



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/11373/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29<sup>th</sup> September 2017**

**Decision & Reasons Promulgated  
On 31 October 2017**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**A M  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr E Pipi, instructed by Just & Brown Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of the Democratic Republic of Congo (DRC) and was born in 1978. He appeals against the decision of First-tier Tribunal Judge R G Walters dated 21<sup>st</sup> January 2017 dismissing his appeal against the refusal of his human rights claim and the decision to deport him.
2. At a hearing on 22<sup>nd</sup> May 2017, I found that First-tier Tribunal Judge Walters had erred in law in his assessment of proportionality. The judge failed to take into account relevant evidence in his assessment of family life and failed to properly direct himself in law. I therefore set aside the

judge's finding that the Appellant had failed to establish family life and show a breach of Article 8. The appeal was adjourned for rehearing. The issues were whether the Appellant had established family life with his mother in the UK and whether the Appellant's return to the DRC would breach Article 8. At that stage Mr Pipi accepted that he could only succeed under Article 8 and he was unlikely to meet the Article 3 threshold.

### **The Appellant's Immigration History**

3. The Appellant is a citizen of the DRC who arrived in the UK in 1991, at the age of 13, with his mother. His mother's asylum claim was refused in 1998, but the family were granted exceptional leave to remain until 19<sup>th</sup> June 1999. The Appellant and his family were granted further leave to remain until 19<sup>th</sup> June 2002. In 2002 and 2005 the Appellant made applications for further leave to remain, but withdrew them. On 20<sup>th</sup> March 2009, the Appellant's family were granted indefinite leave to remain, but the Appellant's application was refused because of his criminal convictions.
4. On 25<sup>th</sup> February 2015, the Appellant was convicted of attempted robbery at Wood Green Crown Court and sentenced to two years imprisonment. The Appellant approached a woman in the middle of the street at 8 o'clock in the evening and demanded that she give him her handbag. He pulled on her scarf which caused her to fall over and, as she was getting back to her feet, he slapped her with an open hand on the side of her face which caused her to have chips to two of her teeth. The sentencing judge commented that this must have been an extremely frightening incident from the complainant's point of view and the offence was of sufficient seriousness to warrant an immediate sentence of imprisonment.
5. To date the Appellant has 27 convictions for 40 offences. In the refusal letter, the Respondent concluded that the public interest required his deportation. The Appellant had not been lawfully resident in the UK for most of his life; he was not socially and culturally integrated; and there were no very significant obstacles to integration because there was sufficient care and support for his mental illness. The Appellant was diagnosed in 1997 at the age of 19 with schizophrenia. The Respondent concluded that the Appellant's private life did not outweigh the public interest. In assessing his mental health, she found that it did not reach the threshold of Article 3.

### **The Appellant's evidence**

6. The Appellant did not attend the hearing because he was detained. I was told that he was currently in immigration detention having served his

latest custodial sentence in July 2017. His evidence is contained in his witness statements dated 2<sup>nd</sup> December 2016 and 18<sup>th</sup> August 2017.

7. In his latest witness statement, he states: "I am very devastated and restless since my human rights application on 18<sup>th</sup> December 2015 for indefinite leave to remain in the UK was refused by the Secretary of State. This is because the refusal on my application rendered me unable to engage in any form of meaningful activities in the form of a job (with which to support myself and be able to live my life independent of my mother). I feel ashamed of myself and also pity my mum because she alone has been carrying the enormous difficult tasks of caring, maintaining and supporting me. I do sincerely feel sorry for my mum and also sincerely sorry for all the troubles I have caused or subjected any person to due to my situation and condition.

I was unable to attend the last hearing that took place on 1<sup>st</sup> August 2017 in this matter it is due to my detention in prison. I regret that I made no attempt whatsoever to contact my mum and/or my solicitors after the court hearing I attended at which I was detained. The reason for this is because I felt ashamed and did not want to face either of them when I have clearly have let both of them down by my behaviour and character. I feel that I am helpless over my situation and that my battle against mental condition is almost an impossible one and endless.

Regarding the reason why I have been involved in further crimes since I came to live with my mum, I cannot understand why myself thinking honestly about it. However, looking back now and how the crimes occurred I can link my action and behaviours regarding those crimes to two things. The first thing is that being idle and without money to support myself (i.e. with which to buy food and things I need from time to time) without having to overburden my poor mum; I became easily lured by a few persons that call themselves my friends. They demand that I help them by doing the acts. They often partake in it but always find a way to escape without me hence I became the one caught and treated as criminal even when the actual culprit. The police do not easily understand me when I try to tell them about those friends who force me to do acts; instead the police seem satisfied having me alone booked for the offence.

I do not naturally like being in trouble and/or to commit the crimes I did. I get threatened with violence by persons that say that they were my friends but if refused to do what I was asked by them to do. I sometimes get myself locked up in my mum's house for three to four days in order to avoid having to see or meet with the individuals. I often do not even remember when, where and how I got involved in committing those crimes for which I get arrested for by the police.

The second reason is that my sister who lives with my mum frustrates me a lot. She has been doing these from the time I started living there with my mum. Whilst she often behaves herself when my mum was in the house, however, when my mum leaves to go to church or to work she would start to verbally insult me and to avoid her insults I would force myself to go on the street where I often need up meeting the bad individuals that pretend to be nice and friendly to me who would then later

force me to do things from which they would get some money. It is those individuals that prevent me from going back to my mum's house on time and made me to not take my prescribed drugs on many occasions when instead I get given their own drugs to take.

Before I went to the hearing at which I was detained I was told by my sister that she was planning to move to outside London for a job that she was being offered and confidence that if she moves out of my mum's house I will be left alone and no longer wander about on the streets when I do not need to go outside mum's house. It means that I would easily be able to avoid the persons calling themselves my friends who all they do would force me to do criminal acts as a bit of favours for them which then get me into trouble. Also staying inside my mum's house would help me take my prescription drugs as my mum would always ensure that I do not miss taking any of my drugs; also she ensures that I am very hygienic and that I eat the food she prepares in the house, which are healthier for me.

I easily forget to take my prescription drugs if not for my mum who reminds me to take them. I do not know what I would do if my mum was taken away from me or if I am separated from my mum.

I have not returned to my home country the DRC since I arrived here in the UK on 10.2.1991 with my mother and sister. I arrived here shortly after my father died in the DRC. I fear for my life if I should be forced to go back to the DRC for any reason. I have vowed not to go back there because I believe that my father's death was not natural and that it was caused by his political opponent in DRC. The thought of my father's sudden death made me to hate everything in the DRC or about the DRC. I am not a violence person but I know that people in DRC are very violence. If I returned there I could easily be harmed. People there would easily feud with me if I should be forcibly removed to that country when I am unable to support myself due to having no job, no shelter, no relatives to assist or seek care for me. My mum and two sisters are residing in the UK. Like myself I cannot see any of them wanting to return to DRC to live but three of them are already naturalised as British citizens and are working here in the UK. I too want to reside permanently in the UK and also to be able to secure whatever job once I get the right to reside and work here in the UK; I aim to earn and maintain a decent standard of living and perhaps show some gratitude to my mum and the community where I live in the UK and my mum's church where she goes to pray for me regularly.

I am sincerely sorry and regret all the mistakes and troubles I have been involved or caused to members of the public here in the UK. I often feel hopeless because what has been happening to me; and I would like to appeal that my personal circumstances are given fair consideration by the judge such that the judge would find it in his/her gentle and kind heart to deal with my situation and show compassion by allowing my appeal. I am emotionally disorientated and very unhappy with myself for what I have done. I promise to try my utmost best to turn a new leaf and become useful to myself, my mum, my community here in the UK. I believe that if my leave to remain application under the human rights my mental issues, private and family life together was granted I would possibly have by now established myself positively here in the UK by way of securing

employment and seeking to find a girlfriend with whom to settle down to build a life together. I have remained very miserable in the UK since my application was refused. It is because the refusal decision shattered my hope and the plans and I have to rebuild my future. The decision has not helped my situation in any way or form.

If forced to leave the UK I will be devastated, very lonely, isolated and rendered helpless and hopeless in the DRC and also be subjected to serious health and safety risks due to my ongoing mental health issues as I continue to rely immensely on the support I receive from my mother and the available prescription drugs given to me here in the UK. I doubt if those drugs are available in DRC and even if they are I surely cannot afford to buy them there.

I plead that the Secretary of State's decision in refusing my application which I believe does sit unwell with my human rights be overturned (sic). This is because the decision failed to consider my established family and private life in the UK and overlooked my ongoing serious mental health issues."

### **The Evidence of the Appellant's mother**

8. The Appellant's mother attended and gave evidence. She relied on her statement of 2<sup>nd</sup> December 2016 in which she states:

"I am extremely concerned and devastated about the Appellant's ongoing mental health condition. As a mother I am doing everything in my power to assist and support him as he continues his fight to overcome the situation he found himself in concerning his mental condition.

...My son was and remains a very considerate and caring person and we love each other so much. He is a very kind and generous person I do not want to lose him. The effect of any forced physical separation from each other would be devastating to me because I know he is very vulnerable and cannot possibly cope or survive without the proper care and support I have been providing him; and apart from which he also needs adequate provision of his medication and treatments in order to help him cope with his mental health conditions."

9. The Appellant's mother stated that she rarely stays away from her son apart from when she is at work and, when he gets into trouble, it is because he is mixed up with other people involved in criminal activity. She tries to dissuade him from associating himself with individuals who lure him to partake in criminal activities. She is employed as a care worker and continues to look after the Appellant without claiming benefits. She is concerned about her son and worries that he may become too frustrated by his lack of status in the UK, preventing him from engaging in some meaningful activities, which could have been assisting him in his fight

against his mental health conditions including taking up a job and/or going back to school.

10. She also relied on her witness statement of 20<sup>th</sup> June 2017 in which she states:

"[The Appellant] left home when he was about 17 and joined bad company. Before he left home he did not know how to cook at that young age and I did all the cooking for him. In January 2016, he was bailed to reside with me. I then realised that he did not (and still does not) know how to cook so I do all the cooking for him. When he was living in Longbridge in accommodation provided for him by the council he nearly died. I cannot remember exactly when this was but I think it may have been around 1999. I used to check on him and provide him with food and care as often as I could. One day, I went there to see him and knocked on his door but there was no response. I got very worried. As I was going back downstairs I heard a faint voice and went back. He just managed to open the door and I saw him half dead. He had been in bed for two weeks and not eaten so I took him to hospital where he was treated. If I had not gone to his flat that day I believe he would have died.

Further his personal hygiene suffered a great deal when he was away from home. Since he started living with me that has improved because I remind him to attend to his personal hygiene.

I also make sure that he takes his medication regularly. The doctor told me that the reason he kept relapsing was because he did not take his medication regularly and each time he failed to adhere to the medication he relapsed and started committing crimes, neglecting himself and going in and out of mental hospital. Since he started living with me in January 2016 I have made sure that he takes his medication regularly so I physically give him his night medicine and remain with him until he takes it. If I do not do that he will not take it regularly as required. He does not have the ability to organise himself and stick to strict administration of the medicine without being prompted or assisted to actually take them. Further whenever I see any sign of downward turn in his mental health I alert the medical carers who take the necessary action.

Since he has been living with me he has not relapsed because of the support I give him as explained above and I am very aware that if he is not supported he will not survive there for longer than a few months.

I have no surviving relatives in DRC. He left DRC at the age of 13 and has never been back. If he arrived at the airport he would have no clue where to go and there is no one there to look after him and give him the type of support I give him so he will rapidly deteriorate."

11. She was asked some additional questions in which she confirmed that she has a sister who lives in Milton Keynes and a brother who lives in Belgium. She has no aunts or uncles in the DRC and her parents have died. If

deported it would be very hard for the Appellant because he came to the UK when he was very little and he did not know the area.

12. In cross-examination, the Appellant's mother stated that she was in the DRC last year for her father's funeral which took place in April 2016. She stayed in a hostel in the capital city of Kinshasa. The funeral was arranged by her, her sisters and brothers and her father's friends. Those in the DRC arranged it and those in the UK contributed some money. Her father had been living with her step mum who was still alive. She was only 50 her father was 92 when he died. Her step mum had now gone to live with a new boyfriend and she had had no contact with her since then. Some friends in her area, and neighbours, contributed money for the funeral. They could not assist her son on return because her father's friends could not support a young man like the Appellant. She did not have a telephone number for them and had not attempted to contact them. She was not able to write because the post took too long. Her son has a mental health problem and if he was returned to the DRC no one would be able to care for him. She could not go back there because she was working as a care assistant and there were no care homes or nursing homes there. She did not earn enough money to pay someone to look after her son in the DRC and none of her other family members could help. Her sister was a widow with children and her brother had fallen on very hard times.
13. The Appellant had lived with her since January 2016 and she made sure he took his medication. She did not know why he continued to commit criminal offences. When she goes out to work or to the church, and when the Appellant goes out, she does not know what he was doing. She accepted that even though he was taking medication he was still committing criminal offences and he had been sent to prison since he had been living with her. When he had been in her house he had not gone to prison before, but he had told her that he was going to court and he did not come back. When asked what she meant in her statement when she said that the Appellant had not relapsed since he had been living with her she stated that when he was in her house he never went to prison before. He had told her he had to go to court and he did not go back.
14. The Appellant had not lived with her for twenty years. He had been living alone and she used to visit him and clean his house. When he was sentenced to two years' imprisonment for robbery, she was not looking after him. He was not calling her either and so she went to Dagenham police station to find out where he was. They did not tell her that he was in prison. She stated that the Appellant's problems were because he did not have a right to stay in the UK and therefore he could not earn money to support himself. He was unable to work and it was hard for him. If he could get papers to be able to stay he would be able to get a job and move on. He would not be able to get a job in the DRC because the country is in trouble and people are killed every day. There were no jobs there. The Appellant has had no papers since 2002. He did not get indefinite leave to remain with the rest of the family because he was in prison. The Appellant

had told her that if he was granted leave to remain he would move on. He would like a last chance.

15. In re-examination, the Appellant's mother stated that her husband came from Nigeria. He could not return to the DRC if she chose to return with the Appellant because her husband worked here and could not leave his job. Her daughter was still living at home and she had a job outside London and was planning to move out. She did not get on with the Appellant and they always argued about food.

### **Medical evidence**

16. The medical evidence of Dr NK is dated 4<sup>th</sup> January 2016. He confirms that the Appellant suffers from schizophrenia and, when unwell, he experiences bizarre delusions that he is invisible and is accompanied by a spirit. The Appellant experiences second person auditory hallucinations giving him commands and advice. He has problems sleeping and his daily activities are disrupted by taking protracted walks. His symptoms respond well to anti-psychotic olanzapine which the Appellant continued to take on a daily basis. Without medication the Appellant's symptoms would return and his health would deteriorate. There would be a likelihood of 80% relapse within a year if he stopped taking his medication. Dr NK stated that, as far as he was aware, there was no appropriate treatment available for the Appellant in the DRC.
17. In his letter dated 1<sup>st</sup> August 2016, Dr M states that his first meeting with the Appellant was on 22<sup>nd</sup> July 2016 and the purpose was to discuss concerns reported by his mother that he might be relapsing in his mental state. At this meeting, the Appellant denied hearing voices or being fearful of anything. He spent most of his time in his room preoccupied with thoughts about his situation of what would happen to him. He was not interacting with other family members and appeared to be low in his mood and manner. The Appellant denied taking any substances although he admitted to drinking alcohol. At that time, he was attending the probation service once a week. The Appellant was in good physical health. There was no psycho motive retardation or agitation observed in his behaviour and his speech was normal in tone, volume and was coherent. His mood was low but he denied any thoughts of harming himself. He reported good sleep although his concentration was poor. He was prescribed fluoxetine for 28 days and a three day prescription of olanzapine.
18. There was also evidence from ER, a Social Worker. She confirmed that the Appellant had been known to mental health services since 2008. He had regular appointments with a Consultant Psychiatrist and was currently on medication of olanzapine and fluoxetine. The Appellant received a huge amount of support from his family especially his mother who prompted him to take his medication and attend appointments. On 19<sup>th</sup> June 2017, the date of her report, the Appellant was currently free of drugs and



alcohol which had contributed to his continued stable mental state. The support he received from his family had been paramount in ensuring compliance with medication and abstinence from alcohol. Should the Appellant stop taking his medication or using alcohol again this would be a huge detriment to his mental state and potentially require him to return to hospital. He should remain on these medications to ensure continued stable mental state. The ongoing support from his family once discharged from mental health services would be his main support network. The only area of stress for the Appellant and his family was the ongoing court appearances and the uncertainty of his legal status.

19. The letter of 4<sup>th</sup> December 2015 from SC, a mental health social worker at IRC The Verne, states that the Appellant has 4 GSCE's and achieved a L2 City and Guilds qualification in Business studies. He has had formal employment with an agency; working at Ford Garage fixing cars, in security and car parking. He became unwell and was unable to continue working. He had good insight into his mental health and living with schizophrenia. He was calm and relaxed with good eye contact. There was no evidence of psychotic features and the Appellant was reasonably kempt and dressed in his own clothing. At that time, he was prescribed 20mgs of olanzapine

### **Background material**

20. At page 54 of the Appellant's bundle, there was evidence that those with mental health issues were stigmatised. Many people believe those suffering from mental health disorders to be associated with witchcraft and sorcery and, therefore, would turn to traditional healers rather than mental health services. There was also evidence at page 41, (WHO - Mental Health Atlas 2011 - Department of Mental Health and Substance abuse) that the majority of primary healthcare doctors and nurses have not received sufficient in service training on mental health within the last five years. Officially approved manuals and the management and treatment of mental disorders were not available in the majority of primary healthcare clinics. Official referral procedures for referring persons from primary care to secondary/tertiary care do not exist. Referral procedures from tertiary/secondary care to primary care also do not exist. Prescription regulations authorised primary healthcare doctors to prescribe and/or to continue prescription psychotherapeutic medicines, but with restrictions. The Department of Health does not permit primary care nurses to prescribe and/or continue prescription of psychotherapeutic medicines. Official policy does not permit primary healthcare nurses to independently diagnose and treat mental health disorders within the primary healthcare system.
21. In the refusal letter, the Respondent relies on the Democratic Republic of Congo Information and Guidance which states that there is sufficient care and support for cases of mental illness. There were suitable facilities for

the Appellant. He would have access to prescription drugs because he could be financially supported by his family and pay for them.

22. In the Democratic Republic of Congo Mental Health Profile – Psychology in Africa August 2013 report, it states: Mental health is part of the primary health care system. Actual treatment of severe mental health disorders is available at the primary level. Mental health is being included in the primary health care and process charts are being defined for mental disorders. Regular training of primary care professionals is carried out in the field of mental health. The Government also partially supports some charitable organisations like SOSAME that provide mental health services. There are no community care facilities for patients with mental disorders. There is one mental health care centre.

### **Submissions**

23. Mr Melvin relied on the Reasons for Refusal Letter and his written submissions handed up on the last occasion. The relevant cases were N [2005] UKHL 31, MM (Zimbabwe) [2012] EWCA Civ 270 and GS (India) [2015] EWCA Civ 40. The threshold was a high one. Absent other Article 8 factors, medical evidence was unlikely to affect the outcome of appeals that did not reach the ‘very exceptional’ test in the Article 3 analysis. The absence or inadequacy of medical treatment, even life preserving treatment, in the country of return could not be relied on at all as a factor engaging Article 8. Where Article 8 was engaged by other factors, the fact that treatment may not be available in the country of return, may be a factor in the proportionality exercise.
24. Mr Melvin submitted that Paposhvili v Belgium (App No 41738/10, 13.12.16) was not binding on this court and, in any event, it turned on its own facts. There was a threshold of exceptionality and it had not been met in this case. There was little risk of deterioration of the Appellant’s health on return in any event. The Appellant had not established family life with his mother. He was 37 years old and there were no circumstances over and above normal emotional ties to establish such dependency. The Appellant had lived apart from his mother for 21 years and he had only been bailed to her address because he had nowhere to live at that time. She offered support and food, but had been unable to prevent his further offending. In fact, it made little difference where the Appellant lived in terms of his offending behaviour. Since his release from imprisonment and the imposition of a deportation order the Appellant has continued to offend. The Appellant’s deportation was in the public interest.
25. Mr Melvin did not accept that there was nobody in the DRC, relatives or otherwise, who would be able to assist the Appellant. In any event, family members in the UK were working and could support him financially. The Appellant seeks leave to remain to take a job and support himself, and one last chance to reform. There was no reason why he could not support himself in the DRC. Medication and support for his mental health condition

was available. The Appellant sees a Social Worker occasionally and his GP gives him a repeat prescription. He has stated that, if he is granted leave, he would apply for a job and move on. There was no evidence from the mental health providers that this was not possible. Therefore, on the facts of this case, the Appellant's mental health did not prevent him from working. There was nothing in the Social Worker's report which dealt with his offending and there was no report from a Consultant Psychiatrist. In fact, there was no new evidence of the Appellant's mental health since the hearing before First-tier Tribunal Judge Walters. There was no deterioration in his wellbeing. He has committed 40 offences over a lengthy period. The public interest outweighs the Appellant's private life. He has remained in the UK without leave since 2002 and his mental health was not such that it was an overriding factor. Mr Melvin invited me to dismiss the appeal.

26. Mr Pipi relied on his skeleton argument and the extracts from Paposhvili set out therein:

“183. The Court considers that the ‘other very exceptional cases’ within the meaning of the judgment in N v UK paragraph 43 which may raise an issue under Article 3 should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy. The Court points out that these situations correspond to a high threshold for the application of Article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness.”

...

188. As the Court has observed above, what is in issue here is the negative obligation not to expose persons to a risk of ill-treatment proscribed by Article 3. It follows that the impact of removal on a person concerned must be assessed by comparing his or her state of health prior to removal and how it would evolve after transfer to the receiving State.

189. As regards the factors to be taken into consideration, the authorities in the returning State must verify on a case by case basis whether the care generally available in the receiving state is sufficient and appropriate in practice for the treatment of the applicant's illness so as to prevent him or her being exposed to treatment contrary to Article 3. The benchmark is not the level of care existing in the returning State; it is not a question of ascertaining whether the care in the receiving state would be equivalent or inferior to that provided

by the healthcare system in the returning State. Nor is it possible to derive from Article 3 a right to receive specific treatment in the receiving state which is not available to the rest of the population.

190. The authorities must also consider the extent to which the individual in question will actually have access to this care and these facilities in the receiving state. The Court observes in that regard that it has previously questioned the accessibility of care and refers to the need to consider the cost of medication and treatment, the existence of a social and family network, and the distance to be travelled in order to have access to the required care.

191. Where, after the relevant information has been examined, serious doubts persist regarding the impact of removal on the persons concerned - on account of the general situation in the receiving country and/or their individual situation - the returning State must obtain individual and sufficient assurances from the receiving State as a precondition for removal that appropriate treatment will be available and accessible to the persons concerned so that they do not find themselves in a situation contrary to Article 3.

192. The Court emphasises that, in cases concerning the removal of seriously ill persons, the event which triggers the inhumane and degrading treatment and which engages the responsibility of the returning State under Article 3 is not the lack of medical infrastructure in the receiving state. Likewise, the issue is not one of any obligation for the returning State to alleviate the disparities between its healthcare system and the level of treatment existing in receiving state through the provision of free and unlimited healthcare to all aliens without a right to stay within its jurisdiction. The responsibility that is engaged under the Convention in cases of this type is that of the returning State, on account of an act - in this instance, expulsion - which would result in an individual being exposed to a risk of treatment prohibited by Article 3."

27. On that basis, Mr Pipi submitted that there was no requirement that the high threshold set out in N applied in this case. The medical evidence showed that when the Appellant did not take his medication he was likely to relapse. Dr NK stated that he suffered from bizarre delusions and these would expose him to a risk of inhumane and degrading treatment on return. It was not the case that the authorities would mistreat him, but there was an absence of care such that the Appellant would be stigmatised by the wider community and, as his situation deteriorated, he would be at risk of inhumane and degrading treatment. The treatment available in the DRC was not sufficient to prevent the Appellant from deteriorating such that, coupled with social stigma, the Appellant would not receive the required care and would be treated by society at large or by mental healthcare professionals in an inhumane and degrading way in breach Article 3. There was no need to establish a total absence of care.

28. Mr Pipi submitted that the Appellant had established family life with his mother. There was ample evidence in his statement and in his mother's oral evidence to show more than normal emotional ties. The Appellant was dependent on his mother to have a decent quality of life. She was helping him with his personal hygiene and his medication. Although, the Appellant had continued offending whilst on medication, part of the problems had arisen because of his arguments with his sister and he had started going out and getting into trouble. The Appellant's mother had confirmed that he and his sister argued and his sister was planning to move out. When she had done so, the Appellant would have no incentive to leave the house and therefore would not encounter those people who get him into trouble. Whether there were friends or relatives who could assist him in the DRC was not relevant because they would be unable to cope with the Appellant's mental health condition and his behaviour. The Appellant will only be able to obtain work if he keeps taking his medication and his condition is stabilised. This was only possible with the support of his family. He would be unable to work in the DRC because he would not be able to stabilise.
29. Mr Pipi relied on the remaining points in his skeleton argument. In SSHD v Kamara [2016] EWCA Civ 813, the court held that the concept of a foreign criminal's integration in the country to which it is proposed that he be deported, as set out in Section 117C(4) and paragraph 339A, is a broad one. It was not confined to the mere ability to find a job or to sustain life while living in the country there. ... The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider, in terms of understanding how life and society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day to day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private life.

## **Findings and conclusions**

### Article 3

30. The Appellant left home at the age of 17 years old and was diagnosed with schizophrenia when he was 19 years old. He has not lived with his mother for 20 years during which time he has lived independently and been able to administer his own medication. He was bailed to his mother's address in January 2016. She accepts that she goes out to work and church and there are times when she does not know where the Appellant is. He accepts that he does not inform his mother of his whereabouts. I find that the Appellant's mother has little control over the Appellant's actions.

31. The evidence from the Appellant is that he forgets to take his medication if he is not reminded. The evidence from the social worker is that his mother prompts him to take his medication. I do not accept that she has been responsible for administering his medication. The situation is not such that the Appellant is unable to treat himself because he is too ill to do so. I find that the Appellant is able to administer his own medication because he has been able to do so in the past and his mental health has not deteriorated such that he is now unable to do so.
32. The Appellant's mental health is not such that he is unable to seek help or obtain medication. He is not so ill that he requires the help of his mother to be able to function. The Appellant's mother is able to provide financial support for him. The medical evidence indicates that the Appellant's condition is controllable if he is prescribed the relevant drugs. He has an insight into his condition and is able to function independently. It is clear from his statement that the Appellant appreciates the consequences of his actions. He blames his lack of status for his inability to get a job. He is not prevented from gaining employment because of his schizophrenia
33. There was no up to date material before me on the availability of mental health services or treatment for schizophrenia in the DRC. Dr NK stated that he was not aware of appropriate treatment. The background material before me is dated 2011 and 2013 and shows that there are very limited mental health facilities in the DRC. I accept that the treatment may not be equivalent to that in the UK and the Appellant may not be able to obtain the same drug. However, there was insufficient evidence before me to show that the Appellant would be unable to obtain drugs to treat his schizophrenia.
34. The Appellant has failed to show that there would be a real risk, on account of the absence of appropriate treatment in the DRC or the lack of access to such treatment, of being exposed to a serious rapid and irreversible decline in his state of health resulting in intense suffering. On the evidence before me the threshold in Paposhvili is not met. On the evidence that has been produced the Appellant's deportation would not result in a breach of Article 3.

## Article 8

35. The Appellant is a foreign criminal and the deportation of a foreign criminal is in the public interest. The Appellant has been sentenced to two years imprisonment and therefore the public interest requires his deportation unless one of the exceptions in section 117C applies. The Appellant has been living in the UK for 26 years from the age of 13. He had leave to remain until 2002 and therefore the majority of his residence has been unlawful. He cannot bring himself within Exception 1 and Exception 2 does not apply.

36. He has been living with his mother, since he was bailed in January 2016, as a matter of necessity. He had not lived with her for 20 years prior to that. She appears to be able to exercise little control over him and he has still been committing offences. The evidence before me from the Appellant's mother and in his witness statement does not show more than normal emotional ties such that he has established family life with her. She is doing her best to help him, but that does not amount to family life for the purposes of Article 8.
37. Even if I accept that the Appellant has established family life with his mother, the interference with his family and private life is in accordance with the law and necessary in a democratic society. The remaining issue is proportionality.
38. The Appellant has been committing crimes throughout his adult life. His first conviction was in February 2000 for possession of a controlled drug. He has committed 40 offences and has 27 convictions. The Appellant, on his own evidence in his witness statement, has not sought to improve his situation. The weight to be attached to the public interests in his deportation is significant.
39. I find that the Appellant has failed to provide sufficient evidence to show that he could not obtain treatment in the DRC for his schizophrenia. His condition is not so serious that he is unable to function in any meaningful way and there was insufficient evidence to show that he would be unable to integrate into society because of his mental illness, notwithstanding the evidence of social stigma.
40. Accordingly, I find that the public interest in deportation outweighs the Appellant's right to family and private life. The Appellant cannot satisfy the exceptions in Section 117C and his deportation is proportionate. I dismiss his appeal.

### **Notice of Decision**

**The appeal is dismissed**

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

**Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.**

**J Frances**

Signed

Date: 27<sup>th</sup> October 2017

Upper Tribunal Judge Frances

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

**J Frances**

Signed

Date: 27<sup>th</sup> October 2017

Upper Tribunal Judge Frances