Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02197/2017

THE IMMIGRATION ACTS

Heard at Field House	**Oral Decision & Reasons Promulgated**
On 7 June 2017	**On 30 June 2017**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KEVIN LUSALA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr P. Singh, Home Office Presenting Officer
For the Respondent: Mr K. Lusala in person

DECISION AND REASONS

1. The Secretary of State appeals against the determination of First-tier Tribunal Judge Widdup promulgated on 27 March 2017 in which he allowed the appeal of Kevin Lusala against a decision to deport him as a result of his criminal offending. The criminal offending is not in issue. I shall refer to Mr Lusala as the appellant as he was in the First-tier Tribunal.

2. The decision letter makes clear that the appellant was born in the United Kingdom on 21 December 1996. On 6 November 2000 he was granted exceptional leave to remain as a dependant of his mother. She had entered the United Kingdom in 1996, shortly before the birth of the appellant, and the appellant's grant of leave was made in line with that of his mother. In due course he was granted indefinite leave to remain on 29 May 2014. By that time he would have been nearly 18 years old.

3. Unfortunately the appellant's life in the United Kingdom, where he has remained throughout his life, has been marred by a number of offences. On 11 November 2011, when the appellant was aged 13 or 14, he was convicted of burglary and given eighteen months' detention in a youth facility. On 30 November 2015 he was convicted of robbery and breach of a conditional discharge and was sentenced to ten months' imprisonment and finally on 22 February 2016 at South East London Magistrates' Court he was convicted of possession of a knife in a public place and was sentenced to eight weeks' imprisonment and it was on the strength of that last conviction of eight weeks' imprisonment that a decision was made to make a deportation order. That was duly made in the form of a decision to make such an order on 5 March 2016 and that triggered the right of appeal which can of course be allowed on the basis that his removal would violate his protected private and family life.

4. By way of opening, it must be said that the appellant was born in the United Kingdom. He will be 21 at the end of this year and has spent his entire life in the United Kingdom living with his family for most of the time, if not all of the time. There were a series of other offences which are mentioned in the deportation decision but they do not seem to have featured significantly in the consideration of his criminal offending.

5. The first thing to consider are the grounds of appeal. It is said by the Secretary of State in the grounds of appeal that the judge did not fully take into account the fact that the case was subject to a consideration of what is now Section 117C of the 2002 Act. Section 117A to C was inserted into the Nationality, Immigration and Asylum Act 2002 by operation of Section 19 of the Immigration Act 2014. This provides in Section 117C additional considerations which the court is required to take into account when in cases involving foreign criminals. A foreign criminal is defined in Section 117D(2) as a person who is not a British citizen and who has been convicted in the United Kingdom of an offence and who has been sentenced to a period of imprisonment of at least twelve months or has been convicted of an offence that has caused serious harm or is a persistent offender.

6. The appellant was indeed sentenced to a period of youth custody for a period of eighteen months but that does not constitute, in my view, a period of imprisonment and consequently he has no been sentenced to a period of imprisonment of at least twelve months. The offences for which he has been convicted have not apparently caused serious harm apart

from the harm that necessarily arises to the community when any offending takes place.

7. So, looking at the convictions as they were recited in the decision letter, the first offence of burglary, where he was sentenced on 11 November 2011, was an offence where he entered a dwelling where a person was subjected to a threat of violence but there is no evidence to suggest that this resulted in serious harm. The offence of possessing a knife was an offence which was explained by the judge in some detail and he was sentenced to eight weeks' imprisonment. That, too, does not suggest it was an offence that resulted in serious harm and the period of imprisonment for the offence of robbery on 30 November 2015 for which he was sentenced to ten months' imprisonment suggests that this was not an offence which resulted in serious harm.

8. In those circumstances I do not consider that he falls within those two limbs of the definition of a foreign criminal. It therefore requires consideration of whether or not he is a persistent offender and, looking at the decision to deport, it appears to be the three offences to which I have referred that prompted the decision to deport and they do not, in my judgment, satisfy the requirement of being a persistent offender. He has been in the United Kingdom for twenty years and has these three convictions.

9. That does not seem to me to amount to persistent offending in the sense described in the Act. Accordingly I am not satisfied that he did fall within the definition of a foreign criminal and consequently is subject to the additional considerations set out in Section 117C. Instead he was subject to the considerations in Section 117B, public interest considerations applicable in all cases, but that seems to have been considered by the judge by his adopting paragraphs 398, 399 and 399A as his guidance.

10. The second point made in the grounds of appeal is that the judge said in paragraph 61 of the determination:

> "I have no hesitation in finding the appellant is socially and culturally integrated in the UK".

In doing so he made reference to the fact that the appellant was, in his judgment, a young Londoner. It is said that such a description is not appropriate as a consideration when one comes to deal with deportation.

11. However, the fact is that the applicant has always lived in the United Kingdom; indeed, as far as we are aware, he has always lived in London. That is where his parents, at least his mother, lived. In those circumstances it is not an inapt description to call him a young Londoner. I do not say that it advances matters much but it gives a flavour of the individual. There is no suggestion that he lived within a particularly close-knit community of DRC citizens or that his religion or ethnic considerations separate him from a large section of the community as sometimes occurs

where individuals have a religious faith or a place in a community which is somewhat remote from the mainstream of British life.

12. It seems to me that the issue of integration has to be viewed sensibly. Since he knows no other community, I think the judge was right in saying that he was integrated in the United Kingdom.

13. I take, however, exception to the judge's comment that it was a mark of his integration that

> "…he also integrated with young people in London as is evidenced all too plainly by his offending with others".

It cannot possibly be said that it is a mark of an individual's integration that the individual resorts to a group of hoodlums or criminal offenders. That is not what the concept of integration means. In the context of this type of case, integration involves embracing the best qualities of a community. It does not involve criminal offending. Nevertheless that criminal offending, alone, cannot stop the appellant being integrated into a community if he has had no other community. For these reasons I think the decision of the judge cannot properly be criticised in the way asserted.

14. It is also said in the grounds of appeal that the judge made another error in relation to finding that there were significant obstacles to his integration into the DRC. The fact is that there are obstacles. He has never been to the DRC. He does not speak Lingala or French. He is not familiar with the community there. There is nothing to suggest that, in the United Kingdom, he has, as it were, acquired a distinctive DRC background in the way he has been brought up. Nevertheless, if the offending had been serious enough then he would be returned to the DRC and he would have to make of it what he will. The obstacles in his integration into the DRC may well be significant but they would not be so significant as to prevent his return to the DRC, were the offending serious enough.

15. Having disposed of the grounds of appeal, I note the approach that was adopted by the judge in the determination. He recorded that the appellant's brother attended the hearing. He noted that Miss Hudson was a witness who spoke in his favour. She met the appellant in 2013 and they began a relationship with each other in 2015. She says that they would like to marry.

16. The judge took into account the fact that the criminal offending was committed (at least in the early years) whilst he was a minor. That was a matter which is of significance when considering the criteria set out in the decision in *Maslov* in which it acknowledges that young people are often involved in criminal misbehaving at an early age but, with the acquisition of greater maturity, outgrow that tendency. Consequently criminal offending whilst committed when very young is often viewed less seriously than it would be in an older person. In this context the judge considered

what Miss Hudson had to say in relation to the influence that she might be able to exert over him.

17. It was for these reasons therefore that the judge made an overall assessment that it would not be proportionate to require him to leave the United Kingdom.

18. In my judgment, that was a conclusion properly open to him. Accordingly I do not find that the judge erred in law in the decision that he made. Needless to say, it is not what I make of the correct outcome that is significant. It is whether or not the judge made an error of law and I am not satisfied that he did. For these reasons I dismiss the Secretary of State's appeal. The decision of First-tier Tribunal Judge Widdup will stand. The appeal of the appellant, Mr Lusala, is allowed.

DECISION

The Secretary of State's appeal is dismissed.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL