Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA 00243 2013

THE IMMIGRATION ACTS

Heard at Victoria Law Courts, Birmingham	**Determination Promulgated**
On 2 July 2013	**On 15 July 2013**

Before

UPPER TRIBUNAL JUDGE PERKINS
UPPER TRIBUNAL JUDGE M^{C}KEE

Between

A--- V---

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms F Clarke, Counsel instructed by Fadiga & Co Solicitors
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

We direct that the appellant be identified only by the initials AV in connection with these proceedings.

1. The appellant is a citizen of the Democratic Republic of Congo. He was born in October 1993 and so is now 19 years old. He appealed to the First-tier Tribunal the decision of the respondent on 22 January 2013 to make him the subject of a deportation order. It is plain from the face of the Notice of Decision that the decision was made under Section 3(5)(a) of the Immigration Act 1971 because the Secretary of State has deemed that the appellant's deportation is conducive to the public good. This is not a case of "automatic deportation" under the UK Borders Act 2007. Automatic deportation does not apply to this appellant's circumstances because the reason for making the appellant the subject of the order is that he was convicted of a criminal offence whilst still a minor and Section 33(3) of the UK Borders Act 2007 provides that a foreign criminal cannot be subject to

"automatic deportation" by reason of a conviction sustained when he was under the age of 18 years.

2. The Grounds of Appeal to the First-tier Tribunal allege that removing the appellant would be contrary to the United Kingdom's obligations under Articles 3 and 8 and contrary to the United Kingdom's obligations under the 1951 Refugee Convention.

3. According to ground 2(b):

> "consequently, the appellant faces indefinite imprisonment, torture degrading treatment and death, if returned, and for these reasons, the Certificate under Section 72 of the Nationality, Immigration and Asylum Act 2002 should be set aside and not upheld."

4. We find this puzzling. A person who would otherwise be a refugee is excluded from the protection of the Convention if he is convicted of a particularly serious crime and constitutes a danger to the community in the United Kingdom. Rebuttable statutory presumptions identify circumstances when a person will be presumed to be convicted of a particularly serious crime and constitute a danger to the community of the United Kingdom but we know of no means by which a person who is excluded from the protection of the Refugee Convention can bring himself within the scope of that Convention purely by showing that he would be at risk in the event of return even if he faced a high degree of risk of the very worst kind of ill-treatment. Such a person may very well be entitled to rely on Article 3 of the European Convention on Human Rights but that is a different point.

5. It has long been the appellant's case that he entered the United Kingdom in June 2005 with his sister. His mother was already in the United Kingdom. His mother had claimed asylum, unsuccessfully, and an appeal against that decision was dismissed in 2004. The appellant applied for asylum shortly after arrival. The application was refused and an appeal against that decision dismissed by Immigration Judge Cheales in a determination promulgated on 2 October 2007. The appellant did not give evidence in this appeal (he was then still not quite 14 years old) and the judge dismissed the appeal largely because of the unreliability of the appellant's mother's evidence.

6. Notwithstanding this history the appellant and his mother and sister were all given indefinite leave to remain in the United Kingdom in about February 2008.

7. On 14 March 2011 the appellant was involved in a criminal enterprise that led to his pleading guilty to offences committed jointly with two others of aggravated burglary and possessing an imitation firearm. The aggravating feature of the burglary is that the three defendants were armed with a knife. Additionally they had in their joint possession an imitation firearm was described as a "BB gun". On 15 July 2011 Mr Recorder Nicholas Cartwright sentenced the older of the two co-accused to four years eights months' detention at a young offender institution and sentenced the appellant and a co-accused, who were both 17 when they committed the offences, to three and a half years' detention.

8. We set out below the opening two paragraphs of the Recorder's sentencing remarks. It is important that anyone reading this determination understands that we appreciate fully just what was involved. He said:

> "Z- R-, A- V-, A- N- , this was a well-organised offence with professional hallmarks. The three of you obviously planned the offence together before it was committed. You targeted a house where you expected there to be valuable items for taking. You expected the house to be occupied otherwise you would not have taken the knife, the imitation firearm and worn balaclavas. You had obviously obtained the knife and the imitation firearm with the purpose of committing this offence. You wore masks and or balaclavas. You wore gloves plainly to avoid leaving fingerprints. The window of the front door was broken and the three of you entered during the hours of darkness.
>
> You, A- V-, had the imitation firearm. You, N-, a knife. Some violence was used, pushing over one of the occupant into the television but it was the presence of the weapons that plainly deterred further resistance from the two people left inside after R- - B- - had run out and call the police. Whilst you took turns to guard the victims for about 20 minutes, the house was comprehensively ransacked by those who were not keeping guard; anything of value was collected ready to be taken. L- H- originally was terrified, although the fact that no actual violence was used led her to become less frightened to the extent that she expressed in her statement. R- - K- was scared at first; by that I infer that she became less frightened because no actual violence was used beyond pushing him over. But R- N- is now afraid to even sit in his own house, quite understandably given what happened. The offence was only thwarted because the police did turn up after 20 minutes and caught the three of you re-handed inside the property, although you, A- V-, tried to blag your way out of it with some lies."

9. The appellant was informed by immigration officials that deportation action would be taken against him and on 19 March 2012 the appellant made written submissions explaining why he should not be deported. He sent a letter on 26 February 2012 and, by letter of 19 March 2012, his representatives, Fadiga & Company, sent something entitled "SUBMISSIONS THAT EXCEPTIONS TO AUTOMATIC DEPORTATION APPLY ON GROUNDS OF HUMAN RIGHTS CONVENTION, ARTICLES 2, 3 AND 8 AND THE REFUGEE CONVENTION".

10. On 22 January 2013 (the letter is dated 2012 but that must wrong because it refers to correspondence in August 2012 –see paragraph 33) the respondent wrote to the appellant a letter under the heading "Application of 33(2) to an asylum claim/reasons for deportation."

11. This letter is not an entirely satisfactory document. We consider it more carefully below. It includes at paragraph 20 the rather startling conclusion that that appellant had not "established a genuine fear of return to Iraq". Nevertheless it is clear that the respondent did not believe the appellant's core case and in particular did not believe that the appellant's mother is of Hema ethnicity. The asylum claim was formally refused at paragraph 41.

12. The part of the letter beginning at paragraph 32 is under the heading "Liability for exclusion from Convention protection". It is pertinent not only for that reason but for illuminating to some extent the respondent's

decision to deport the appellant. It asserts that by reason of Section 72(6) of the Nationality, Immigration and Asylum Act 2002 it was open to the appellant to rebut the presumption that he constituted a danger to the community but he had not done that. The letter noted that the appellant had been able to show that he had behaved responsibly in prison and had been commended for some his conduct as a prisoner. However at paragraph 34 the writer drew attention to the appellant's comments in an "undated" letter (it is the letter that the appellant sent on 26 February 2012) where he said:

> "I understand my conviction may seem serious". The letter continued, "it considered that you have failed to take ownership of the seriousness of the crimes you have committed."

13. It went on to say that the appellant had provided no evidence to show that he was rehabilitated or had begun the rehabilitation process by attending courses and so on. We consider this below at paragraph 40.

14. The First-tier Tribunal dismissed the appeal.

15. Before considering the First-tier Tribunal's Determination there are two comments we need to make.

16. Firstly, the grounds of appeal to the Upper Tribunal suggest that the First-tier Tribunal was wrong to conclude that the appellant had a "medium risk of re-conviction". The most recent evidence, being a letter dated 20 March 2013, suggested that the risk of conviction was low. This is correct but the grounds should have made it plain that the letter relied on to support that contention was not before the First-tier Tribunal. It was dated after the First-tier Tribunal hearing and whatever can be said against the First-tier Tribunal it cannot be criticised for not considering a letter that had not even been written when it heard the case.

17. Secondly, the grounds refer to the case of Maslov v Austria [2008] ECHR 546. According to the Secretary of State's Response to the grounds of appeal under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008:

> "the appellant did not fall within Maslov as he was not a settled migrant who had spent the majority of his adult life in the UK with leave to remain but an illegal entrant who committed a very serious crime".

18. This assertion is wrong. The appellant is a settled migrant. He appears to have entered the United Kingdom illegally but he had unconditional leave to remain in the United Kingdom since 2008. The Response was misleading and impacted wrongly on our initial preparation. The Response was settled by a Senior Presenting Officer whom we regard as experienced and conscientious. This misleading observation should not have been made and we suspect it was an example of the consequences of the Secretary of State's officers having to respond to grounds for permission to appeal without seeing the whole file. It does not encourage us to have confidence in the Secretary of State when mistakes like this happen.

19. Further, as we explain when we consider Maslov, it is not determinative of the appeal that the appellant did not spend the majority of his adult life in the UK.

20. Before us Mr Smart for the respondent conceded that the First-tier Tribunal had erred in law. The First-tier Tribunal treated the appeal as if it was an appeal against automatic deportation. In fairness to the First-tier Tribunal, both parties had produced material suggesting that this was an appeal against "automatic deportation" but it is not. This erroneous classification of the appeal is not necessarily irredeemable but it makes it very difficult to sustain an argument that the First-tier Tribunal had read the papers and considered the arguments properly when it could not identify accurately the kind of appeal it was determining.

21. Further, the First-tier Tribunal did not refer to the decision in Maslov or, much more importantly, show proper appreciation of its significance. In a case of this kind the omission is irredeemable.

22. We therefore set aside the decision of the First-tier Tribunal.

23. Mr Smart reminded us of the decision in Bah (EO (Turkey) – liability to deport) [2012] UKUT 00196(IAC). We have to ask ourselves if the appellant is liable to deportation. Clearly he is a foreign criminal who has committed a serious offence. We are not aware of any policy that would exclude him from deportation. It was the appellant's case before us the she *should not* be deported, rather than *could not* be deported, and, although we recognise the importance in a case such as this of deciding if the appellant is liable to deportation it has not added much to our deliberations to answer the question affirmatively.

24. That being so, it is for the appellant to show that he is entitled to international protection or that removing him would be contrary to the United Kingdom's obligations under the European Convention on Human Rights but it is sufficient for him to show that there is real risk of his being ill treated in the event of his removal. To the extent that a burden and standard of proof is relevant when balancing the consequences of removal to the appellant and those close to him against the imperative to remove him in the public good it is for the respondent to show that removal is justified.

25. We confirm that we have not made any findings of fact without considering first the evidence as a whole. This Determination has been made by two judges. There have been several drafts. If, for example, the order in which points are considered or the place where comments are made on the evidence, creates the impression that points have been decided piecemeal then the impression is wrong.

26. This is clearly not a case where the appellant can succeed under the immigration rules. Although he has lived in the United Kingdom since 2005 when was aged 11 years he has not lived in the United Kingdom for more than half of his life. However we do not accept that the amended immigration rules can serve as a substitute for a full consideration of the appellant's claim under article 8 of the European Convention on Human

Rights (except, probably, in rare cases that will be obvious when they occur, see Nagre v SSHD [2013] EWHC 720 (Admin)) (see, for example, Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 60 (IAC).

27. We heard submissions from the parties.

28. It was not argued vigorously before us that the appellant is a refugee because of his ethnicity and, for the avoidance of doubt, we make it plain that the appellant has not shown that he risks serious ill treatment for a reasons that could qualify him for international protection as a refugee under the Refugee Convention, the Qualification Directive, or at all.

29. It was also argued before us that the appellant cannot be returned because, by reason of his conviction, he can expect to be detained and thereby incur a risk of really serious ill-treatment in the event of his return. We do not accept that this would amount to persecution for a reason known to the Refugee Convention or the Qualification Directive but it could lead to the appeal being allowed on human rights grounds with reference to article 3 of the European Convention on Human Rights.

30. There is clearly considerable evidence to support this contention. The appellant exhibited a letter from His Excellency Barnabe-Kikaya-Bin-Karubi who is the Ambassador of the Democratic Republic of Congo in the United Kingdom. The letter is dated 16 August 2012 and is addressed to Mary Glindon MP. It corrects a misunderstanding arising from remarks attributed to the Ambassador that were either made unintentionally or misreported. However the letter continued:

> "nevertheless, people who are being deported for having committed crimes in the UK are held in custody for a period of time to allow the Congolese justice system to clarify their situation".

31. We have paid particular attention to a Report of Fact Finding Missions DRC between 18 and 22 June 2012 in the appellant's bundle. We do have concerns about the fate of a person detained in the Congolese justice system. There are reports of detainees being ill treated and the concerns are compounded by the difficulties associated with visiting prisoners. However we recognise that the government of France has provided evidence of returning people successfully although none of the examples given where people who had been convicted of criminal activities in France.

32. We accept that the United Kingdom authorities would not identify the appellant as an offender to the authorities in the DRC but we are impressed with the contention in the grounds that the appellant's voice and manner would identify him as a person who has been away from the DRC for some years. We find that the authorities would be likely to question him and that the reason for his return would become clear. We have decided not to investigate this further because, for reasons that we will explain with more care below, we have decided to allow the appeal on human rights grounds with reference to Article 8 of the European Convention on Human Rights because of his circumstances in the United Kingdom and his lack of experience of the DRC rather than because of any risk of his being detained on arrival.

33. It is convenient to explain here our reasons for directing that the appellant be identified only by his initials. We recognise that the may well be public interest in this decision. It would be an unwelcome irony if we are wrong and the case has to be looked at again if the appellant could say that his need for international protection had been increased significantly because of the publicity that his case had attracted.

34. No oral evidence was called before us. We have looked at the documents in the appeal.

35. The appellant said in his asylum interview (Concluding Questions) that:

> "I've got all my life here. I have no contact with anyone in the Congo or know anyone there. I have nothing there, no-one to look after me, like a different planet. Depend on my Mum for everything."

36. His mother said in her statement that she was "distressed" at the thought of the appellant living on his own in the DRC.

37. The respondent's case is somewhat equivocal. The respondent did not believe that the appellant had left the DRC because his father was taken away. However the letter of 22 January 2012, although superficially impressive, contains paragraphs that are not, or should not be, relevant to the decision. For example there are passages explaining why the appellant cannot rely on rules that preserve some relationship with his children or partner but it has never been the appellant's case that he has such relationships. One of the paragraphs under the heading "Private Life" explains how he can maintain contact with his wife. Again, this shows no appreciation of the appellant's case. He does not have a wife.

38. There is no reason to doubt the appellant's claim to have arrived in the United Kingdom in 2005 or to find that he has returned to the DRC after he left. We are therefore surprised to read (on page 11 of the letter):

> Furthermore, it is considered that you retain ties with the Democratic Republic of the Congo. Although you have been resident in the United Kingdom for 7 years, you spent your formative years in the Democratic Republic of Congo, where you have established your first social relationships and there are no grounds to suggest that you are estranged from the culture of the Democratic Republic of the Congo.

39. Put simply we completely disagree with this observation in almost all respects. We have no idea what "ties" are thought to have been retained or what evidence supports such a view. We do not accept that the first 11 years of life are the "formative years" for a young man. He will not remember much before he was aged 5 years and hardly anything before he was aged 3 years. His formative years were not in the Democratic Republic of Congo but in the West Midlands where he grew up, went to school and has friends. We do not accept that any social relationships that he established before he came to the United Kingdom are likely to be of any use to him now. We acknowledge that he obtained an A* grade GCSE in French. This is relevant to life in the DRC but does not undermine our finding that by reason of an absence of 8 years and only childhood memories before then, the appellant is estranged from the culture of the

DRC. If this paragraph in the respondent's letter is intended to justify the appellant's removal then it fails.

40. As indicated above, the appellant wrote a letter on 26 February 2012. This is where he said that "I understand that my conviction may seem serious". That is not all that he said in this letter. We set out below the entire paragraph from which the respondent quoted selectively. The appellant is entitled to have his comments considered in context. We have emboldened the phrase that was highlighted by the respondent. We do not think that paragraph 34 of the respondent's letter of 22 January 2013 summarises fairly the appellant's case. The appellant said:

> "I am aware that the UK Border Agency presumed that I pose a danger to the public because of my conviction and the length of my sentence. I would like to rebut that presumption and give evidence to why I believe that I do not pose any danger to the public. **I understand that my conviction may seem serious** and I am surely(sic) sorry for the victims and regretful of my actions. I have never been involved in crimes before, this is my first and only conviction, it was a big mistake and I regret it every day. I had just turned 17 at the time of the offence and I was under a lot of peer pressure from the other people involved. I am no longer in contact with the other people involved and I have kept myself distant from the troublemakers and bad company."

41. Thus it is plain that the appellant began by apologising for his actions, which is clearly a reference to his criminal activities, and "the effect it may have had on the victims". He wished he could go back in time and do the right thing. He claimed that he was young and immature and acted under peer pressure. He described his conduct as "out of character and not something he would have ever thought about doing". He pointed out that the offence was committed about two years before he wrote the letter and that he had grown up in the interim. He claimed to have addressed issues that led him to offend and drew attention to his good behaviour in prison in support of the contention that he had re-organised his life.

42. He then went on to say how the Sandwell Youth Offenders' Team had made a pre-sentence report recommending community service because they felt he was not at risk to the public.

43. The letter is carefully written in legible manuscript. No doubt he had ample opportunity to consider its contents extremely carefully and quite possibly had advice about what he should so but he said what he did.

44. The appellant supported his account with an unsigned statement. It is not dated. It essentially repeats things said elsewhere and so we are able to give it some weight. He says how he missed his family in the United Kingdom when he was in prison.

45. He said:

> "This is my first and only conviction, I have acknowledged that my actions were wrong and I have done everything I have been asked to, I have complied with Rules and I am willing to comply with the probation and any condition opposed [sic] on me in the community. I want to be a normal

> hardworking good citizen and contribute to the UK and have my life back and finally put this horrid experience in the past."

46. He then went on to say how his whole life was in the United Kingdom. He came to the United Kingdom when he was aged 11, after his father had been arrested and taken away. He had grown up in the United Kingdom and was educated in the United Kingdom and had made ties and friendships in the United Kingdom and he was frightened of returning to the DRC.

47. He said that if he was allowed to stay in the United Kingdom he would continue his education and hoped to study at university.

48. We note that the appellant gave evidence before the First-tier Tribunal and was cross-examined. He answered questions then confirming he had spent some time in Kinshasa with his father.

49. There is a statement from his mother, Mrs O- S-. This confirms that she and the appellant's brother and sister are now naturalised British citizens. According to her statement the appellant passed GCSE examinations in English, Mathematics, Science and French and obtained a BTEC First Certificate Level 2 in Travel and Tourism and had enrolled at a local college to study BTEC National Diploma in Business and had completed a one year of a two year course when he was arrested.

50. She described the appellant as a "good hardworking and helpful boy" and that she was shocked about his arrest because he had never been involved in "crime or bad company". She had visited the appellant in prison and, understandably, he was finding life hard. She gave an example of how her other son, D, was struggling without his big brother. D could not discuss with his mother his plans to join a football team in the way he could with the appellant.

51. Paragraph 8 of the statement is particularly telling. There the appellant's mother said:

> "The offences that A- V- has committed are inexcusable, but, he has served his prison sentence as a punishment for his acts. A further punishment to A- V-, by removing him from the UK, where he has lived for the past 8 years, to the DRC, a country he left as an 11 year old child, would be too harsh a punishment. That would not only be too harsh a punishment to A- V- but one to the rest of us his family members, particularly his younger siblings, S- and D-, who have readjusted in this country after our separation in the DRC."

52. She too gave evidence before the First-tier Tribunal and in answer to questions in cross-examination said she had sent money to Kinshasa after she had left.

53. There is then correspondence from other family members and friends. These are printed letters that are substantially similar to points made in manuscript to the Secretary of State. These are not particularly helpful. It is very hard to know the extent to which the writers are expressing their own views and the extent to which they are saying what they think they ought to say. The description of the appellant by his sister as someone

who is “a very caring and kind person, he wouldn’t even hurt a fly” would not be recognised by the unfortunate women who had him intrude in their home, masked and armed. The fact that they were not actually physically hurt helps to the extent that the situation would have been even worse if they had attacked them but this hardly makes for a good point.

54. A letter from a friend of the appellant’s mother expressing the opinion that the appellant is “not dangerous to the community” is again of limited value because it seems to be a theme in this case that no one expected the appellant to commit the offence that he did so that fact that those close to him do not expect him to reoffend is not particularly reassuring. We do not regard these letters as particularly well-informed or objective but we do note that the appellant has close friends or family members who will stand up for him and that is to their credit, if not to his.

55. We do find that it is in the best interests of the appellant’s younger brother and sister that he remains in the United Kingdom because, notwithstanding his criminal conviction, he is a stabilising male influence and we do give weight to their interests because Parliament says that we must, but this element in the case adds little weight to the balancing exercise. It is not a weighty point here.

56. We have considered the Pre-Sentence Report dated 5 July 2011 by the Senior Court Officer Mr Jim Pearson which includes a version of events in which the appellant seeks to play down his responsibility. There was no trial of the issue or any basis of plea entered before the court as far as we are aware.

57. Nevertheless, we find paragraph 2.6 of the report dated 5 July 2011 more helpful where the Mr Pearson says:

> “Despite A- V-’s different version of events to those from the Crown Prosecution Service documents he is still very upset about being involved in this offence. He stated that he felt awful about the impact that his actions would have had on the victims. A- V- made it clear that he was ashamed about what he had done and was upset that he would now be viewed as a criminal. He was also able to express significant and comprehensive remorse for his actions and was seriously concerned about the long-lasting trauma he has caused. These levels of victim empathy are very positive and indicate a clear potential for A- V- to comply and learn from a Community Order.

58. There is also a report from one Vicky Simmons, a Court Officer with the Sandwell Youth Offending Service. Her report is not dated. We think that it has to be read with the Pre-Sentence Report. She concludes her report by saying:

> “A- V- has demonstrated the ability to comply and work well within the community. Furthermore he has demonstrated a high level of commitment and co-operation throughout his involvement with the Bail Support Programme. He is an articulate young man who is able to comprehend the seriousness of his offence and the express a desire academically achieve in life [sic]. He has been a pleasure to supervise and has always been polite and well-mannered to Youth Offending Officers.”

59. There is a bundle from the appellant under the heading "Appellant's Prison Records Bundle".

60. The report by the Offending Supervisor, Mr Rhys Thomas dated 5 March 2013 is helpful. He had supervised the appellant for fifteen months during his incarceration. He said:

> "Please note due to A- V-'s limited involvement in the Criminal Justice System he did not meet the criteria for any Offending Behaviour Programmes (e.g. Thinking Skills Programme) TSB or Controlling Anger and Learning to Manage it (CALM)."

61. The clear implication is that these limited resources would go to the people who clearly needed such training and it was not to the appellant's discredit that he was not qualified to take such a course. The report concluded by saying that the appellant had been compliant throughout his time in custody. His conduct had reached the point where he was trusted to work and supervise others in the prison grounds.

62. The OASys Report of 10 January 2012 is in many ways very similar. Section 2.11 under the heading "Does the offender accept responsibility for the current offence?" is answered in the affirmative and includes the following comment:

> "Despite A- V-'s differing version of events to the police report he is still very upset about being involved in this offence. He stated that he felt "bad" about the impact his actions would have had on the victims". In the interview A- V- made it clear that he was ashamed about what he had done and that he had felt coerced into the offence.

63. A cautionary note is sounded under the heading "Section 7 – lifestyle and associates". It acknowledges that the appellant claimed that since he had been in trouble his lifestyle had changed significantly and that he no longer spent time hanging around in public places associating with whoever presented themselves. Nevertheless, he was still on good terms with one of his co-accused. The appellant said that he trusted the co-accused and that had got him into trouble. He was determined to learn from his mistake.

64. The report also records how the appellant recognised that his own criminal behaviour was unacceptable and that he was ashamed of what he had done.

65. There are then reports confirming the appellant had acted responsibly and even creditably in prison.

66. The conclusion in the letter of 22 February 2013 that the appellant was "assessed as a medium risk of harm to the public from robbery" and a "medium risk of reconviction" seems to arise from a weighting system that acknowledges the previous offences and weaknesses in the appellant's character. It has to be read with the document dated 20 March 2013 from Mr Rhys-Thomas assigning the appellant firmly to the "low" band of risk for likely re-offending.

67. Of course we do not know what the appellant will do in the future. We know that he is a young man apparently capable of benefiting from

education who insists that he has learnt the consequences of being easily led or not standing up to peers who suggest bad things.

68. We know that those with experience who interviewed him found that he was able to appreciate the nature of the wrong that he had done. The rather derogatory observation in the Reasons for Refusal Letter based on a partial reading of a detailed letter prepared by the appellant does not stand up when assessed with the observations of independent people and experienced people with a professional obligation to give an honest and reasoned opinion.

69. We recognise that the ability to keep out of trouble at a time when a person's conduct is under the highest degree of scrutiny is not particularly revealing but it is to the appellant's credit that he has not been in trouble since he has been released.

70. Much more importantly we give considerable weight to the opinions of those who have seen him in custody and seen his reaction to their enquiries about his attitude to offending. We think it is unlikely that he will be in trouble again.

71. It follows therefore that the evidence before us suggests that this offence, bad as it was, is unlikely to be repeated.

72. We remind ourselves of paragraph 75 of the decision in Maslov which states:

> "In short, the court considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile."

73. The appellant has clearly spent a major part (but not a majority) of his childhood and youth in the United Kingdom. He has not always had permission to be in the United Kingdom but he introduced himself soon after arrival. He was brought to the country at the age of 11 years cannot be criticised for the conduct of those who brought him. He has had unconditional leave to remain since 2008.

74. The clear point is this is a young man whose attitudes and understanding has been shaped largely by British society.

75. We also find that he has no particular aptitude for living in the Democratic Republic of Congo. It is not easy to get a clear picture of what would await him there because it has not been possible to rely on things that he has said but there is no reason to think he has been in the DRC since coming to the United Kingdom in 2005.

76. Further, the Democratic Republic of Congo is a difficult country where life is not lived as it is in the United Kingdom. It would be an enormous wrench for him to establish himself there. We avoid the use of the phrase "re-establish" because he has no adult experience of living in that country.

77. The quotation from Maslov is not statute law. It is, we find, a fair summary of the reasoning in an authoritative decision to which we are obliged to

have regard. It ruled on the approach to take when a young person's private and family life had to be balanced against the public good in his being removed.

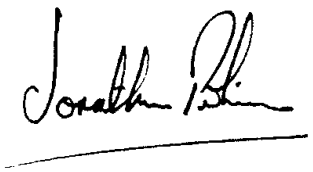
78. The clear meaning of Maslov is that removing a young foreign criminal, such as the appellant, would usually be disproportionate to any proper purpose. The requirement that "very serious reasons are required to justify expulsion" should be well-known to immigration practitioners and Home Office decision makers and should be clear when reasons for the decision are given. We have looked for the "very serious reasons" in the respondent's decision and we have found none. We found the history of a young person convicted of a very serious offence. We do not accept that he is still a danger to the United Kingdom. The evidence points the other way. He is intent on living industriously and there are good reasons to think that he will achieve that. It is well-recognised in European and United Kingdom law that it is wrong to treat a child as if he were an adult and the appellant was not an adult when he committed the offence that has led to all this trouble.

79. Nothing we say here should be seen by anyone as diminishing the seriousness of his criminal activity. It is unusual to start a criminal career with anything as serious as aggravated burglary and possessing a firearm but there is no evidence that this appellant was in trouble before and he was sentenced on the basis that this was his first experience of criminal activity. The punishment, although no doubt wholly justified for what he did, was a condign sentence for a young person, which, if we may respectfully observe, is no more than he deserved. The evidence suggests that he has learned his lesson.

80. We are quite unpersuaded that it is proportionate to remove him from the United Kingdom now that he has completed his sentence.

81. It follows therefore that having set aside the decision of the First-tier Tribunal we allow the appeal on human rights grounds.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 11 July 2013