Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15857/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 March 2020	**On 29 April 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

LONGWANI NKWABILO
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Radford instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. On 29 October 2019 First-Tier Tribunal Judge Beach dismissed the appellant's appeal on human rights grounds. The appellant has been granted permission to appeal to the Upper Tribunal.

Background

2. The appellant, a citizen of Zambia born on 3 January 2000, entered the United Kingdom as a visitor on 23 January 2001 with leave valid until 13 June 2001. The Judge records the appellant's immigration history between [2 – 6]. The Judge's findings of fact are set out from [45] of the decision under challenge which can be summarised in the following terms:

   a. The appellant arrived in the United Kingdom when he was only one year old as a visitor and has had no lawful leave since. The Judge notes the appellant was a minor and did not make the decision to remain illegally [47].
   b. The appellant does not take responsibility for the offences for which he has been convicted. The psychiatrist notes the appellant was unwilling or unable to explain his actions [48].
   c. The Judge accepts the appellant has not reoffended since April 2018 but notes he has been aware of the threat of deportation since May 2018 as well as potential consequences of deportation given his father is also subject to deportation proceedings [49].
   d. The appellant has undertaken a risk assessment which assesses him as being low risk of reoffending provided he retains family support, his immigration status is resolved, he has access to structured activities, and avoids social peers. It was found to be still too early to see whether the appellant can maintain his lack of reoffending given the factors identified in the psychiatrist's report [50].
   e. The report identified that part of the appellant's offending behaviour is as a result of the appellant becoming aware of his lack of status in the UK and problems that arose as a result, but that is an unresolved issue and an adverse factor that still exists [51].
   f. The Judge finds the appellant is a persistent offender [52].
   g. The Judge finds none of the exceptions in section 117C Nationality, Immigration and Asylum Act 2002 apply to the appellant [53].
   h. The appellant does not have a qualifying child or partner cannot rely on section 117C (5) [54].
   i. The appellant was therefore required to show very compelling circumstances which outweigh the public interest in deportation [55].
   j. The Judge considered the merits of the appeal on the basis the appellant will be returning to Zambia alone [57].
   k. The Judge notes the diagnosis of moderate depressive disorder and associated symptoms of anxiety and the doctor's opinion that the appellant's symptoms would increase if he were removed to Zambia [58].
   l. The Judge finds Dr Birchall, the author of an expert report relied upon by the appellant, has the degree of expertise appropriate in reaching the opinion stated as well as relying on documentary sources and conversations with contacts [59].
   m. The Judge accepts the appellant has not returned to Zambia since he came to the United Kingdom aged 1 and that he will be returning to a country of which he has no memory of living. The Judge finds the appellant will have retained some cultural connection to his own family unit and the wider family in Zambia. The appellant speaks English which is the official language in Zambia and would not face linguistic problems. The appellant's access to the labour market may be hampered if he is unable to access the mainstream, formal employment sector because he does not speak a tribal dialect, but he could in time learn the same. The risk assessment

suggests there could be some cognitive development but the Judge notes the appellant has been able to obtain GCSEs in the UK [63].

n. The Judge notes a Children and Family Assessment stating the appellant is vulnerable encouraging him to seek support although the appellant declined to do so, which the author of the assessment believes was because the appellant wanted to protect his self-image and avoid an analysis of the reality of his situation. The Judge finds the report did not suggest the appellant was particularly vulnerable to exploitation but rather that he was someone who did not want to lose face before his peers [64].

o. The Judge records some concerns about the appellant returning to Zambia. Although it was claimed there had been disagreement within the family about 10 years ago the Judge finds this was not adequately explained. The Judge notes the expert referring to close social relationships in Zambia on tribal lines and did not find the claim the family will be unable to trace family members in Zambia credible. The Judge noted the appellant's mother did not say her family would not seek to support the appellant notwithstanding the disagreement 10 years ago. The Judge notes the appellant is an adult who has some psychological difficulties and some cognitive impairment but is in good physical health. The Judge finds it is likely the appellant would face significant obstacles in reintegrating into Zambia although even if very significant obstacles the appellant could not meet the exceptions section 117C(4) of the 2002 Act as he has not lived lawfully in the UK for the majority of his life. The Judge questions whether the appellant is socially and culturally integrated into the UK given his offending [65].

p. The Judge finds the difficulties in reintegrating into Zambia on their own would not be sufficient to amount to very compelling circumstances [67].

q. The Judge considers factors in the appellant's favour [67].

r. The Judge refers to low risk of reoffending but also appellant's continued minimising of his offending as noted in the pre-sentence report and risk assessment. The Judge expresses concern over the appellant's lack of insight into the reasons for and his responsibility for his offending which includes a conviction of possessing a knife blade/sharp pointed article and an offence of possession of an offensive weapon [68].

s. The Judge find the appellant has lived in the UK for almost all his life, has family in the UK, has supportive parents and a sister, that the relationship with family will be severed by his deportation, although the family will remain in contact and all will do all they can to support the appellant in reintegrating into Zambia. The Judge finds the appellant does not meet the exceptions within section 117C(4) and (5) of the 2002 Act. The Judge accepts the appellant will struggle on return to Zambia but finds he will have the emotional support of his family to assist in reintegrating, he speaks the language of Zambia, any difficulties are not sufficient to amount to very significant obstacles, that although it be a shock to the appellant to return to a country where he has not lived since he was one years old, he has a supportive family in the UK who will assist in integration. It was not found credible UK family could not trace their family in Zambia to request assistance for the appellant when he first arrived there. The Judge notes the appellant is not receiving treatment in the UK for any psychological problems and the evidence did not show no support was available in Zambia. The Judge found it had not been shown very compelling circumstances existed that outweighed the public interest in deportation and that the respondent had shown the decision was justified as necessary and proportionate [69].

3. The appellant sought permission to appeal 10 grounds. The grant of permission to appeal refers to three specific grounds in the following terms:

> "2. I consider it arguable that the Judge erred a set out at b), f) and i) grounds and whilst I do not consider it arguable that the Judge took the wrong approach to Maslov (the appellant is in a very different position to the appellant in Akinyemi who would have been entitled to British nationality if a proper application had been made) it is arguable as set out in a) grounds that the Judge should have considered the significance of all but one of the appellant's convictions having been as a child when considering her overall assessment of proportionality.
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> 3. So far as the other grounds were concerned, the Judge considered the issue of whether the appellant was a persistent offender carefully and the conclusion to which she came appears to be one open to her; the Judge did not reverse the burden of proof because the judge did not conclude that the appellant was a persistent offender because she was not sure whether he would relapse, she concluded he was a persistent offender on the basis of the offences he had already committed and the absence of a sufficient period which had passed to indicate he would remain crime free. I do not see how the Judge had the material available to her to consider how the appellant's lack of insight into the reasons for and the responsibility for his offending might be affected by cognitive impairment or depression. Although the appellant might have some cognitive development issues he had obtain GCSEs and the psychiatrist did not consider him to have a significant global learning disability; there does not appear to have been any material in the psychiatric report which could have suggested that the appellant was not taking responsibility for his offending because of cognitive impairment /depression. The Judge's point at [63] was that the appellant's ability to speak English meant that he would be able to communicate without too much difficulty; she was aware of the separate point about the difficulties of obtaining employment if only English was spoken (see end of the same paragraph). So far as ground J is concerned, at this moment the appellant's father is still in the UK; the appellant cannot have it both ways as the Judge considered the appellant's integration into Zambia as if he would not have the presence of his father to help him integrate.
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> 4. Despite my comments I do not restrict the grounds which may be argued."

Error of law

4. Ground 2(a) asserted legal error in the Judge failing to properly evaluate the relevance of the fact the appellant committed most of his offences as a youth as per Maslov v Austria.
5. At the date of the hearing before the Judge relevant case law indicated that the Maslov criteria did not apply to a person in the United Kingdom unlawfully which is the situation for this appellant. It is not a case of an appellant who is a settled migrant.

6. Relevant cases include, ED (Ghana) v Secretary of State for the Home Department [2012] EWCA Civ 39 in which an appellant came to the UK aged 6 in 1997. Since the age of 13, he had been convicted of several offences including handling stolen goods and possessing an offensive weapon. For much, if not all, of his time in the UK he had been here unlawfully in terms of his immigration status. For the purposes of Maslov v Austria (Application No. 1638/03) the Judge placed emphasis on the fact that the Claimant had been in the UK unlawfully. The Claimant submitted that, although he had been present in the UK unlawfully, the specific facts of his case meant that the test set out in Maslov required very special reasons justifying his removal. The Court of Appeal found that either an individual's presence was "lawful" or "unlawful" in immigration terms. The determination of that status then in turn indicated whether or not the need for "very special reasons" applied in his case. The Claimant could not claim "lawful" status. Therefore as a matter of law, Maslov did not apply to his case and the Judge was entirely correct in the approach he took (para 32).
7. In Richards v Secretary of State for the Home Department [2013] EWCA Civ 244 the Court of Appeal said that the Upper Tribunal correctly held that the important case of Maslov v Austria (2007) 47 EHRR 496 was of no assistance when the appellant had no right to be in this country.
8. In DM (Zimbabwe) [2015] EWCA Civ 1288 it was held that the statement of general principle on deporting foreign criminals established in Maslov v Austria (1638/03) that very serious reasons were required to justify the expulsion of a settled migrant who had spent the major part of his childhood and youth in the host country, did not apply to criminal offenders who were unlawfully present in a country. In any assessment of a person's right to remain in a country under Article 8 of the ECHR, it was important to consider whether he had any right to be there at all.
9. Ms Radford refers in her submissions to the recent decision of the Court of Appeal in CI (Nigeria) v SSHD [2019] EWCA Civ 2027 in which it was explained that the Maslov principles should have been applied to the case of a settled migrant who had lived in the UK from a toddler (although he had not lived legally in the UK for more than half his life). The real distinction was whether a migrant had a right of residence or not; the length/proportion of their time with a right of residence went to weight rather than anything else. It would not be fair to give little weight to private life in a case where the grant of indefinite leave to remain was delayed when CI was a child through no fault of his. CI should not have less weight accorded to the fact he had spent his childhood and youth in the UK than would have been given if he had a vested right of residence for most of that period.
10. It is of importance to note that in CI (Nigeria) the Court of Appeal considered that the law on Maslov was correctly set out in DM (Zimbabwe).
11. The Judge also clearly noted the appellant's date of birth, immigration history, and the date of the commission of the appellant's offences at [2 – 6] in the following terms:

> "2. The appellant entered the UK on 23 January 2001 with leave to enter as a visitor valid until 13 June 2001. On 28 February 2008, the appellant's father applied for leave to remain outside the Immigration Rules. The

appellant, his mother and siblings all dependent on that application. The application was rejected on 11 March 2008 because of non-payment of the application fee. On 27 April 2008, the application was refused. The appellant's mother appealed against that decision. The outcome of the appeal is not known.

3. On 11 October 2011, the appellants mother applied for leave to remain in the UK outside the Immigration Rues. The appellant and his siblings were dependants on that application. On 19 January 2012, the application was refused with no right of appeal.

4. On 7 April 2017, at North London Juvenile Court, the appellant was convicted of affray. He was given a referral order for 6 months and was ordered to pay a victim surcharge of £20.00. On 16 May 2017, the appellant's mother applied for leave to remain outside the Immigration Rules. The appellant was listed as a dependant on that application. The appellant's application was refused on suitability grounds.

5. On 6 September 2017, at Black Country Juvenile Court, the appellant was convicted of possessing a knife/blade/sharp pointed article in a public place and sentenced to 4 months curfew with electronic tagging. On 22 November 2017, at Black Country Juvenile Court , the appellant was convicted of aggravated vehicle taking, driving dangerously on road or place, using a vehicle whilst uninsured, driving otherwise than in accordance with a licence, possessing a controlled drug - Class B, Cannabis and conviction of an offence whilst a youth rehabilitation order was in force. The appellant was disqualified from driving. On 8 April 2018, at Walsall Magistrates Court, the appellant was convicted of 2 counts of possession of an offensive weapon without lawful authority or reasonable excuse. He was sentenced to 6 months concurrently in a Young offenders institution.

6. On 4 May 2018, the respondent notified the appellant of her intention to make a deportation order against the appellant. In response to this, the appellant lodged a human rights claim. On 11 July 2018, a decision was made to refuse the appellant's human rights claim. The appellant gave Notice of Appeal against this decision."

12. It was not made out before the Judge that the appellant had a vested right of residence in the United Kingdom on the facts.
13. According to the PNC printout made available to the Judge the offence of affray was committed on 6 December 2016 shortly prior to the appellants 17th birthday. The offences which the appellant was sentenced on 6 September 2017 include acts of theft committed on 19 August 2017 and the possession of a knife blade/sharp pointed article on 8th August 2017 when the appellant was 17 years of age. The offences for which the appellant was convicted on 22 November 2017 were when the appellant was still 17 years of age. The offence which the appellant was convicted on 10 April 2018 occurred on 8 April 2018 after the appellant had attained his majority.
14. The Judge took into account the appellant's age when considering the weight that could be given to this aspect and was clearly aware that the majority of the

offences had been committed by the appellant whilst he remained a minor. No arguable material legal error is made out.

15. Ground (b) asserts there was no indication in the decision that the Judge weighed up the seriousness of the appellants offending against the seriousness of the proposed interference with his private and family life. A reading of the determination as a whole shows there is no arguable merit in such a submission. The Judge considered the proportionality of the claim weighing up points in favour of the appellant and those in favour of the Secretary of State. The Judge clearly took into account the impact upon the family in the United Kingdom and the appellant when deciding whether the respondent had established that the decision was proportionate to the legitimate aim relied upon. The assertion the Judge did not consider how the "relatively less serious nature of his offending" affected the assessment of proportionality or very compelling circumstances has no merit as the Judge clearly considered the offences in the decision under challenge. No arguable legal error is made out. Disagreement with the Judge's conclusions regarding the proportionality assessment is not sufficient.
16. Ground (c) asserts the Judge erred in her assessment of whether the appellant was a persistent offender failing to consider the limited length of time over which the offending has taken place and whether it was sufficiently long for the appellant to be described as a persistent offender. It is also asserted the appellant had not offended since his release from a Young Offenders Institute on 10 July 2018. It is also pleaded, on the same issue, at Ground (d) that it was irrational of the Judge to conclude that the appellant was a persistent offender on the basis that it was too soon to say whether he would relapse into offending as it was for the respondent to prove the appellant is a persistent offender and not for the appellant to show he is not. The grounds assert if it was too soon to say whether his offending would persist the respondent had not discharged the burden of proof. It is also argued it was irrational to conclude the appellant was a persistent offender because one of the causes of his offending was in his immigration status which had not yet been resolved when the First-Tier Tribunal was being asked to resolve the same.
17. In Chege ("is a persistent offender") [2016] UKUT 187 (IAC) it was held:

    (i) The question whether the appellant "is a persistent offender" is a question of mixed fact and law and falls to be determined by the Tribunal as at the date of the hearing before it;

    (ii) The phrase "persistent offender" in s.117D(2)(c) of the 2002 Act must mean the same thing as "persistent offender" in paragraph 398(c) of the Immigration Rules;

    (iii) A "persistent offender" is someone who keeps on breaking the law. That does not mean, however, that he has to keep on offending until the date of the relevant decision or that the continuity of the offending cannot be broken. A "persistent offender" is not a permanent status that can never be lost once it is acquired, but an individual can be regarded as a "persistent offender" for the purpose of the Rules and the 2002 Act even though he may not have offended for some time. The question whether he fits that description will

depend on the overall picture and pattern of his offending over his entire offending history up to that date. Each case will turn on its own facts.

18. The Court of Appeal have approved what was said about "persistent offender" in Chege in the case of SC (Zimbabwe) v SSHD [2018] EWCA Civ 929. It was also explained in that case there was no requirement under paragraph 398(c) immigration rules to attach significant weight to the views of the SSHD in relation to whether the individual was a persistent offender.
19. In SC the Court also said that it agreed "in substance" with the subsequent paragraphs from the decision in Chege. These included the following:

> "57. In order to answer the question whether someone is a persistent offender, the decision-maker (be it the Tribunal or the Secretary of State) must consider the whole history of the individual from the commission of the first offence up to the date of the decision and ask themselves whether he can properly be described as someone who keeps on committing criminal offences. Factors to be taken into account will include the overall pattern of offending, the frequency of the offences, their nature, their number, the period or periods over which they are committed, and (where relevant) any reasons underlying the offending, such as an alcohol or drug dependency or association with other criminals. This is in line with the guidance given in the Immigration Directorate Instructions, Chapter 13, version 5.0 (dated 28 July 2014) to which Mr Malik referred, which states that a persistent offender is "a repeat offender who shows a pattern of offending over a period of time". The guidance goes on to say "this can mean a series of offences committed in a fairly short timeframe, or which escalate in seriousness over time, or a long history of minor offences."
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> 58. If the person concerned has been out of trouble for a significant period or periods within the overall period under consideration, then the length of such periods and the reasons for his keeping out of trouble may be important considerations, though of course the decision maker is entitled to bear in mind that the mere fact that someone has not been convicted for some time does not necessarily signify that he has seen the error of his ways. It may simply mean that he has paused in his offending. It is the overall picture of his behaviour that matters.
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> 59. If during those periods of apparent good behaviour the person concerned was serving the custodial part of a short sentence, or was too unwell to go out and commit the kinds of offences he is generally prone to commit, there may be an explanation for the hiatus in offending which is not inconsistent with his being properly regarded as a persistent offender. Likewise, it he had a very strong incentive not to commit further offences, such as being subject to a community order, or a suspended sentence, or he is on bail, or he has been served with a notice of deportation, the fact that he has committed no further offences during that period may be of little significance in deciding whether, looking at his history as a whole, he fits the description.
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> 60. On the other hand, we agree with First-tier Tribunal Judge Whalan that an established period of rehabilitation may lead properly to the

conclusion that an individual is no longer a persistent offender. Depending on the particular facts and circumstances, a former drug addict who has ceased shoplifting to feed his habit after a period in rehabilitation, and who has been out of trouble for a significant period of time thereafter, might not be capable of being termed a "persistent offender" because when his history is looked at in the round, it can no longer be said that he is someone who keeps on offending."

20. The Judges findings on this issue are set out between [48 – 52] in the following terms:

> "48. It is the respondent's position that the appellant is a persistent offender. The appellant's position is that he is not a persistent offender. The appellant has been convicted of a number of offences. I note that the majority of the offences occurred when the appellant was a minor. However, the most recent conviction occurred when the appellant was not a minor. There are similarities in the offences with 2 of the offences being for possession of an offensive weapon without lawful authority or reasonable excuse and one offence of possession of a knife/blade/sharp pointed article. The appellant does not really take responsibility for the offences stating that the first offence involving a knife occurred because he had picked up the lock knife when he saw it on the ground and that he intended to dispose of it. He also takes no real responsibility for the second offence of having an offensive weapon stating that he had the items with him because he was on the way to help a friend meant his bike. The psychiatrist notes that the appellant was unwilling or unable to explain why, if that were the case, one of the items was tucked into his waistband.
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> 49. It is true that the appellant has not reoffended since April 2018 but it is also true that he has been aware of the threat of deportation since May 2018 which will no doubt have some deterrent effect he is well aware of the potential consequences of deportation given that his father is also subject to deportation proceedings and is currently appealing against the dismissal of his appeal by the First-tier Tribunal.
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> 50. The appellant has undertaken a risk assessment which assesses him as being a low risk of reoffending but this is with the proviso that he retains family support, his immigration status is resolved, he has access to structured activities and avoids anti social peers. Whilst the appellant has not been convicted of any further offences since May 2018, part of that period was during the time when he was serving a sentence of imprisonment and it is still quite early to see whether the appellant can maintain his lack of reoffending given the factors which were identified by the psychiatrist is playing a part in the offending behaviour, the fact is required to ensure that the risk of reoffending remains low and his propensity to minimise his responsibility for the offences.
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> 51. It was submitted on behalf of the appellant that the reason for the offending behaviour was, at least in part, a result of the appellant becoming aware of his lack of status in the UK and the problems which then arose as a result of that. The psychiatric report and Social Services assessment confirm that this played a part in the offending behaviour.

> However, this remains an unresolved issue in that adverse factor still exists.
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> 52. Taking account of all the evidence and relevant case law, I find that the appellant is a persistent offender."

21. The Judge clearly considered this matters she was required to including the appellant's circumstances, the chronology of the offending behaviour, the nature of the offending behaviour, and contributing factors. No arguable legal error is made out in the Judge's conclusion that the appellant has continued to offend. The fact the offences were committed since shortly before the appellant attained the age of 17 and continued into adulthood clearly showed that at the date of the hearing this was a finding available to the Judge on the evidence. Whilst the grounds assert the Judge did not consider whether a sufficiently long period had passed, Ms Radford identified no authority or test which specified what will be the minimum period. There is in fact no such test as it is a question of fact depending on all the circumstances of the case.
22. The fact the appellant claims to have been under great strain as a result of family upheaval is a factor considered by the Judge who clearly weighed in the assessment the psychiatric and Social Workers report. There is nothing arguably irrational about the Judge commenting that one of the factors identified, namely the appellant's immigration status, remained outstanding. The Judge was fully aware that this was an issue the First-Tier Tribunal was assessing but the evidence does not show this was the only factor that explains the appellant's conduct. The Judge takes particular note of the appellant's refusal to acknowledge and accept responsibility for his offending behaviour.
23. The assertion the Judge somehow reversed the burden of proof has no arguable merit. The Judge weighed up all the evidence and in light of the same found the appellant is a persistent offender. The evidence before the Judge suggested the appellant had broken the law repeatedly in the past and is likely to do so in the future. Adequate reasons are given in support of this contention and no arguable legal error is made out.
24. Ground (e) asserts having accepted the appellant was a vulnerable witness and having made adjustments to the procedure the Judge failed to consider how the appellant's disability impacted on his evidence, in particular not considering how far his "lack of insight into reasons for and his responsibility for his offending" have been affected by cognitive impairment and/or depression. The appellant seeks to compare the error to that in AM (Afghanistan) [2018] 4 WLR 78, at [33]:

> "33. Given the emphasis on the determination of credibility on the facts of this appeal, there is particular force in the Guidance at [13] to [15]: "13. The weight to be placed upon factors of vulnerability may differ depending on the matter under appeal, the burden and standard of proof and whether the individual is a witness or an appellant. 14. Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those [who] are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to

> which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity. 15. The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and this whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind."

25. The Judge records at [13]:

> "13. The appellant had provided medical evidence which stated that he was suffering from moderate depression and anxiety in which stated that there were some concerns over his cognitive ability. Both parties agreed that the appellant should be treated as a vulnerable witness. I reminded the parties of the Joint Presidential Guidance No.2 of 2010: Child, vulnerable adult and sensitive appellant guidance. Throughout the hearing, I remained alert as to whether questions were understood by the appellant and on some occasions, I suggested that question should be rephrased so that the appellant fully understood the questions which he was being asked."

26. In addition to considering and applying the guidance in relation to the conduct of the preceding the Judge also took careful note of the evidence in the appellant's favour including the psychiatric report of Dr Wootton. The Judge specifically records at [58]:

> "58. The appellant has been diagnosed as suffering from moderate depressive disorder with associated symptoms of anxiety. Dr Wootton, who assessed the appellant, notes that symptoms are likely to fluctuate and will be affected by stressors such as the appellant's immigration status, family stress and difficulty accessing health and social care. In Dr Wootton's opinion, the appellant's symptoms would increase if he were removed to Zambia, in particular because the symptoms are '*closely linked with his current situation'* [Q2.b.] Dr Wooton states:
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> > *'Clearly his mental health is relevant here is given his level of functioning is impaired and his symptoms include lack of motivation it is likely to be more difficult for him to meet his needs and other people in a similar situation'*."

27. The Judge also took into account the Children Family assessment in which concerns were expressed about the appellant's vulnerability as a result of his trying to obtain status in the eyes of other young people. It is not a case in which the Judge was unaware of or failed to factor into the process the appellant's vulnerability. The Judge was clearly aware of the concerns raised by the psychiatrist and how they would have impacted upon the appellant's evidence. The concerns expressed by the Judge about the appellant's failure to acknowledge his culpability and responsibility for the offending were matters identified by the psychiatrist as were the factors playing a part in his offending behaviour [48] and

[50]. The Judge clearly considered all relevant issues and recognised the limitations upon the appellant as evidenced by a sentence in [65] in the following terms "*the appellant is an adult who has some psychological difficulties and some cognitive impairment (although a specific diagnosis has not been made it was clear that the appellant occasionally struggled to understand a question) but is in good physical health.* No arguable legal error material to the decision to dismiss the appeal is made out on this ground. The Judge considered and factored the disability and vulnerability into her assessment of the evidence.

28. Ground (f) asserts that when finding the appellant was not receiving medical treatment the Judge erred as he was, as evidenced by letters from a treating psychiatrist and mental health practitioner in the supplementary bundle which it is claimed was relevant to the Judges proportionality assessment.

29. The Judge at [69] writes:

> "69. The appellant has lived in the UK for almost all of his life. He has family in the UK with whom he lives. His parents and sister are clearly supportive of the appellant and they and the appellant will be extremely saddened by the appellant's deportation from the UK which will sever the family unit to some extent. However, the family can remain in contact with the appellant from the UK and will no doubt do all that they can to support him in reintegrating into Zambia although given their financial circumstances this may be emotional rather than practical support. The appellant does not meet the exceptions within section 117C(4) and (5) of the Nationality, Immigration and Asylum Act 2002. I accept that the appellant will struggle on return to Zambia because of the length of time which he has spent away from Zambia, his young age when he left and his lack of contact with Zambia since he left. However, he will have the emotional support of his family to assist him in reintegrating. He speaks English which is the official language of Zambia. His father's evidence was that he had spoken English when he lived in Zambia and did not suggest that speaking English placed him at a particular disadvantage. There will be difficulties in the appellant reintegrating but I find that they are not sufficient to amount to very significant obstacles. I accept that the appellant remains part of the family unit in the UK that the appellant's mother has the appellant's father and sister to provide her with support and the evidence did not show that the appellant played a significant part or that such care could not be provided by other family members or professionals. It was submitted on behalf of the appellant that deportation would be tantamount to exile. I accepted that it would be a shock to the appellant to return to a country where he has not lived since he was a year old but he has a supportive family in the UK who would do all they could to assist him in integrating into Zambia and I do not find it credible that the family could not trace their family in Zambia to request assistance for the appellant when he first arrives in Zambia. The appellant has some psychological problems but he is not receiving treatment in the UK at the moment and the evidence did not show that no support at all was available in Zambia. I find that the appellant has not shown that there are very compelling circumstances which outweigh the public interest in

> deportation. Taking account of all the evidence, I further find that the respondent has shown that the decision is a justified, necessary and proportionate decision."

30. Whilst the supplementary bundle contains details of a treatment plan, which included medication, the Judge was correct to report that there was no evidence showing that the appellant was receiving treatment in the UK. It was only in response to a question from the bench to Ms Radford, asking whether the appellant was taking the recommended prescribed medication, that she confirmed he was after having taken instructions. Until this time it does not appear this was known even to the appellants legal representative who appeared for him before the Judge. No arguable material error is made out.
31. Whilst the country expert may have stated that no suitable treatment it was available in Zambia the Judge records that there was no diagnosis for the appellant's condition. Country information shows there is a functioning health service in Zambia providing treatment for those with mental health issues albeit that the available medication is not the same as that available in the United Kingdom. What was not shown before the Judge was that the appellant's return would lead to a breach of article 3 ECHR on the basis of his medical condition. It was not show medical treatment would not be available.
32. Ground (g) asserts that the Judge accepted the appellant could not enter the Zambian labour market without learning a new language and also found his family could not offer him any practical support, yet failed to explain why the resultant lack of subsistence will be a significant obstacle but not a very significant obstacles to integration. Ground (h) asserts the Judge concluded that as the appellant's father spoke English the appellant would not face significant problems which is stated to be illogical as speaking English was not claim to be a problem, the problem being that the appellant did not speak any tribal languages.
33. The Judge accepted that without knowing the tribal language the appellant would find it difficult to enter the former labour market but found the appellant will have support of family members in Zambia on return and will be able to learn the language. As such the Judge found that there will be no very significant obstacles to reintegration whilst accepting that it would be difficult for the appellant who would face significant obstacles. This finding is adequately reasoned, and no arguable material legal error is made out.
34. Ground (i) challenges the Judge's decision regarding the assessment of the appellant's vulnerability but the Judge clearly took into account the Children and Family Assessment and makes clear findings in support of the conclusions reached when considering the evidence as a whole. The Judge found the appellant to be a vulnerable individual and also comments upon aspects of the appellant's presentation and personality contained in the reports. The claim the Judge failed to consider material matters has no arguable merit. Just because the appellant may disagree with the Judge's conclusions, arrived at having undertaken the necessary assessment, does not mean such issues were not assessed.
35. Ground (j) challenges the Judges conclusion regarding the impact of deportation upon the appellant's mother and sister in which the Judge concludes this will be mitigated by the presence of his father who could continue to support them where

the appellant's father's separate appeal had been dismissed and was an appeal currently before the Upper Tribunal. The grounds assert the appeals are contradictory and cannot both stand and that there was no evidential basis on which the Judge concludes the appellant's mother and sister will have the support of the appellant's father.

36. The Judge who granted permission commented upon this ground specifically writing "*at this moment the appellant's father is still in the UK; the appellant cannot have it both ways as the Judge considered the appellant's integration into Zambia as if he would not have the presence of his father help him integrate*".

37. Before the Upper Tribunal, at this hearing, Ms Radford advised the court that the appellant's father's appeal had been refused by the Upper Tribunal on 2 December 2019 meaning that he was now likely to be removed and would not be available to provide the support as anticipated by the Judge.

38. Whilst it would have been preferable for the appeals of the family unit to be been heard together that was not the case as noted by the Judge. At [12] the Judge writes:

> "12. At the beginning of the hearing , I asked for an update with regard to the appeal of the appellant's father who is also subject to deportation proceedings. Ms Radford said that the appellant's father's appeal had been refused before the First-tier Tribunal but that he had sought permission to appeal to the Upper Tribunal against this decision. She said that permission to appeal had been granted and that the appellant's father was awaiting a hearing date before the Upper Tribunal. Neither party provided me with a copy of the appellant's father's appeal decision or other documents relating to the appellant's father."

39. The Judge was entitled to proceed as she did in light of the information made available. At that stage the appellant's father remained in the United Kingdom. It is also the case when the determination is read as a whole that the Judge has not based the assessment of proportionality solely on the presence of the appellants father in the United Kingdom. Whilst the Judge does find the appellant's mother has his father and sister to provide support it is not made out the Judge would have come to any different conclusion if the appellant's father was not available in light of the presence of the sister, other family members, friends, and/or professionals who it was found could meet any needs the appellant's mother may have. If the appellant's father has lost his appeal and is to be deported to Zambia it also means the appellant will have his father there to assist with his reintegration when he is deported. The development with regard to the father's appeal, whilst a matter not known to the Judge, appears to weaken the appellant's claim that the findings he could return to Zambia is infected by legal error as he will now have his father with him, without undermining the Judge's conclusions as to the proportionality of the decision in light of the availability of other family support in the UK.

40. Ms Radford's submission that the Judge failed to weigh up the evidence, failed to take relevant matters into account, and failed to consider material facts has no arguable merit. This is clearly a carefully considered determination and the conclusion arrived at follow proper consideration of relevant matters. The

appellant had not established an entitlement to an exception under the Rules or section 11 C. Mr Tufan submitted that the Immigration Rules include Maslov principles which the appellant was unable to established assisted him in this appeal.

41. The appellant is a foreign criminal who is the subject of an order for his deportation from the United Kingdom on the basis of his persistent offending as found by the Judge. No remorse was shown, and the Judge's findings are supported by adequate reasoning. The weight to be given to the evidence was a matter for the Judge. It is clear all relevant evidence was considered with the required degree of anxious scrutiny.

42. The appellant is unable to satisfy section 117B(6) and no arguable legal error material to the manner in which the Judge conducted the assessment of the merits or the balancing exercise is made out. The fact the appellant does not like the decision and disagrees with the same is not sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

43. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

44. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 25 March 2020