



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/02170/2013

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 24 November 2014

Determination Promulgated
On 5 February 2015

Before

UPPER TRIBUNAL JUDGE ESHUN
UPPER TRIBUNAL JUDGE O'CONNOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR NATHANIEL EXEWU-AGO
(Anonymity Order Not Made)

Respondent

Representation:

For the Appellant: Mr Z Malik, Counsel
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Although the Secretary of State is the appellant before the Upper Tribunal we shall continue to refer to Mr Exewu-Ago as the appellant herein.
2. This is a rehearing of the appellant's appeal against the decision of the respondent made on 30 September 2013 that Section 32(5) of the UK Borders Act 2007 applies to him. A deportation order was also signed against the appellant on the same date.

3. The appellant is a citizen of Nigeria born in 15 September 1985. On 16 April 2012 the appellant was convicted at Woolwich Crown Court of domestic burglary and sentenced to six years' imprisonment. This is the offence that triggered the decision to deport him.
4. Prior to the offence that led to the deportation order, the appellant had other convictions. On 19 November 2009 he was convicted of common assault at Woolwich Magistrates' Court and was sentenced to a community order of 60 hours unpaid work. He was also asked to pay compensation of £100 and costs of £180. On 19 August 2010 he was convicted of possession of cannabis resin class B, possession of a bladed article/knife in a public place and given a community order sentence, costs of £105 and a curfew of three months and tagging. On 20 September 2010 he was convicted of possession of class A and class B cannabis resin drugs. He was sentenced to a community order of 100 hours unpaid work and asked to pay costs of £55.
5. The appellant appealed the respondent's decision on the basis that it comes within the exceptions to automatic deportation in Section 33(2)(a) of the 2007 Act, that of a person whose removal from the United Kingdom would breach obligations under Article 8 of the ECHR. He claimed that his deportation would be a disproportionate interference with his right to a family life with his parents, brothers and sisters in the UK and his private life on the basis of his mental health.
6. On 13 July 2014 the appellant's appeal was allowed by a First-tier Tribunal consisting of Judge Plumtre and Mrs J Holt.
7. In a decision promulgated on 14 October 2014 the Upper Tribunal consisting of Upper Tribunal Judges Eshun and O'Connor found that the First-tier Tribunal had made an error of law for the reasons set out in their decision. The error meant that the First-tier Tribunal's decision could not stand. We set it aside in order to remake it. Thus the appeal came before us on 24 November 2014.
8. The appellant was found guilty of "entering the property as a trespasser with intent to inflict really serious harm", but that when he did so, he did not have a weapon. The appellant denied entering the property and making threats and asserted that he had a bottle in his hand in the garden to the property because he was drinking from it. The judge said the proper approach to the jury's verdict is not that the bottle was never a weapon but rather that the appellant was carrying it as a weapon but did not enter as a trespasser until after he had smashed the bottle so that he was no longer carrying it at the point of entry. The judge said there were many serious aggravating factors in this case. The first was that the occupiers were at home, two women who may not have been the most vulnerable, but who presented no threat to the appellant whatsoever, as well as two children, one a young baby. Secondly, both women were clearly terrified by the appellant's threats, not only to Mrs Spencer's son but they also feared for their own safety. The judge had no doubt that the two women were traumatised by the whole incident. Thirdly the appellant threatened to kill Michael. He also threatened to come back again if anything happened to his brother.

Fourthly, the appellant took a deliberate decision to go looking for Michael at his home, indicating a degree of premeditation. Fifth he was carrying a weapon, a glass bottle hidden down the front of his trousers which he produced and smashed such that it could easily have been used to inflict serious injury or worse. Finally, the appellant had been drinking alcohol, seriously increasing the risk of potential harm to others. A further, but modest aggravating factor was that he had previous conviction for common assault and possession of a bladed article, although those offences were not nearly as serious as the present one.

9. The sentencing judge considered a report by Dr Cumming, a Consultant Forensic Psychiatrist who concluded that the appellant did not suffer from any mental illness. The appellant's reports of hearing voices were inconsistent, not in keeping with a mental illness and not consistent with objective, day-to-day observations of his behaviour at the prison. The appellant claims to have been seen by his GP over these symptoms and to have been in hospital after suffering a head injury were not substantiated by any of his medical records. The suggestion was that his claims were a deliberate attempt to avoid being detained in the main prison as opposed to the healthcare facility. The judge noted there was a minor incident of self harm and that on one occasion, a ligature was found in the appellant's cell. The appellant claimed he might be able to stop the voices if he used it. However, in the light of all the other evidence, the judge did not consider these incidents were genuine. What was clear was that no mental health issues played any part in the commission of the index offence, rational violent response to his brother being stabbed.
10. The sentencing judge was in no doubt that this offence fell within the most serious category of the sentencing guidelines and sentenced the appellant to six years imprisonment.
11. The First-tier Tribunal had before them the report of Dr Ian Cumming prepared for the Woolwich Crown Court before sentence and a psychiatric report prepared by Dr Seena Fazel at the request of City Legal Partnership.
12. The unchallenged findings of fact which were made by the First-tier Tribunal were as follows:
13. The appellant comes from a dysfunctional family which is unsurprising given that his parents left their children in order to come to the UK in 1988 when the appellant was aged 3 or 4 years and then apparently did not see him again until he entered the United Kingdom with his siblings in December 2006 when he was 21.
14. It was apparent from the oral evidence particularly of his mother that she had little or no insight into the appellant's condition, and that although his father had some greater insight, the medical records from the GP seen by Dr Cumming and Dr Fazel both make it clear that he was never taken to his GP to be seen for reasons of mental ill-treatment-health. Whilst the Tribunal accepted that it was difficult to make an adult young man attend a doctor, if he did not want to, and perhaps understandably given the separation of the family, little if any efforts had been made by his parents to obtain adequate medical treatment for the appellant which the Tribunal found in

part based on a misunderstanding of western medicine and what treatment was available. The Tribunal also accepted that sadly all too credible that the appellant would have been treated by a local doctor and given herbs in Nigeria.

15. The sad reality is that the appellant did not receive any medical diagnosis until he entered the prison regime and even then it was some eight months before he was first sent to the Crofton Unit for assessment after he was remanded in custody on 2 December 2011.
16. Again perhaps unsurprisingly his parents had at best visited the appellant once in hospital and his father a further time when he was in the Crofton Psychiatric Unit. The Tribunal found that it was his siblings who have visited him, particularly his twin brother Blessing who visited him on average twice a month throughout his incarceration.
17. In summary the Tribunal found that any impact on his parents were he to be removed to Nigeria would be minimal and possibly a relief to them given that they have done so little for their son, although they accepted that he has lived with both his parents since his arrival in the UK in 2006. However it was clear from a number of reports that the appellant spent a period of time in hospital apparently for a head injury to which none of his family made any reference at all, not even his twin brother Blessing.
18. The Tribunal accepted the oral evidence of the appellant's twin brother that he assisted him both with job searches, during interviews and any problems arising from his employment thereafter whether due to behavioural problems or question marks over his permission to work. Therefore despite an ultimate diagnosis of a schizoaffective disorder, the appellant has successfully been able to hold down a number of jobs in the UK between 2006 and 2011.
19. The Tribunal also found that the Presenting Officer was right to stress that all witnesses were to some extent untruthful about the family situation in Nigeria and particularly the appellant's father who belatedly conceded that he had spent some two and a half months in Nigeria in the last year visiting school friends. The Tribunal rejected the oral evidence that the family is sufficiently callous to make no financial provision at all for the last remaining sibling Hanna in Nigeria who has no fixed home address but is able to somehow sustain herself and three children either by living with friends or presumably by irregular work. The Tribunal found that Hanna is not as destitute as the family would have them believe, even though they accepted that the other siblings, having entered the UK as teenagers or near adults have clearly experienced difficulties in adjusting to life in the UK and with the exception of Blessing who has achieved educational but not yet professional success, are largely in low-level jobs in which they struggle to sustain themselves. This also applies to the appellant's parents.
20. We recite as this stage the Tribunal's record of the psychiatric evidence as it formed the basis of Mr. Malik's submissions to us.

Dr. Cumming's report

- “61. ... It is clear from paragraphs 3-5 that the appellant did not always give accurate details about his family, where his siblings were born and the age of his father. It is also apparent from paragraph 8 that there appear to be no records of attendance in respect of mental health complaints although he had attended for a gunshot wound in August 2010. It also appears from paragraph 9 that the appellant was in hospital for around two-three months or possibly two weeks in respect of a head injury (although none of his family made any reference to this).
62. It is clear from the paragraphs 8-10 relating to past psychiatric history that the appellant made several references to hearing voices, sometimes at work and sometimes in the park.
63. In relation to the offence of burglary, it is clear that the appellant told Dr Cumming that he had drunk but was not sure how much and that he had been working for the UK mail in Dartford. A witness had told him who was responsible for the stabbing of his twin brother so he went to his home with the intention of informing the boy's mother what he had done. He had been drinking alcohol which he clarified as beer and estimated he had drunk around three bottles of beer between 5 p.m. and the offence committed at 8 p.m. He had gone to a home in Slade Green, a woman had answered. The appellant had told her he was looking for Michael. The woman had told him Michael used to live there but not any more. He had argued with the woman because he was drunk and left a bottle which the appellant said was smashed. He left to go home and was arrested at the airport. He had seen Michael in prison and Michael had written to him. He had given these letters to his barrister. Dr Cumming records the account of the offence from the probation report which indicated that he had pulled a bottle out of his trousers and smashed on the front door.
64. On his arrival in custody the appellant reported hearing voices which made him do things that shocked him afterwards. This included jumping out of a window and also cutting his arm. Whilst at the police station voices had told him to eat tissue paper.
65. At an interview with Dr Cumming on 5 December 2011 the appellant had told him he had not had any formal contact with mental health services but he had seen his GP around six months ago when he complained of hearing voices. He had been put on medication for six months but admitted to not taking it and not knowing what it was. The appellant had begun hearing voices around two years ago and included telling him to harm himself. He described a male voice as telling him to do things he did not want to do such as jumping off the balcony but had been stopped by his brother.
66. Dr Cumming had seen notes from his GP. There was no evidence of attendance to see his GP over mental health symptoms. The appellant was then discharged to the main prison and there were no entries until 20 April 2012 when the appellant had reported to a nurse that he was seeing ghosts in his cell. He had thereafter slept with the light on which disturbed his cellmates. He would bang his head on the wall when hearing voices and was seen to lie on the floor and bang his head on the floor. Hence he was admitted again to the health care centre.

67. *After this admission he saw Dr Fazel on 23 April 2012 who reported that he had heard voices when he missed his grandparents and after the death of his grandmother. The appellant had said that he had a brother who had mental health problems in Nigeria. He had claimed that his family wanted him to see a mental health professional but he kept running away. He was noted to be vague, spoke in a low volume but concentrated well. He was now willing to take medication although he had not wanted to in the past.*
68. *Later that day the appellant had cut himself and explained that he had done so as he had not been prescribed medication and had wanted an antipsychotic. He settled but was soon seen to be arguing with other prisoners particularly because he put his light on and watched television in the early hours.*
69. *Dr Cumming reviewed the appellant on 2 May 2012 and without prompting the appellant said that he was hearing voices and introduced this into the conversation repeatedly. He said he had been found guilty of burglary but did not do it. He said that he heard voices both internally and externally who spoke in English and although the appellant was imprecise he said that he heard voices more often at night and perhaps twice a week lasting three-four hours. He saw black ghosts who flew around the room. Dr Cumming asked him why he had not sought help outside prison and suggested that the voices told him not to seek help. Dr Cumming pointed out that objective observations from staff did not support his claims to be hearing voices.*
70. *Although apparently settled on 23 May 2012 the appellant was much more irritable and began to scream and shout and rub his face with soap. On reporting to Dr Cumming he said that he had heard dogs and foxes and had been seeing ghosts. Dr Cumming noted "There had been an upturn of behavioural changes since the appellant had been informed that he is to be discharged". Dr Cumming noted that in the several weeks he had been in the health care centre such symptoms (e.g. of hearing voices) had little if any impact on his functioning and his claims are not supported by the evidence of observations by many professionals who had seen him. The appellant again described voices but his description of voices was inconsistent and not in keeping with a mental illness. He had told Officer Wicks that he was happy to go to the main prison but said "Am I not going to even get medication to help me sleep?". Dr Cumming told the appellant that the observations had not supported a disruptive sleep pattern and he could see no need for intervention. Dr Cumming told him he would be discharged to the main prison whereupon the appellant began to bang his door and make funny noises. He was observed to pace around the cell and spat in the face of the nurse. Over the next few days he continued to behave bizarrely and put toothpaste on his face and poured milk upon himself. He was subsequently restrained.*
71. *He was placed in the segregation unit for a period and then moved to the main prison. On 4 August 2012 he again complained of hearing voices and was re-admitted to the health care centre. He stated that whilst in the main prison he had been moved to different cells because he did not get on with his cellmates due to voices speaking to him. He tends to talk back to these voices which upset his cellmates. The appellant wanted medication to help him sleep and to take the*

voices away. It later transpired that the appellant had had an altercation with his cellmate over allegations that he had stolen tobacco.

72. The appellant saw Dr Fazel on 6 June 2012 and made reference to voices instructing him to hang himself and that his head sometimes swelled up which he could not control because the voices are always talking to him both upstairs and downstairs as there is a lot of noise. The appellant also said that this symptom did not occur outside of prison.
73. Dr Cumming saw him on 11 June 2012 and asked him about the circumstances of his re-admission. The appellant said he could not cope in the main prison due to hearing voices. There is reference to the appellant talking to fruit such as apples and oranges.
74. In the opinion of Dr Cumming the appellant is challenging to assess and in consequence has spent a lengthy time in the health care centre whilst in custody in an attempt to understand the nature of his symptoms and to assess his mental state.
75. The appellant's description of his symptoms is inconsistent and is not supported by day-to-day observations. The appellant had claimed that he began hearing voices both after the death of his grandmother and more recently because of a car crash when he had claimed to be in hospital following a head injury for a number of months but could not give the name of the hospital or ward and had also claimed that he had not informed his family (despite potentially being absent from the family home for a number of weeks or months).
76. In terms of the symptoms of hearing voices the appellant takes every opportunity to inform staff that he hears voices and has done so for a number of years but this does not explain why he failed to obtain help in the community. His description of the voices varies considerably and there is marked variation in their occurrence, persistency and content. The presence of such symptoms is not supported by day-to-day observations. On one occasion when he was told that staff did not think he had a mental illness he became mute and pretended to be unresponsive. His description does not in Dr Cumming's opinion fit with a description of auditory hallucinations as might be seen in a mental illness such as schizophrenia. Also the appellant has reported seeing ghosts, walls move, having his head swell and a variety of other symptoms which are not usually seen in illnesses such as schizophrenia. There are many other issues which are odd and unlikely (such as claiming not to know the name of his mother).
77. Dr Cumming states at paragraph 31

'He has been seen by a number of professionals in this period in custody and there is a consensus agreement that Mr Ago does not have a mental illness. I remain uncertain as to why he would like to be seen to have a mental illness but I noted that recently he has had difficulties with other prisoners in the main prison over allegations of stealing tobacco and this led to a re-admission to the health care unit. It is possible therefore that he has made assertions around symptoms as a mechanism to avoid other issues. In

taking this into account I do not feel that Mr Ago needs admission to hospital at this time'.

Dr Cumming stated that the short-term objective is to try to return the appellant to the main prison population but acknowledged that there was some increase in risk to himself if a custodial sentence is imposed.

78. *Dr Cumming concluded at paragraph 32 that the appellant would seem to be a man who can be impulsive and aggressive particularly when alcohol is involved which seems to be the case at the time of the offence.*

Psychiatric Report - Dr Seena Fazel

79. *This report is at pages 3-13 SP. This report was prepared at the request of City Legal Partnerships. Dr Fazel has seen the report dated 16 July 2012 prepared by Dr Ian Cumming, another report dated 30 July 2012 from Dr Sophie Anhoury and a psychological assessment dated 2 November 2012 from Dr Theresa Connolly and the discharge summary prepared by nursing staff dated 14 November 2012 dealing with his admission to the Crofton Psychiatric Unit in 2012. Dr Fazel first assessed the appellant in December 2012 as part of her duties as a visiting psychiatrist at HMP Huntercombe and assessed him a further five times in 2013 and twice in 2014, the last being 19 June 2014.*
80. *Dr Fazel provides a helpful summary of what happened to the appellant in custody at section 5 and that when she first assessed him in December 2012, a year after he had been remanded in custody on 2 December 2011 she prescribed oral Risperidone to which the appellant only partially responded. She changed this to another oral antipsychotic drug Quetiapine which had little effect and in February 2014 changed his medication to a depot antipsychotic drug Risperdal consta. Dr Fazel noted a marked improvement in his mental state. In section 6 Dr Fazel deals with her most recent examination on 19 June 2014 when the appellant was dressed in clean clothes, was co-operative and had good eye contact with speech normal in both rate and rhythm. The appellant appeared not to be depressed or anxious and denied any current thoughts of suicide or self harm. There was no evidence of any perceptual abnormalities such as auditory or visual hallucinations. He was cognitively oriented in person, place and time and seemed to have insight into the value of his current depot medication which he plans to take for the foreseeable future.*
81. *In the opinion of Dr Fazel she states that the appellant has a severe mental illness which she characterises as a schizoaffective disorder which is a severe and enduring mental illness - a psychotic illness with significant affective symptoms that coincided with its onset. His response to medication supports a diagnosis of a severe mental illness. Her impression is that this illness has been present for some years and his description of the burglary is consistent with someone who is mentally unstable.*
82. *At paragraph 7.3 Dr Fazel discusses the possibility that the appellant's symptoms and behaviour have been feigned or exaggerated as a way of influencing the outcome of any decisions regarding his deportation. She is of the opinion that the appellant has probably exaggerated some of his symptoms at times, but his*

response to depot (as distinct from oral medication) would provide no additional gain if it was feigned. If anything as his release date approached Dr Fazel would expect his self-reported symptoms to worsen but in fact they have not. Furthermore although he may have exaggerated his symptoms at times, that does not take away the fact that he has had symptoms and it is not uncommon for psychiatric patients to exaggerate symptoms if they are not receiving the treatment they feel they need.

83. *Dr Fazel recommends the continuation of depot Risperdal consta once a fortnight for another 18-24 months and this should only be decreased gradually with medical supervision if he is asymptomatic at that point. Dr Fazel is unable to opine on the availability of Risperdal depot in Nigeria. In her opinion the appellant needs regular follow-up by mental health nurses who would administer the depot. He would need two-three monthly psychiatric reviews but does not currently need psychiatric hospitalisation. This package of care would be arranged for the appellant if he were released to the UK.*
84. *Her prognosis is that if the appellant remains on his current medication he could return to employment and independent living on release from prison, although it is not possible to be certain. His prognosis will worsen if he is subject to psychosocial stressors and illegal drugs and without medication he would relapse and his mental state deteriorate to an extent that he would be at risk to himself and others.*

Submissions

21. Mr Malik was content for the Upper Tribunal to remake the decision on the basis of the evidence that was before the First-tier Tribunal. No new medical evidence was submitted on behalf of the appellant.
22. Mr Malik relied on the psychiatric evidence that was before the First-tier Tribunal. He submitted that Dr Fazel assessed the appellant for the first time in December 2012 as part of her duties as a visiting psychiatrist at HMP Huntercombe and assessed him a further five times in 2013 and twice in 2014. It is recorded at paragraph 81 of the First-tier Tribunal's decision that in the opinion of Dr Fazel the appellant has a severe mental illness which she characterised as a schizoaffective disorder which is a severe and enduring mental illness – a psychotic illness with significant affective symptoms that coincided with its onset. Her impression was that this illness has been present for some years and his description of the burglary is consistent with someone who is mentally unstable.
23. Dr Fazel recommends the continuation of depot Risperdal consta once a fortnight for another eighteen to 24 month. In the opinion of Dr Fazel the appellant needs regular follow-up by mental health nurses who would administer the depot. He would need two to three monthly psychiatric reviews but does not currently need psychiatric hospitalisation. This package of care would be arranged for the appellant if he were released to the UK.

24. Mr Malik submitted that the judge found that the appellant has family life with his parents and siblings as per the reasoning in Kugathas given the diagnosis of a schizoaffective disorder.
25. Mr. Malik submitted that the appellant's medical condition amounts to an exceptional circumstance. According to the COI Report on Nigeria dated 14 June 2013 which was re-issued on 3 February 2014 and was before the First-tier Tribunal, Nigerian hospitals in general suffer from poor funding, a lack of qualified staff, lack of drugs and medical equipment and the Federal and State Governments do not provide free medical services. Nigeria's mental health facilities consist of eight federally funded psychiatric hospitals and six state-owned mental hospitals for a population of over 150,000 people. Risperodine is an available mental health drug as is Quetiapine but, which according to Dr Fazel, the appellant did not respond well to. Mr Malik said it is unclear whether the Risperdal consta depot medication is or is not available in Nigeria.
26. Mr. Malik submitted that the Upper Tribunal decision in Akhalu (health claim: ECHR Article 8) Nigeria [2013] UKUT 400 (IAC) (24 July 2013) has little relevance to this case. Akhalu had no leave to remain. This appellant had indefinite leave to remain.
27. Mr Malik submitted that the appellant's offences were hideous, but his medical condition makes his case exceptional and therefore it would be disproportionate to deport him. He submitted that although paragraph 398 uses the word "exceptional" and Section 117C uses the word "compelling" to describe an appellant's circumstances, they both mean the same thing. The appellant's circumstances have to be compelling or exceptional in order to outweigh the public interest in deportation.
28. Mr Wilding submitted that this is not a case that can be described as very compelling over and above the circumstances described in paragraphs 398 and 399A. He submitted that Section 117C the amendment to the 2002 Act reflects the Rules in paragraph 398. As the appellant was sentenced to more than four years in prison, there will need to be very compelling circumstances over and above exceptional circumstances. The test has to properly reflect the public interest.
29. Mr Wilding submitted that YM (Uganda) [2014] EWCA Civ 1292 reflects the changes in the Immigration Rules. These Rules require strong public interest. The appellant's case relies on his medical condition to argue exceptional circumstances. Akhalu is a case on medical condition which is considered through the prism of Article 8.
30. Mr Wilding submitted that in this case the public interest is very strong. At paragraph 102 it is recorded that paragraph 26.39 of the COI Report states that Risperodine is available in Nigeria. The judge did not find it credible that there was no financial support for Hanna in Nigeria. This means that the appellant would not fall within the very compelling circumstances. According to Akhalu when you have a medical case the public interest to counterbalance that must not water down Article

3. **Akhalu** was lawfully present in the UK when she fell ill. The finding was that if she returned to Nigeria she would die. This is not the case here.

Findings

31. The issue before us is whether in the light of all the evidence in the round, including the medical evidence, and having taken into account the preserved findings of fact made by the First-tier Tribunal, there very compelling circumstances over and above those described in paragraphs 399 and 399A sufficient to outweigh the public interest in deportation in this case.
32. In our assessment of the public interest, we have to consider the amendment by Section 19 of the 2014 Act to the Nationality, Immigration and Asylum Act 2002, which inserted sections 117A-D therein. This new sections identify the public interest considerations in respect of Article 8 of the ECHR. The considerations in Section 117 mirror the considerations in paragraphs 398 of the Immigration Rules.

33. Paragraph 398 states:

“Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

- (a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;*
- (b) ...*
- (c) ...*

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and if, it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.”

34. Sections 117B and 117 C of the 2002 Act state:

117B:

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

- (a) are less of a burden on taxpayers, and*
- (b) are better able to integrate into society.*

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

- (a) are not a burden on taxpayers, and*
- (b) are better able to integrate into society.*

(4) Little weight should be given to –

- (a) a private life, or*
- (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.*

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and*
- (b) it would not be reasonable to expect the child to leave the United Kingdom.*

117C Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where –

- (a) C has been lawfully resident in the United Kingdom for most of C's life,*
- (b) C is socially and culturally integrated in the United Kingdom, and*
- (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.*

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

35. We find that paragraph 399 does not apply in this case because the appellant does not have a genuine and subsisting parental relationship with a child under the age of 18 who is in the UK; nor does he have a genuine and subsisting relationship with a partner who is in the UK. We note that paragraph 399A was not argued before us.
36. Therefore, in this case we are considering whether the appellant's circumstances are very compelling.
37. We have quoted the psychiatric evidence that was before the First-tier Tribunal. The appellant's case rests predominantly on his mental condition and the medication he is currently taking, the care package which it is said would not be available to him if he were deported to Nigeria.
38. We find that the appellant's offence was extremely serious and that was why he was given a term of imprisonment of six years. We find that Section 117C reflects the Immigration Rules in Rule 398. There needs to be very compelling circumstances.
39. In a recent decision by the Court of Appeal in **AJ (Angola) [2014] EWCA Civ 16** the Court of Appeal stressed the importance of the public interest in deportation. The Court of Appeal held that the sentence imposed is a clear marker of the seriousness of the offending, as is also indicated by the UK Borders Act 2007 and the new Rules. The Court of Appeal stressed the need to give full and proper weight to the public interest in the deportation of an appellant as a foreign criminal. The Court of Appeal held that the Upper Tribunal should have approached the assessment of the claim under Article 8 by application of the new Rules, and in particular (since the appellant could not bring himself within paragraph 399 and 399A of the new Rules, by asking itself whether there were very compelling reasons, within the "exceptional circumstances" rubric in paragraph 398), to outweigh the strong public interest in deportation in the appellant's case. In addressing that question, the Upper Tribunal should, of course, have given due respect to the guidance from the Grand Chamber in *Maslov* at paragraph [75] of the judgment (reading it in the context of the general guidance given by the Grand Chamber at paragraph [68]-[76] of the judgment) but as a matter to be weighed into the overall assessment and balanced against the strong public interest in deportation to which the UK Borders Act 2007 and the new Rules give expression.
40. We find that the Upper Tribunal decision in **Akhalu** has no relevance to this case. The facts in **Akhalu** are very different from the facts in this case. **Akhalu** was not a foreign criminal. After arriving in the UK as a student, she was diagnosed with end stage kidney failure. It was conceded by the Home Office Presenting Officer that she would not be able to afford the treatment she needed in Nigeria and so would inevitably die. Her medical condition was considered through the prism of Article 8.
41. The appellant in the instant case had indefinite leave to remain but is now facing deportation because he is a foreign criminal. He is not alleging and it has not been conceded that without the medical treatment and care he is receiving in the UK he would die if he is deported to Nigeria. It is his case that his medical condition

amounts to exceptional circumstances and therefore outweighs the public interest in deporting him. The appellant relied on the medical report by Dr Fazel.

42. Dr. Cumming came to the conclusion that the appellant did not suffer from any mental illness. The appellant's reports of hearing voices were inconsistent, not in keeping with a mental illness and not consistent with objective day-to-day observations of his behaviour in prison. His claims about suffering a head injury were not substantiated by any of his medical reports. Dr. Cumming concluded that the appellant would seem to be a man who can be impulsive and aggressive, particularly when alcohol is involved which seems to be the case at the time of the offence. So it is not surprising that the appellant relied on the medical report by Dr Fazel. Her findings were in complete contrast to those of Dr. Cumming. Dr Fazel states that the appellant has a severe mental illness which she characterised as a schizoaffective disorder – a psychotic illness with significant affective symptoms that coincided with its onset. Her impression was that this illness has been present for some years. His description of the burglary was consistent with someone who is mentally unstable. She was of the opinion that the appellant has probably exaggerated some of his symptoms at times, but that does not take away the fact that he has had symptoms and it is not uncommon for psychiatric patients to exaggerate symptoms if they are not receiving the treatment they feel they need. On balance we are prepared to accept Dr. Fazel's psychiatric assessment of the appellant.
43. The appellant is currently dependent on the medication he is prescribed by Dr Fazel, that is depot antipsychotic drugs with Risperdal consta once a fortnight for another eighteen to twenty four months. Dr. Fazel said that the appellant only partially responded to Risperidone and Quetiapine had little effect on him. Dr. Fazel states that his prognosis will worsen if he is subject to psychosocial stressors and illegal drugs and without medication he would relapse and his mental state would deteriorate to an extent that he would be at risk to himself and others. She also said that the appellant needs regular follow-up by mental health nurses who would administer the depot. He would need two-three monthly psychiatric reviews but does not currently need psychiatric hospitalisation, which is about the only thing she and Dr. Cumming agreed on. Her prognosis is that if the appellant remains on his current medication he could return to employment and independent living on release from prison, although it is not possible to be certain. Dr Fazel's prognosis suggests that the appellant is not likely to be at risk of re-offending so long as he remains on his current medication.
44. We know from the COI Report that Risperidone is available in Nigeria as well as Quetiapine. There was no evidence from the appellant that Depot Risperdal Consta is not available in Nigeria. From the COI Report we know that there are federally funded psychiatric hospitals and state-owned mental hospitals in Nigeria. Therefore on the evidence before us we find that the appellant has not demonstrated that he would not be able to obtain the medication that he requires, or medication equivalent, for his purposes, to it; and he should be able to obtain medical treatment from any of the psychiatric hospitals in Nigeria for his mental condition. We do not know what Dr Fazel means by "psychosocial stressors". The appellant has a sister in Nigeria. The Tribunal did not believe that the family in the UK were not financially

supporting the sister. Consequently we find that with the support of his sister and financial help from his family in the UK, the appellant should be able to keep away from illegal drugs and find employment to enable him lead an independent life.

45. Looking at all of the appellant's circumstances as a whole, and taking full account of his medical condition and all that we say about that above, the fact that he has family in the United Kingdom with whom he has a family life, and the length of the appellant's stay in the United Kingdom and the fact he had Indefinite Leave to Remain here, nevertheless, the public interest in the appellant's removal is significant, given the nature of his offending and the length of sentence he received for it. In all the circumstances of this case we are not satisfied that there are very compelling circumstances that outweigh the public interest in the appellant's deportation.
46. Accordingly we dismiss the appellant's appeal.

Signed

Date

Upper Tribunal Judge Eshun