Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01521/2013

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Determination Promulgated**
On 23rd June 2014	**On 1st August 2014**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR W T

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Haywood, Counsel, instructed by Cale Solicitors
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria born on 26th July 1992. He seeks to appeal against the respondent's decision of 17th July 2013 making him the subject of a deportation order by virtue of Section 32(5) of the UK Borders Act 2007.

2. The appellant's appeal came before First-tier Tribunal Judge Phillips and Miss Singer (non-legal member) for hearing on 12th March 2014. The appellant's appeal was dismissed.

3. Grounds of appeal were submitted essentially on the basis that the principles in the case of **Maslov** had not been applied nor the principles as set out in **Ogundimu (Article 8 – new Rules) Nigeria [2013] UKUT 00060 (IAC).** Permission to appeal was granted on that basis.

   Thus the matter comes before me in pursuance of that permission.

4. The appellant was included as a dependant in the asylum claim of his mother made on 31st January 2000 at port. That application was refused and an appeal lodged. Appeal rights were exhausted on 30th August 2000. The appellant's father entered the United Kingdom on 3rd April 2002 and claimed asylum on arrival. His application was also refused and eventually the appeal was recorded as withdrawn.

5. Shortly after arrival in 2000 the appellant's mother and youngest sibling moved away from Middlesbrough to London leaving the appellant and two of his siblings in the care of another. That care passed to the Social Work Department and he went into foster care in July 2000. In June 2004 the appellant and one of his siblings were returned to the care of his parents now living in London. The parents separated in June 2005 but did not divorce.

6. On 20th June 2007 the appellant was convicted for common assault and attempted theft for which he received a referral order for twelve months. On 16th December 2010 he was convicted at the Croydon Crown Court for robbery and was sentenced to 27 months in a young offenders' institution. On 5th April 2011 he was also convicted for possession of a prohibited firearm and sentenced to six years in a young offenders' institution.

7. On 10th June 2013 the appellant was notified of his liability to deportation and given an opportunity to make representations. At the date of making the deportation order no response had been received to that notice.

8. At the hearing before the First-tier Tribunal a number of witnesses gave evidence including the appellant himself, his mother and father.

9. The burden of the submissions made at that time was that the appellant had come to the United Kingdom when aged 8. He was still a relatively young man having spent most of his life in the United Kingdom. It was argued on his behalf that he had lost any realistic ties with Nigeria.

10. The position as adopted by the respondent was that it was not unreasonable to expect him to return and to readjust to life in Nigeria. The appellant has grandparents and two maternal uncles in Nigeria as well as two paternal uncles, aunts and a paternal grandmother. The appellant

will be able to utilise any qualifications gained in the United Kingdom on return to Nigeria.

11. The position as advanced on behalf of the appellant at the hearing was essentially that he had very few relatives in Nigeria who would be able to help him. Seemingly the mother of his mother now lives in Ghana rather than in Nigeria. The appellant's mother gave evidence that she does not know the whereabouts of her brothers in Nigeria, having lost contact some four years previously. She contended that if the appellant were to return to Nigeria there would be no property and no family. The appellant's father also gave evidence to the effect that he did not have any family left in Nigeria. His parents had died and his brothers were in the United Kingdom. He said there was no family property.

12. The Tribunal was also addressed at length as to the efforts made by the appellant to improve himself by undertaking courses. It was said that he was not a risk to the public.

13. The Tribunal, however, came to the conclusion as to risk that there was no reason to differ from the risk assessment made in the OASys Report.

14. The Tribunal noted the circumstances in **Maslov** and in **Masih**.

15. Notwithstanding the contentions that had been made, the Tribunal at paragraph 93 of the decision found themselves to be satisfied that there remain family, social and cultural ties to Nigeria. They noted that the appellant's father was in the United Kingdom in a business exporting to Nigeria. He had business contacts.

16. Both the appellant's mother and father had been found to lack credibility in the asylum claims which they had previously presented and the Tribunal was of the opinion that the appellant and his parents had sought to discount the possibility that there were family and friends in Nigeria.

17. The Tribunal noted the serious nature of the appellant's offences, the most serious offence being committed when the appellant was aged 18 and therefore no longer a juvenile. The Tribunal considered that the appellant did not meet the requirements of paragraph 399 of the Immigration Rules. He did not show that he had no ties to Nigeria and did not meet the requirements of paragraph 399A of the Immigration Rules. Overall it was found that it was legitimate and proportionate for the deportation to take place.

18. Mr Haywood who represents the appellant relies upon his skeleton argument.

19. He seeks to suggest that in the present case the decision in **Maslov v Austria [2008] ECHR 548** should have been followed by the Tribunal. This was particularly so, in that he suggests that the Tribunal erred in

finding that there were ties with Nigeria such as to meet the requirements in **Ogundimu**.

20. Further he submits that the Tribunal failed to take into account or afford due weight to various relevant and material factors when assessing proportionality, such factors to include the age of the appellant at the time when the offences were committed, the passage of time since the last conviction and the appellant's good behaviour since. Inadequate consideration was given to the importance of family and private life in all the circumstances.

21. Ms Isherwood, on behalf of the respondent, invites me to find that contrary to such contentions the Tribunal was very careful in its analysis of the matters. She invites me to find that the principles as set out in **Maslov** have been enshrined in the Immigration Rules themselves. In any event this was such a serious offence that the considerations of family ties were deemed by statute to be less important than otherwise would be the case.

22. She invites me to find that the Tribunal properly applied the law and the principles to the case.

23. The case of **Maslov** seeks to set out in general terms the principles that should be applied in the deportation of an individual, particularly one that came into the country as a minor and whose offending generally was as a minor.

24. In general terms those principles are as follows:-

    (a) The nature and seriousness of the offences committed by the appellant.

    (b) Length of appellant's stay.

    (c) Time elapsed since the committing of the offences and the appellant's conduct during that period.

    (d) Solidarity of social, cultural and family ties with host country and country of origin.

    (e) Duration of the exclusion order.

25. The court considered 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 as a juvenile. It was however recognised that national authorities enjoyed a certain margin of appreciation when assessing whether an interference with the right protected by Article 8 was necessary in a democratic situation.

26. Mr Haywood relies heavily upon the comments made in the decision of **Ogundimu** and particularly the stress placed upon the importance of establishing that there are realistic family ties. Mr Haywood submits the mere fact that the appellant's father has a business linked to Nigeria is not sufficient in all the circumstances. Mr Haywood also submits that **Maslov** stressed the importance of considering the progress towards improvement since offending and this the Tribunal failed to do or to give due weight to that improvement.

27. Although **Maslov** is clearly of importance in setting out the general principles to apply it is readily apparent from the wording of paragraph 398 and 399 and 399A that those principles have been enshrined within the Immigration Rules.

28. It is the case, as was recognised indeed by the court in **Maslov**, that the more serious the offending the greater the weight should be attached to the public interest in the removal.

29. Thus it is significant to note the hierarchy of seriousness as set out in paragraph 398(a) to (c).

30. In this case paragraph 398(a) is the appropriate passage which applies to the appellant, namely that the deportation of a person in the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least four years.

31. Significantly, therefore, those persons who have been sentenced to a period of imprisonment of at least four years find themselves excluded from paragraphs 399 and 399A because such applies only to those persons in the less serious category of offending as envisaged in 398(b) or (c).

32. The issue of having ties in the home country is one raised in paragraph 399A(b). Such a consideration does not apply in this case because parliament clearly has decided that, for the most serious category of offending, such a consideration should not apply in the proportionality assessment or at any rate should be afforded less weight.

33. Notwithstanding the merits or otherwise of the arguments addressed to me by Mr Haywood in respect of family ties in **Ogundimu**, the reality of the situation is that parliament has decided that for persons who have committed the most serious category of offences the argument as to family ties does not extend to them to the extent that it may apply to others.

34. Similarly arguments about risk and improvement generally are of less significance in the overall consideration of the matter than otherwise perhaps would be the case, given that parliament has decreed that it is in

the best interests of society for those convicted of serious offences to be removed from the jurisdiction. The less serious the offence the more attention should be given to the issue of risk whereas the greater the criminality the less weight should be attached.

35. In this case as the Tribunal noted there are connections in Nigeria with his father. No doubt he can be financially supported by his family and no doubt his father with his connections could find a job for the appellant or at least contacts on his behalf. The Tribunal saw no reason why the appellant could not make his own way in Nigeria.

36. The situation of circumstances over and above the Immigration Rules has been considered in a number of decisions in particular in **Nagre v SSHD [2013] EWHC 720 (Admin)**, in **MF (Article 8 – new Rules) Nigeria [2012] UKUT 00393 (IAC)** and in **Green (Article 8 – new Rules) [2013] UKUT 00254 (IAC).**

37. There may be factors not significantly taken into account in the Rules which may merit the application of Articles 3 and 8 ECHR.

38. The circumstances of the appellant's youth, his family connections in the United Kingdom, his lesser ties with Nigeria or the length of time that he has been in the United Kingdom and his relative youth are all matters that have been envisaged within the Immigration Rules.

39. Despite Mr Haywood's cogent arguments on behalf of the appellant it seems to me to be nothing that is compelling, exceptional or of such a nature that there should be consideration of the appellant's human rights outside of the Immigration Rules themselves. This is not a case where removal would constitute a breach of human rights under Article 3 of the ECHR or would have such a detrimental effect to those family members remaining in the United Kingdom such as would amount to an exceptional or compelling situation. There is nothing to suggest upon Janusi principles that removal would incur undue hardship or suffering .

40. In all the circumstances I do not find there to be any error of law in the approach taken by the Tribunal. It clearly recognised that the appellant fell to be considered under paragraph 398(a) and have taken proper account of all matters that had been urged on his behalf.

41. In those circumstances the appellant's appeal before the Upper Tribunal is dismissed. The original decision of the First-tier Tribunal shall stand namely that his appeal is dismissed in respect of the Immigration Rules and indeed in respect of all matters, including human rights.

Signed Date

Upper Tribunal Judge King TD