest in deporting him. I must step back here and refer once more to the Appellant's lack of social and cultural ties since they feature as part of this consideration.

44. The Appellant entered the UK aged about 8 years, retains no familial ties in Angola, and does not speak (and therefore does not write) the relevant Portuguese language. In other words he has no communication skills. Were he to be deported to Angola it would in my judgment be transporting him to an alien environment and one without any support system at all. When this is factored in to the Appellant's psychiatric history, as it must be, since it forms part of the overall reasons why he suffers mental health problems then I find those circumstances amount to very compelling reasons countervailing deportation. I turn to the psychiatric report prepared by Professor Katona dated 15th September 2012 and the Forensic Psychologist's Report from Joanne Lackenby dated 11th November 2013.

45. Professor Katona reports that there is a distinct impact of deportation, for the Appellant's mental health. He states that the Appellant has complex PTSD [7.5 – 7.7]

and that there is a significant risk of suicide if the Appellant is "forced back" to Angola. As I understand Professor Katona's report the reasoning for this conclusion is that mental deterioration is highly likely because the Appellant would experience the loss of his family life as further abandonment. Professor Katona goes on to state at [11.2],

> "People with PTSD show increased suicidality. In my opinion there is a significant risk that Mr Joao would harm himself, with potentially fatal consequences, if he were forced back to Angola. The risk would be significant in the UK once he lost all hope of remaining here and would remain so during the removal process and once he was back in Angola. In view of the loss of face–to-face contact with his fiancée and his unborn child that would nonetheless ensue. I do not think object reassurance about his safety in Angola would be sufficient for him to "take stock" and decide against suicide."

46. Professor Katona goes on to opine that the Appellant would be unable to find it emotionally sustaining to maintain contact with his fiancée by phone or through internet social networks and then states at [11.4],

> "Because of his worsening PTSD and associated depressive and anxiety symptoms, Mr Joao would be likely to render him incapable of working and supporting himself. The added stress of destitution would make him likely to resort to drug taking to alleviate his symptoms, and to return to crime to fund his consequent drug habit."

47. At this point it is pertinent to say that Mr Hodgetts did canvass whether the Appellant's risk of suicide would bring him within Article 3 ECHR. This concept was not developed fully before me but it is right that the Respondent did counter this in her Reasons for Refusal letter of 12th September 2013. It is said in the RFRL that Angola is a country which now has the drug paroxetine and availability of outpatient medical treatment. In my view that is not sufficient, in this Appellant's case, to counter Professor Katona's findings at [11.4] of his report. It is hard to see how a man with no language skills and no familial ties in Angola could avail himself of the limited healthcare available there.

48. In addition to Professor Katona's report, there is a report from a forensic psychologist Joanne Lackenby dated November 2013. This report is of more recent origin than Professor Katona's, but she confirms his opinion and says at [15.3],

> "Within the UK Mr Joao has access to a high level of professional support to assist with his mental health and should he be granted the relevant authority to gain employment, this will serve to further reduce an already low risk of violence. Mr Joao is motivated to cooperate with authorities currently and is keen when he is able to access greater intensity mental health input/counselling and to work. Mr Joao is subject a very high level of stress and is depressed in response to this. This has not and does not increase the risk of violence or offending. However he has stated categorically that he will take his own life if he is unsuccessful in his appeal. Given his history, his fears of life in Angola, the loss of contact with his family this is considered to be a significant and real risk. Unless Mr Joao found himself in a situation where is relationship broke down, he was homeless and had lost all his other personal support it is difficult to envisage he

> would return to drug use and offending. This scenario is much more likely in Angola than in the United Kingdom."

49. Further she report at part 5 headed **'Future problems with stress or coping'**,

> "His depression and PTSD symptoms would likely worsen if returned to Angola due to the lack of personal and professional support and the continued lack of integration into a society that he does not know."

50. For the sake of completeness I ought to say that Professor Katona reports that in his expert opinion, the Appellant is not feigning his condition.

51. Therefore, when I bring these matters into the proportionality exercise, whilst giving very great weight to the public interest because the Appellant was convicted of a serious crime resulting in a custodial sentence of ten years, nevertheless I find that the reasons put forward by the Appellant why he should not be deported amount to very compelling ones. I find those reasons outweigh the public interest in refusing to revoke the deportation order made against him.

Decision

52. The determination of the First-tier Tribunal which was promulgated on 30th January 2014 is set aside. I hereby remake the decision. The Appellant's appeal against the SSHD's refusal of 12th September 2013 to revoke the deportation order made against him, is allowed under Article 8 ECHR.

No anonymity direction is made

Signature
Judge of the Upper Tribunal

Dated
31st October 2014