IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA019842014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 April 2016	**On 26 May 2016**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SS
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr P Richardson, Counsel, instructed by J D Spicer Zeb Solicitors
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal comes before me by way of a rehearing to enable the Upper Tribunal to consider any further evidence relating to the Appellant's ability to reintegrate into the Democratic Republic of Congo (DRC) following the Respondent's successful appeal against a decision of the First-tier Tribunal, dated 12 October 2015, which allowed the Appellant's appeal against the Respondent's decision to deport him on the basis that his presence was not conducive to the public good by virtue of Section 5(1) of the Immigration Act 1971.

2. In an error of law hearing heard on 14 January 2016 I found that the First-tier Tribunal Judge materially erred in law by failing to take into account the full scope of the relevant public interest factors in the proportionality assessment encapsulated within paragraph 398 of the immigration rules. I additionally found that the First-tier Tribunal judge's conclusion that the Appellant was a vulnerable individual was not supported by the evidence before him. Nor had there been any consideration of the ability of the Appellant's aunt and uncle to provide financial or other support to him through remote means, or of the Appellant's ability to obtain employment in the DRC. The First-tier Tribunal judge also failed to give adequate reasons why the Appellant's recently acquired knowledge that he was an orphan would impact on his ability to integrate into the DRC.

Background

3. The Appellant is a national of the DRC. His date of birth is given as [ ] 1996. He first entered the United Kingdom on 20 May 2007 as an 11 year old. He was granted indefinite leave to remain on the basis of family reunion with DS, his uncle. On 19 February 2013, when he was 16 years old, the Appellant was convicted of wounding with intent to cause grievous bodily harm and of having a blade/article in public. The incident involved a deliberate attack on a fellow student resulting in the Appellant slashing the other student across the face with a knife leaving a lifelong scar. The Appellant pleaded guilty to this offence and received a custodial sentence of three years and nine months' imprisonment in a young offenders' institution. He had committed other, albeit less serious offences including offences of theft and breach of a referral order. He had not received any other custodial sentence.

The decision of the First-tier Tribunal

4. The Respondent considered that the Appellant's presence was not conducive to the public good and made a decision to deport him. The Appellant appealed that decision and his hearing was heard on various dates in May, July and September 2015. The First-tier Tribunal judge heard evidence from the Appellant, from his aunt JM and his uncle, DS. Having considered the evidence from the various witnesses the judge found that the Appellant would not have any fear of persecution and/or Article 3 ill-treatment if deported to the DRC on the basis of his criminal conviction coupled with the fact that his uncle was a recognised refugee. No cross-appeal had been made in respect of this finding.

5. The First-tier Tribunal judge then considered Article 8. The First-tier Tribunal judge found that the Appellant could not meet the requirements of paragraph 399A of the Immigration Rules because he had not resided in the United Kingdom for most of his life. Mr Richardson accepted that this continued to be the case. Having arrived in the UK aged 11, the Appellant had been here for almost 9 years. At paragraph 49 of his decision the First-tier Tribunal judge found there were "clearly significant obstacles" to the Appellant's integration in the DRC, chiefly the absence of any social network to support him in that process. In so doing the

First-tier Tribunal judge did not appear to be intending to apply the test in paragraph 398 of the immigration rules which required the existence of "very significant obstacles". The First-tier Tribunal judge found that the Appellant had spent the greater part of his 'socially aware life' in this country having been here for all of his teenage years and for all of his compulsory secondary education. The judge was satisfied that the Appellant had studied and socialised exclusively in English.

6. The First-tier Tribunal judge accepted that the Appellant had been orphaned as a child and grew up regarding his aunt and uncle as his real parents. It was only in 2011 that the Appellant learnt that his aunt and uncle were not his biological parents. The judge found, on the basis of the evidence before him at the date of the First-tier Tribunal hearing, that the Appellant did not have any immediate family members in the DRC and accepted that his grandmother, with whom he had lived prior to entering the United Kingdom, was now dead. The judge found that the Appellant's strongest ties were to the United Kingdom. The judge found that there was no realistic possibility that the Appellant's family in the United Kingdom could relocate to the DRC because his uncle was a recognised refugee. I pause to note that the evidence before the judge indicated that the Appellant's aunt and uncle were separated but there was no evidence that his aunt held any fear from the authorities in the DRC.

7. Although the Appellant was over the age of 18 the First-tier Tribunal judge found, again on the evidence before him, that he had not yet established an independent life and was said to be still very much a member of his aunt's household. The First-tier Tribunal judge observed the sentencing judge's remarks to the effect that the Appellant was 'not very grown up' and considered this to be a reference to his relative immaturity and not simply his chronological age. The sentencing judge had also described the Appellant as "vulnerable", a factor that played a role in the First-tier Tribunal's proportionality assessment.

8. The First-tier Tribunal accepted that the index offence committed by the Appellant was undoubtedly serious as it involved the use of violence and had serious and permanent repercussions for the victim. Having considered the Appellant's background the First-tier Tribunal found that he had fallen in with the wrong crowd and joined a gang. The First-tier Tribunal judge found, again on the basis of the evidence before him, that the Appellant had engaged with his rehabilitation and had not committed any further offences since his release.

9. The First-tier Tribunal concluded that the Appellant was a vulnerable individual and that having to start off again in the DRC would present considerable challenges to him for which he would be 'ill-equipped and without proper support from the significant adults in his life'. The First-tier Tribunal judge concluded that the factors militating against the Appellant's deportation outweighed the public interest in his deportation.

The finding of material errors of law

10. In the error of law hearing I found, applying *AM* [2012] EWCA Civ 1634, that the Judge failed to take into account or engage with all relevant public interest factors such as the need to deter individuals from committing offences, the need to express society's revulsion at the commission of serious offences, and the need to ensure public confidence that offenders are punished. This undermined the First-tier Tribunal's proportionality assessment. Nor had there been particularised reference to section 117C(2) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) which requires a court or tribunal to take into account, when assessing proportionality, that the more serious the offence, the stronger is the public interest in removal.

11. Nor was I satisfied that the First-tier Tribunal judge was entitled to conclude that the Appellant was a vulnerable individual. The only reference to the term "vulnerable" before the First-tier Tribunal was in the Judge's sentencing remarks. This read, "[the Appellant's] *vulnerability is within the gang and because of his membership of it he was vulnerable from others as well*". It is clear that the sentencing remarks related to vulnerability in the context of the Appellant's membership of a gang and not to any inherent vulnerability on his part. The sentencing Judge's reference to the Appellant being "not very grown up" and to being easily influenced has to be considered in the context of the Appellant as a 16 year old and there was no basis for the First-tier Tribunal judge to find, as a 19 year old, that the Appellant was vulnerable or immature. The various certificates provided by the Appellant to the First-tier Tribunal judge were further indications of his growing maturity.

12. Nor was there sufficient evidence that, as a 19 year old, the Appellant enjoyed anything more than normal bonds of affection with his aunt and his uncle. The First-tier Tribunal failed to give adequate reasons why the Appellant's recently acquired knowledge that he was an orphan would impact on his ability to reintegrate into the DRC. The First-tier Tribunal's conclusion that the Appellant would be 'ill-equipped and without proper support from significant adults in his life' was reached without any consideration of the ability of his aunt and uncle to provide financial or other support through remote means. It was apparent from the evidence identified at paragraphs 14 and 18 of the First-tier Tribunal's decision that the Appellant's family in the United Kingdom paid for his grandmother's medical bills and sent money for her funeral. Nor was any assessment made of the Appellant's skills/qualifications and whether these, together with his proficiency in English, would assist him in finding a job in the DRC. I noted in the error of law decision that there was no evidence that the Appellant no longer spoke Lingala.

The rehearing

13. Although a further bundle had been served by the Appellant's representatives, this did not contain any new documents that had not been before the First-tier Tribunal.

14. The Presenting Officer applied for permission to serve copies of the Appellant's 'Family Reunion Application Detail's and the accompanying Interview Record, relating to his application for indefinite leave to enter the UK which was made on 10 November 2006. The Respondent also sought permission to serve an OASys Assessment dated 04 November 2014 made in respect of the Applicant. Mr Richardson opposed the application to adduce these documents citing the "*Ladd v Marshall* principles" (see *Ladd v Marshall [1954] 1 WLR 1489*) and noting that the documents could have been adduced before the First-tier Tribunal and that the OASys report was only a snapshot of the Applicant's circumstances at the time it was created. This is an adjourned hearing of an appeal, a material error of have having been uncovered by the Upper Tribunal. The reason it was adjourned was to allow the provision of further evidence. The *Ladd v Marshall* principles have no application in this context. The documents were both relevant to the issues under consideration. I admitted the documents but indicated that any weight I attached to them would be considered in light of their provenance and date of creation. Mr Richardson indicated he had sufficient opportunity to take account of the documents and made no application to adjourn the hearing. Mr Richardson then sought to admit a national Probation Service letter dated 13 April 2016 into evidence, which I admitted.

15. It was accepted by Mr Richardson at the outset of the hearing that the Appellant could only succeed under paragraph 398 of the immigration rules if he could show the existence of 'very compelling circumstances' over and above those described in paragraphs 399 and 399A.

16. In examination-in-chief the Appellant confirmed that the Applications Details document contained his photograph and referred to his family name as 'Ngobe Saku'. The Interview Record accompanying the Applications Details document indicated that the Applicant was accompanied by 'Marie Tsaku, who first claimed to be the aunt of his uncle DS, and then claimed to be DS's sister. According to the interview record the Appellant and his sister called her 'aunt'. When the Appellant was asked about this person he said he did not know who she was. When asked who else lived with his grandmother in the DRC the Appellant said his cousin and a 'few other people'. One was an adult but the Appellant could not really remember. The Appellant claimed he had no contact with anyone else in the DRC since he came to the UK. He claimed to have no relatives in the DRC.

17. The Appellant said he had not seen a probation officer in the 5 months prior to his release from custody. Since his release he had seen Probation once every week. The three warnings mentioned in the probation letter produced by the Appellant related to his late attendance at meetings. He had never missed an appointment. The Appellant claimed he had a trial in 3 weeks for Arsenal football club, and had been accepted on a college course to study sport science. The Appellant also received support from the St Giles trust. He no longer saw the people he used to see prior to his incarceration and had not committed any other offences.

18. In cross-examination the Appellant said if Marie was his aunt he would know about it. The Appellant said that DS did have siblings in the UK. The Appellant did not know all of them personally. The Appellant explained that if he received more than 3 probation warnings he would be returned to jail. The Appellant was referred to page 9 of the OASys Assessment. This contained an assertion that the Appellant was a member of the Dem Africans (DA) gang based in Edmonton. The Appellant said he was never a gang member and had been hanging around with the wrong people. When referred to another section of the OASys report in which a probation officer did not get the impression that the Appellant was remorseful, the Appellant said he was easily influenced and regretted what he did. The Appellant said he had never brought his previous friends to his family home.

19. The Appellant claimed he 'doesn't really speak French', although he could understand it. The Appellant was referred to 6.9 of the Oasys report which indicated that, at home, the family communicated in French/Lingala. The Appellant claimed he could not speak Lingala at all. His family spoke to him in Lingala but he claimed he would not reply in the language. He claimed that he could understand a bit of Lingala. Another paragraph in 6.9 of the report indicated that the Appellant had not wanted to be visited by his aunt while he was in custody and rejected her phone calls. Instead the Appellant had tried to keep his association with his friends and asked for them to be allowed to visit. In oral evidence the Appellant denied this, claiming that his family had visited him in 2013, 2014 and 2015.

20. When examination-in-chief of DS commenced it became apparent that he needed a French or Lingala interpreter. One was eventually obtained. DS claimed he did not know who Marie Tsaku was. DS's mother was quite elderly when the Appellant applied for entry clearance and DS believed his mother probably took Marie Tsaku to the embassy with her. When asked who Marie Tsaku was, DS claimed she was someone who was helping his mother. When I asked DS whether he knew of Marie Tsaku he said that he lost everything when he left the DRC and that he did not have a number for her. When asked who he was referring to DS said he did not know anymore.

21. In cross-examination DS stated that he sent money to a friend in the DRC to help his mother and the friend told DS that there was someone helping his mother. When DS sent money to his friend, his mother was present. DS would speak to his mother on the telephone and inquire about her health. DS confirmed that he was in direct contact with his mother. When it was pointed out to DS that Marie Tsaku said the Appellant and his cousin were living with her (Q16), DS said he did not know that and said the Appellant had been living with his (DS's) mother. DS explained that the house in which his mother used to live was the family house. He did not know who looked after it after his mother died. When asked if he could support the Appellant if deported to the DRC DS said it was impossible with a small salary. When asked whether his siblings in the UK could help support the Appellant DS said his siblings were actually his cousins. They were the children of his paternal uncle. He had a 'real' sister but she died (the Appellant's mother).

When I asked DS why he never asked his mother about the woman who was helping her, he said that it never came to his mind.

22. In re-examination DS said he was employed by [R L] and his salary was £1,000 a month. He lived by himself and paid rent of £360 a month. His other outgoings included phone, bills, food, travelling, clothes and council tax. After these expenses he had maybe £100.

23. JM adopted her statement and gave evidence via the interpreter. There was no examination-in-chief. In cross-examination JM claimed that DS had a 'blood' brother in the UK. When asked whether the Appellant, his cousin and DS's mother stayed in the same property after she (JM) left the DRC, JM said that they had left the family home after DS escaped from the DRC and rented a property. JM claimed that no-one else lived with DS's mother, the Appellant and his cousin. She had never heard of Marie Tsaku and was not aware of anyone else living with DS's mother. DS's mother would receive money sent from the UK via agencies and she would collect the money herself. DS's mother had her own phone, paid for by DS and JM. When asked whether she could send money to the Appellant if he was deported, JM said he was too young and not self-sufficient. The assertion in the OASys report that the Appellant rejected her phone calls and did not want her to visit was not true.

24. In response to questions from me JM said that the Appellant could previously understand French prior to his time in prison. She claimed he did not understand when she tried to speak Lingala. She had never been told about a woman who had helped DS's mother.

25. I heard submissions from both representatives which I have fully taken into account.

Findings and reasons

26. The Appellant was sentenced to a period of more than 12 months but less than 4 years imprisonment. The Appellant cannot meet the requirements of paragraph 399A because he has not lawfully resident in the UK for most of his life. This was not in dispute. Nor was it in dispute that the Appellant cannot meet the requirements of paragraph 399 of the immigration rules. As such, and pursuant to paragraph 398, the public interest in the Appellant's deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A. Following *MF (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 1192 the immigration rules constitute a complete code for consideration of Article 8 in the context of deportation decisions. All factors relevant to proportionality, including, the *Maslov* criteria, will be considered under paragraph 398.

27. I begin, as my starting point, with the retained factual findings of the First-tier Tribunal. I accept that the Appellant has lived in the UK since entering in 2007, aged 11, with lawful leave, and that he has his strongest ties to the UK. I accept

that the Appellant has spent all of his 'socially aware life' in the UK, and that he has studied and socialised exclusively in English and is highly proficient in the language. I accept that he has integrated into the UK. His proficiency in English is a relevant consideration under section 117B(2) of the 2002 Act. I accept that the Appellant is capable of undertaking remunerative employment and that he has the capacity to be self-sufficient, a relevant factor under section 117B(3).

28. The First-tier Tribunal Judge accepted that the Appellant only learnt that DS and JM were not his biological parents sometime after he arrived in the UK. This acceptance does not sit comfortably with Marie Tsaku's answer recorded in the Appellant's entry clearance interview record that the Appellant did know about the death of his mother prior to entering the UK. I am nevertheless prepared to accept the Appellant's claim that he only became aware of his actual relationship to DS and JM after entering the UK, and that this may have had some adverse psychological impact on him.

29. The First-tier Tribunal Judge accepted that the Appellant did not have any immediate family members in the DRC. For the following reasons I cannot accept this earlier finding. The First-tier Tribunal did not have the benefit of the Appellant's Application Details and the record of interview relating to his entry clearance application made at the end of 2006, or the oral evidence given in respect of these documents. At his entry clearance interview the Appellant was accompanied by someone called Marie Tsaku who described herself as his aunt (the sister of DS). The interview record notes that the Appellant called Marie 'aunt'. It is clear from the interview record that this person had knowledge about the Appellant's circumstances (she was aware that the Appellant's mother had died and knew when she died; she knew that DS had assumed care of him; she knew details about the Appellant's cousin; she knew details about the Appellant's aunt and uncle's migration to the UK; she knew that DS and JM sent money to the Appellant and was able to produce a receipt). This suggests that the Appellant had other family members in the DRC other than his grandmother, at least in 2006. This however is inconsistent with the evidence produced to the Tribunals on his behalf. The Appellant claimed not to know who Marie was despite the interview record noting that he called her 'aunt'. In his oral evidence the Appellant said that, in addition to him and his cousin, a 'few other people' lived with his grandmother. He claimed not to know who they were but said one was an adult. This is, to some extent, supported by the entry clearance interview record in which Marie Tsaku states that the Appellant and his cousin live with her.

30. I found DS's evidence relating to Marie Tsaku to be evasive. He claimed, on the one hand, that Marie was probably someone who was helping his mother when she was elderly. He then said that he did not have a number for 'her'. This suggests he had some knowledge of Marie Tsaku. When asked to clarify who 'her' was, DS then said "I don't know anymore." DS also stated that he was in direct contact with his mother and would speak to her when he sent money to his friend. If DS was in contact with his mother (the Appellant's grandmother), I find it incredible that DS would not have been aware that his mother had a woman living

with her and helping her. This undermines DS's claim that he has no knowledge of Marie Tsaku. I am reinforced in this conclusion by reference to the fact that Marie Tsaku was interviewed for the purpose of the Appellant's entry clearance application, an application in which DS acted as the sponsor. I simply find it incredible that DS would not be aware of the person accompanying the Appellant to an interview and speaking on his behalf when he was acting as sponsor. In her oral evidence JM said she was not aware of anyone else living with the Appellant's grandmother other than him and his cousin. Given that there was direct telephone communication between DS and his mother I do not find it credible that JM would be unaware that other people lived with the Appellant's grandmother. For these reasons I do not accept the evidence advanced by the Appellant and his witnesses in respect of the absence of any other family support in the DRC. I find it more likely than not that the Appellant does have relatives living in the DRC.

31. The First-tier Tribunal found that the Appellant was vulnerable and immature. For the reasons given at paragraph 11 of this decision I am not satisfied that the Appellant is either vulnerable or immature. Nor am I satisfied, having regard to *Singh* [2015] EWCA Civ 630, that there is sufficient evidence that, as a 19 year old, the Appellant enjoys anything more than normal bonds of affection with his aunt and his uncle. I accept that the Appellant now lives with his aunt, as a term of his bail. But no evidence has been adduced to support the contention that there is anything beyond the normal bonds of affection between the Appellant and DS and JM. No evidence was adduced to suggest that the Appellant would be unable to maintain indirect or remote communication with his family in the UK.

32. There were some general inconsistencies between the evidence given by DS and JM. DS first claimed to have siblings in the UK, but later claimed he only had one biological sibling, his deceased sister, and that the 'siblings' he had been referring to were actually cousins. JM however was quite clear in her evidence that DS had a 'blood' brother in the UK. In his oral evidence DS claimed he used to send money to his mother via a friend. In her oral evidence JM stated that money was sent to DS's mother via an agency and that DS's mother would collect the money herself from the agencies. There was additionally discrepant evidence as to whether the Appellant's grandmother was living in her family home or rented accommodation when the Appellant left the DRC. I find these inconsistencies undermine to some extent the general credibility of both witnesses.

33. In the Appellant's entry clearance interview Marie Tsaku is recorded as having said that his family in the UK (JM and DS) sent him and his cousin money, and reference was made to a receipt. In the First-tier Tribunal hearing evidence was given that DS paid for his mother to reside in hospital prior to her death and that money was sent for the funeral. In his evidence before the Upper Tribunal DS claimed he had a small salary and that it was impossible for him to provide any financial support to the Appellant. Although DS gave details of his income and outgoings, and claimed he only had around £100 a month after his outgoings, no supporting evidence was produced. It was therefore impossible to confirm DS's

assertions, despite the clear terms on which the error of law hearing was adjourned. JM, in her evidence before the Upper Tribunal, stated that money was sent to DS's mother to provide food and accommodation and a telephone. When asked if she could provide money to the Appellant if he was deported, JM did not answer the question and instead said that the Appellant was too young to be self-sufficient. Other than some old documents from HMRC relating to the award of tax credits to JM, no independent evidence was provided relating to her income and expenditure. Given that DS and JM were previously able to provide funds to the Appellant and his grandmother in the DRC, and in the absence of any independent evidence relating to their financial circumstances, and in light of my concerns as to their general credibility, I am not satisfied that they would be unable to provide at least some funds to the Appellant if deported.

34. Having considered the evidence presented to me at the adjourned hearing, I am not satisfied the Appellant cannot speak or communicate in Lingala or French. The Appellant lived in the DRC until he was 11 years old. In the First-tier Tribunal hearing the Appellant said that the only language he spoke for the first 10 years of his life was Lingala. I do not find it likely that the Appellant would lose his ability to speak Lingala having spoken only that language for the early formative years of his life. My conclusion is supported by the OASys report which indicated that, at home in the UK, the family communicated in French/Lingala. In his oral evidence the Appellant said he cannot really speak French although he accepted that he understood it. DS could not however give his evidence in English and required a French/Lingala interpreter. This suggests that the communication between the Appellant and his uncle would have been in French or Lingala. I am consequently satisfied that the Appellant would be deported to a country in which he is able to communicate and where he is familiar with the principle languages, or where he would be able to re-acquaint himself with the languages without much difficulty.

35. The Appellant is a young, fit and healthy male who, in addition to his ability to speak or easily reacquaint himself with either French or Lingala, can speak English. He lived in the DRC for the first 11 years of his life and is likely to have retained some familiarity with the culture and the customs. He has obtained a number of qualifications while in prison, including a BTEC in Workskills and Health and safety qualifications, which would assist him in obtaining employment in the DRC. Through a combination of his ability to become self-sufficient, the probability that his family in the UK would be able to provide him with some funds, and the probability that he does have family in the DRC, I find he would not be rendered destitute on deportation.

36. The Appellant maintains that he is remorseful for his serious offence. In his oral evidence the Appellant categorically stated that he was never a gang member. The Sentencing Judge however was clearly of the view that the Appellant was a member of a gang. This is further supported by the information provided in the OASys report. The Appellant's denial of ever being a gang member is contradicted by the aforementioned evidence. I find that the Appellant is attempting to minimalize the extent of his previous criminal activities and involvement. This

indicates he has not yet accepted responsibility for his previous actions, undermining his claim to rehabilitation. In this regard I additionally note the comments in the OASys report (12.8) that, although previously expressing remorse, on the occasion the probation officer met him the Appellant did not give this impression. Although disputed by the Appellant I further note the assertion in the OASys report that the Appellant tried to keep his associations with his friends and asked for them to be allowed to visit him when he was jailed. This suggests that, at least while he was in custody, the Appellant was actively trying to retain contact with his former associates. I nevertheless take account of the National Probation Service letter dated 13 April 2016 confirming that the Appellant has not been charged with any further offences, that he positively and that he positively engaged with Probation, and that the Appellant reports being motivated to gain employment or training. I note however that he does have three warnings on file, the Appellant claims for being late.

37. I take into account the fact that the Appellant was only 16 years old when he committed his index offence. I attach significant weight to the fact that he was a minor when his offence was committed, a point very much in his favour when assessing whether there are very compelling circumstances over and above those described in paragraphs 399 and 399A. The Appellant's minority is relevant in respect of both his maturity when the offence was committed and the possibility of rehabilitation. I additionally take account of the Sentencing Judge's remarks that the Appellant was immature when the offence was committed and that he was vulnerable within the gang to which he belonged.

38. I have additionally considered the relevant factors identified in *Maslov v Austria* [2008] ECHR 546 including the nature and seriousness of the Appellant's criminality, the length of his stay in the UK, the time that has elapsed since the commission of his index offence and his conduct during that period (no further offences have been committed), and the solidity of his social, cultural and family ties to the UK host country and with the DRC.

39. I do however note the seriousness of the offence, which left his victim scarred for life, as reflected in the sentence of three years and nine months' imprisonment in a young offenders' institution. The offence constituted an escalation in relation to the Appellant's previous history of offending. I take into consideration the public interest in the maintenance of effective immigration controls (section 117B(1) of the 2002 Act), that the deportation of foreign criminals is in the public interest (section 117C(1)), and that the more serious the offence committed, the greater is the public interest in deportation (section 117C(2)). I take into account the public interest in deterring foreign criminals from committing offences and the public revulsion in this serious offence. I additionally take into consideration the fact that neither Exceptional 1 nor Exception 2 in section 117C(4) apply to the Appellant, and that the public interest therefore requires his deportation. Having regard to the Court of Appeal decision in *SS (Nigeria)* [2013] EWCA Civ 550 I note that a foreign criminal's claim to resist deportation on Article 8 grounds needed to be very strong to prevail over the public interest in deporting foreign criminals.

40. I am prepared to accept that there are significant obstacles to the Appellant's integration in the DRC, but, in light of my findings above and the findings of the First-tier Tribunal that have been preserved, I am not satisfied these obstacles constitute the very compelling circumstances needed to show that the decision would be disproportionate under Article 8 in light of the significant public interest factors weighing in favour of the Appellant's removal.

Notice of Decision

The First-tier Tribunal made material errors of law. Having reheard the appeal it is dismissed on human rights grounds.

25 May 2016

Signed Date

Upper Tribunal Judge Blum

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

25 May 2016

Signed Date

Upper Tribunal Judge Blum