Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02197/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
Judgment given orally at hearing on On 10 September 2014	**On 29 September 2014**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

GREG KEDIENHON

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert, Counsel instructed by Turpin & Miller Solicitors (Oxford)
For the Respondent: Ms C Johnstone, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 14 February 1991. He is now aged 23 years. He was born in Belgium but he is not a citizen of Belgium. He is said to have arrived in the UK in 2000.

2. The circumstances in which his case comes before the Upper Tribunal relate to his conviction for criminal offences arising in 2008 and 2009. He was sentenced on 23 June 2010 to a total of eight years' imprisonment for offences concerning the supply of crack cocaine in April to June 2008. Whilst on bail for that offence he committed another offence of supplying crack cocaine in October 2008 and whilst on remand at Norwich Young Offenders' Institute he committed the offence of wounding with intent. The drugs offences resulted in concurrent sentences of four years' imprisonment. The wounding with intent also resulted in a sentence of four years' imprisonment, but a consecutive sentence.

3. As part of the further background to this appeal it is necessary to refer briefly to the fact that the appellant has been convicted of various offences on a number of previous occasions. These are set out in the Secretary of State's decision letter dated 28 October 2013. They have involved, for the most part, various offences of violence and dishonesty, as well as failing to comply with court orders of one sort or another.

4. The result of the sentences that were imposed on 23 June 2010 following the convictions to which I have referred resulting in eight years' imprisonment, was that on 28 October 2013 the Secretary of State made a decision under the UK Borders Act 2007 to make a deportation order under the automatic deportation provisions of that Act.

5. The appellant's appeal against that decision came before First-tier Tribunal Judge Martins and Mrs W Jordan, a non-legal member, on 4 March 2014, and following which the First-tier Tribunal dismissed his appeal.

6. The sole ground of appeal against their decision and on which permission was granted is in relation to the decision in Maslov v Austria [2008] ECHR 546. The grounds of appeal were amplified in submissions before me today by Mr Gilbert.

7. Returning to the decision of the First-tier Tribunal, it is necessary to set out some of its findings of fact. The Tribunal took into account, and made reference to, the appellant's troubled family background and, it is I think fair to say, that his family circumstances have not been altogether conducive to an upbringing which would have enabled him to live a settled life.

8. At [95] of the determination the First-tier Tribunal concluded that the appellant could not meet the requirements of the deportation immigration rules and that fact appears to have been accepted on his behalf (see [95]).

9. Other findings were to the following effect. In relation to the appellant's daughter, who I shall identify by her initial as 'A', who was born on 4 June 2009, the Tribunal stated that for most of his daughter's life the appellant had been in prison and therefore had not had much interaction with her, or input into her life. His ex-partner is his daughter's primary carer and that situation would continue whether or not the appellant is in the UK. The

Tribunal concluded that even though the appellant does have family life with his daughter by virtue of his relationship with her, the interference that would follow from his removal would not be disproportionate.

10. The Tribunal considered the appellant's relationship with various other family members. It was accepted that he had formed a good relationship with his half sister and a stepbrother with whom he lived for six months before serving his prison sentence. The Tribunal went on however, to state that he has since been absent from their home for some three and a half years. His stepmother and father, being the children's primary carers, meant that it would not be necessary for the appellant to remain in the UK. His removal in terms of his relationship with them was found not to be disproportionate.

11. At [99] it was accepted that the appellant and his stepmother have developed a bond and that he sees her as the mother he never had, and that she has embraced him as her son. It was found that the appellant's family had maintained regular contact with him and they had visited him throughout his time in prison, and then in immigration detention. Again however, it was concluded that there was not a dependency that went beyond normal family ties and there was no family life in law between them.

12. It was concluded at [100] that the appellant has a very strong private life in the UK. He was born in Belgium and had spent nine years of his life there and the only other country he had lived in was the UK. The Tribunal found that he had spent some fourteen years of his 23 year life in the UK and three and a half years of those in prison. In terms of ties to Nigeria, it was found that the appellant's father is now permanently resident in the UK and has family here.

13. It appeared, and the Tribunal seemed to accept, that the appellant's mother had made at least two applications to return to the UK from Nigeria, one when the appellant's older brother had died, again another very sad feature of the appellant's life. The Tribunal accepted that the appellant had no contact with his mother or his younger brother since they left the UK, even if other members of the family have had some contact. It was concluded that the appellant's father has a brother in Nigeria who is the father of the appellant's cousin and that cousin gave evidence before the Tribunal. It was accepted on the basis of the evidence of the appellant's father and his cousin, that the relatives in Nigeria do not know the appellant.

14. The Tribunal went on however, to conclude that the appellant had an uncle in Nigeria who could provide some support for him there with the appellant's father "doing the necessary from the UK" as it was put, particularly in relation to financial support and initially in terms of settling the appellant in Nigeria. Contact could be maintained by visits, including by the appellant's cousins, stepmother and sibling in the UK.

15. It was accepted that the appellant has a substantial private life in the UK which would be interfered with by his deportation. There was reference to the legitimate aim of the prevention of disorder and crime and the Tribunal referred to the significant public interest that needed to be taken into account.

16. Continuing with the findings of the First-tier Tribunal, it was found that the six months that the appellant had lived with his family before serving his sentence was a time in his life when his behaviour was different from that which he had engaged in previously.

17. The Tribunal took into account however, the fact that whilst serving his sentence the appellant appeared to have resorted to behaviour that did not in fact inspire confidence regarding the risk he may pose to the community. There was reference to the 40 adjudications that arose during his time in custody and that he had by that time reached adulthood. The adjudications are referred to as having dated from 13 June 2009 to 24 September 2013 and being related to assault, being disrespectful to an officer, disobeying a lawful order, fighting, possession of a non-authorised article, selling or delivering an unauthorised article, disobeying rules or regulations, using threatening, abusive or insulting words or behaviour, intentionally obstructing an officer in the execution of his duty and destroying or damaging property. In relation to those the Tribunal stated that as the Secretary of State had noted, they were not acts of juvenile delinquency but appear to have been deliberate and coordinated offences. The Tribunal stated that "…this does not bear out the hoped for choice and change to a more positive pattern of behaviour."

18. The Tribunal went on to state that the appellant posed a medium risk of reconviction. Reference was made to the significance of that risk and at [104] it was stated as follows:

> "despite consideration of the caution in the case of **Maslov**, in respect of those who commit crime when young and taking into account the fact that the appellant has life lived (sic) in the United Kingdom since the age of 9 years, but with family in that country; we find that the balance is tipped in favour of the public interest and deterrent effect."

19. Reverting to the challenge to the determination, it does as I have indicated, centre on the decision in Maslov. Although not expressed in this way, it is said that that decision establishes the principle that a Tribunal making an assessment of the proportionality of an expulsion or deportation decision, needs to take into account the issue of re-integration and it is said there is a duty on a state to facilitate that re-integration. In that regard I was referred to [100] of Maslov in particular, where there is reference to "the- with one exception- non-violent nature of the offences committed when a minor and the State's duty to facilitate his re-integration into society." Other factors were then referred to, the Court in Maslov going on to conclude that it was disproportionate for that individual to be removed from Austria.

20. The platform from which that conclusion at [100] was launched is identifiable earlier on in the decision but continues at [83] of Maslov where there is reference to the best interests of the child and what is said to include an obligation to facilitate his or her re-integration. In that connection the court noted that Article 40 of the Convention on the Rights of the Child makes re-integration an aim to be pursued by the juvenile justice system, and they referred to their own paragraphs 36 to 38, where reference was made to that Article.

21. Even for the present accepting that there is a duty on the Secretary of State to facilitate re-integration in the circumstances explained, Mr Gilbert was not able to describe to me what the limits of that duty are in relation to a case where the offender, or person subject to deportation, reaches adulthood. It was submitted that that was a matter for the Tribunal to determine, but that does not engage with the issue which is an important one where it is asserted that there is a duty on the Secretary of State. The boundaries, or limits, of that duty do need to be delineated.

22. Of significance, it seems to me, is that in Maslov the offences were committed when that appellant was a juvenile. There is some parallel with the circumstances of this appellant in that two of the offences which prompted the decision to make a deportation order were committed when he was under the age of 18 years. One of the offences however, and the one which resulted in a consecutive sentence, that is to say the wounding with intent, was committed when he was aged 18. Mr Gilbert seeks to persuade me that it is significant that at that time the appellant was being treated as a young person by the Secretary of State in the sense that he was in a young offenders' institution, but I do not consider that the arrangements whereby a person is detained for criminal offences helps to illuminate the argument.

23. Furthermore, in terms of specific facts, the offences that concerned the Court in Maslov were, with one exception, non-violent. That is not the case so far as this appellant is concerned.

24. Aside from Maslov, I was not referred to any other authority in support of the proposition advanced. In particular, I was not referred to any domestic authority which describes the interrelationship between the duty asserted and the public interest in deportation in the case of offenders who have committed serious offences in relation to drugs or violence. I was not asked to consider that there was any parallel with decisions relating to integration in cases involving deportation of EU citizens.

25. I am not satisfied that there is the duty described by Mr Gilbert, at least not in the case of this appellant. If there is that duty, I do not accept that it was breached by the Secretary of State in taking the deportation decision, or if it was breached that the First-tier Tribunal erred in law by failing to take that breach into account. Alternatively, if the First-tier Tribunal did err in law in this respect, I am not satisfied that it is an error of law requiring the decision to be set aside.

26. It is to be borne in mind that in relation to a number of the offences for which the appellant had previously received sentences, there were non-custodial options, for example supervision orders and the like, as well as custodial sentences, such as a detention and training order. It seems to me that those sentences were part and parcel of the Secretary of State's attempts to integrate, or re-integrate, the appellant into society and to steer him away from offending. In any event, the last offence for which the appellant was convicted was undoubtedly when he was an adult and it was also undoubtedly a serious offence.

27. For the sake of completeness, in so far as Mr Gilbert sought to widen the grounds to include the point about very serious reasons being required for expulsion when the offences were committed as a juvenile, it is important to bear in mind the decision of the Court of Appeal in Akpinar [2014] EWCA Civ 937 where the limits of what is sometimes described as the 'Maslov principle' are explained.

28. Mr Gilbert referred me to the psychological assessment dated 18 February 2014 from Joanne Lackenby. I was referred in particular to pages 93, 97 and 101. In relation to page 97 it was stated in that report that if released and deported to Nigeria, family support would be unavailable or available in such a limited way through telephone, internet or letter contact as being unlikely to provide any real support and would not serve as risk-reducing, in that lack of support for individuals is considered risk increasing. But of course that aspect of the report fails to take into account, as necessarily it would because it preceded the determination of the First-tier Tribunal, the First-tier Tribunal's conclusions in relation to the support that the appellant could expect to receive on return to Nigeria.

29. In relation to page 101 and the social network that the appellant would have the benefit from when residing in Cambridge, these are matters that were manifestly taken into account by the First-tier Tribunal. The same can be said for the other part of that psychological assessment to which I was referred, at page 93.

30. In these circumstances, I am not satisfied that there is any error of law in the decision of the First-tier Tribunal or any error of law that requires the decision to be set aside. The decision to dismiss the appeal therefore stands.

Upper Tribunal Judge Kopieczek 26/09/14